

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 16 July 2015

**Public Authority:** Bristol City Council  
**Address:** City Hall  
College Green  
Bristol  
BS1 5TR

#### **Decision (including any steps ordered)**

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1. The complainant has requested full information on the building regulations application and site inspections of his neighbour's adjacent property. The council initially withheld the entirety of the information on the basis that it was third party personal data. During the case the council provided the complainant with the information which it considered to be his own personal data as part of a subject access request under section 7 of the Data Protection Act 1998 (the DPA). It maintained that the remaining information was excepted from disclosure under regulation 13(1) as it was third party personal data.
2. The Commissioner's decision is that the council was correct to rely on regulation 13(1) to withhold the remaining information. He also finds that the council breached regulation 5(2) as it did not comply fully with the request within the prescribed 20 working day time frame.
3. The Commissioner does not require the council to take any steps in this case.

#### **Request and response**

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4. On 7 November 2014, the complainant requested information of the following description from the council:

*"We hereby make a freedom of information request for full information on the building regulations application and site inspections. This*

*information should include the name and qualifications of the "approved inspector".*

5. On 22 December 2014 the council responded. It refused to provide the requested information. It cited section 40(2) of the FOIA as its reason for doing so.
6. The complainant requested an internal review on 11 February 2015. The council sent the outcome of this on 25 February 2015. It advised that it no longer considered the name and qualifications of the inspector to be withheld information, and this was therefore disclosed. In respect of the remaining building regulation application and site inspection information, the council advised that the correct access regime was the EIR. However it maintained that the information was personal data and therefore considered that regulation 13(1) applied.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 4 March 2015 to complain about the way his request for information had been handled. In particular he considered that the council was incorrect to rely on regulation 13 to withhold the information. He maintained that the information he sought was technical information relating to structural design and building compliance issues which may ultimately affect his property, and was therefore not personal data.
8. During the course of the investigation, the council disclosed the information from the building control file which it considered to be the complainant's personal data and which therefore could be disclosed to him under the subject access provisions of section 7 of the DPA.
9. The Commissioner considers the scope of this investigation to be to determine whether the council was correct to withhold the remaining information under regulation 13(1), and to formally record any procedural breaches of the EIR.

### **Reasons for decision**

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#### **Is it environmental information**

10. The first question for the Commissioner to address here is whether the information is environmental in accordance with the definition given in regulation 2(1) of the EIR:

*"any information in written, visual, aural, electronic or any other material form on –*

*(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...*

*(b) factors, such as substances, energy, noise, radiation or waste, emissions...affecting or likely to affect the elements of the environment referred to in (a);*

*(c) measures (including administrative measures), such as policies, legislation, plans, programmes...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".*

11. The Commissioner considers that the information in question relates to 'measures' that fall within the scope of regulation 2(1)(c). The information was generated as the works were subject to the Building Regulations. The building works consisted of a side and rear extension, which changes the exterior of the address in question. The Commissioner considers that the information relates to a 'measure' that affected the landscape, which is an element of the environment set out in regulation 2(1)(a). Information relating to this would constitute "any information on" the application or measure. It is therefore clear to the Commissioner that the request was for environmental information

### **Regulation 13(1) – personal data**

12. Regulation 13 provides that personal data of someone other than the person making the request shall not be disclosed where either one of two conditions are satisfied. The first condition, which is relevant here, is that disclosure would contravene one of the data protection principles in the DPA or would contravene section 10 of the DPA.

*Is the withheld information personal data?*

13. Personal data is defined in section 1(1) of the DPA as -

*"...data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual".*

14. In determining whether information is the personal data of individuals other than the requester, that is, third party personal data, the Commissioner has referred to his own guidance and considered the information in question. He has looked at whether the information

relates to living individuals who can be identified from the requested information and whether that information is biographically significant about them.

15. The withheld information consists of building control information compiled in a building control file relating to the specified property. It is the Commissioner's view that an individual or individuals can often be identified from a postal address through sources such as the Land Registry and the electoral roll. It would be a relatively simple task to marry up this information with what is withheld, to determine the name of the owner/occupier. Additionally, local knowledge of the area will likely mean that local residents will know who occupies and/or owns the building. The complainant, of course, knows the name of the building's owner as he is the next door neighbour. The withheld information therefore provides, amongst other things, biographical detail as to what building work the owner/occupier has undertaken as well as information about the inside of his home.
16. In addition to this, the complainant himself has argued that as a neighbour, he ought to have a right to the requested information on the basis that it is about works carried out to a property which may impact on his property, and therefore on his family and private life. The Commissioner finds the same to be true of the information in respect of the property occupier. Clearly information about how his home is constructed, including the layout of the rooms, will be information which has an impact on his family and private life.
17. The Commissioner therefore does not doubt that the withheld information is the personal data of the owner/occupier, for the purposes of the EIR.

*Would disclosure contravene any of the Data Protection Principles?*

18. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations in this case have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

*Reasonable expectations*

19. The council has advised the Commissioner that the individual has reasonable expectations that this information would not be disclosed into the public domain. This is because unlike planning applications,

building control files are not routinely disclosed or published into the public domain.

20. The Commissioner accepts that the way in which the council normally treats this type of information would shape the reasonable expectations of the individual, and they therefore would not expect the council to disclose the information. In addition to this, although the EIR are motive and requester blind, the Commissioner understands that the complainant and his neighbour do not have a good relationship as a result of the building work, and this is a factor which would also shape the individual's reasonable expectations.
21. The Commissioner notes that Building Regulation approval is a requirement of the building work to the individual's property, and so it could be considered that the individual was in effect compelled by law to allow the Council to record his personal data in the context of building works carried out on his own property. It is therefore quite reasonable for the individual then not to want this information publically disseminated

#### *Consequences of disclosure*

22. The Commissioner's view is that the consequences of disclosure of the withheld information in this case would not be significant as the information is not of particular personal sensitivity. Therefore, the Commissioner does not see that there would be a specific detrimental impact, on the basis of distress, placed upon the individual should the information be disclosed. Neither has the Commissioner been presented with any tangible consequences on the individual, such as financial loss, if the withheld information was disclosed. However, he does accept that given that there is a reasonable expectation that the information will not be disclosed, there would be some level of distress from disclosure on the basis that privacy has been unexpectedly lost.
23. The Commissioner accepts therefore that the disclosure of this information into the public domain would have some negative impact on the individual's privacy, to the extent that it will result in the unexpected loss of privacy, which in itself could be distressing.

#### *Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure*

24. The complainant's position is that disclosure of building control information should be routine as it is with planning applications, at least to the extent that it is disclosed to those on whom the works to be inspected has an impact. He considers that in this case, the information he has requested should have been provided to him as he is the next

door neighbour and the building work could have a structural impact on his property.

25. He has explained that he is concerned that the design and construction of his neighbour's property may be deficient and that such deficiencies could have been concealed. He believes that the withheld information could have an impact on his property, his family, and other members of the public, such as passers by, and should therefore be disclosed.
26. He has expressed the view that if building control information is not made routinely publically available, then how will the public know that that the Building Regulations are being implemented effectively in the interests of all. He has raised concerns that there is no mechanism for neighbours or other interested parties to comment on the building regulation process. He has said that the objections he raised against the planning application included comment on building regulation issues, and he requested that these be forwarded to building control. He is concerned that these have not been forwarded as requested.
27. The Commissioner has seen the building control file and notes that this information is included within it. The council has explained that it chose not to provide it to the complainant as part of the subject access response, as it originated from him, and therefore he would have retained a copy.
28. Both the Commissioner and the council acknowledge and understand that the complainant has a vested interest in the withheld information. To this end, during the Commissioner's investigation, the council disclosed to the complainant the information from the building control file which could be considered to be his personal data. The Commissioner has had sight of this, and whilst he notes that the disclosed information comprises only a portion of the file, and is in places of poor legibility, it does represent the portion of the building work that would be likely to impact on his property, that being within 3 meters of the boundary party wall.
29. The complainant has also informed the Commissioner that he maintains that building regulations information should be considered in the same light as planning information, and should therefore be routinely disclosed. His view is that Building Regulations exist to protect the health and safety of those who will use and come into contact with the new building works. He believes that this includes neighbours like himself, and that such information should therefore be disclosed to him and others in situations like his own. He has said that he feels strongly that the building control process has deteriorated and is not functioning adequately in the public interest. He says that there are wider issues which need to be considered by the Secretary of State.

30. Notwithstanding the complainant's position, the Commissioner doubts how strong the wider public interest would be in the particular withheld information in this case. This is because it records the view of a building inspector along with technical calculations on building work on a private property. It is clearly not within the Commissioner's remit to make findings or comments on the adequacy and accuracy of the building control information in this case. The Commissioner notes that there are other avenues which exist for this purpose, such as the Local Government Ombudsman which specifically states that it will consider complaints from *"an affected neighbour about the council failing to take enforcement action against a significant breach of the Regulations."*<sup>1</sup>
31. There may be some justification as to why the complainant himself reasonably wishes to access this information and have it released to serve his private interest in the matter. However, the Commissioner can only consider whether the information should be released into the public domain without restriction rather than whether the complainant alone should have access to it. Indeed he considers that in disclosing some information from the building control file under to the complainant under the subject access provisions at section 7 of the DPA, the council has gone some way to meet this need.
32. The Commissioner accepts that the consequences of disclosure are limited; relating mainly to the unexpected loss of privacy, and that there is a public interest in ensuring that the building regulation and control process is carried out correctly. However, with regard solely to the public interest in the requested information from this case, the Commissioner is not convinced that this outweighs the individual's right to privacy of his personal data. This is particularly the case as the Commissioner considers that there are other avenues open to the complainant to resolve his wider concerns about the building control process.
33. Accordingly the Commissioner finds that this information was correctly withheld by virtue of regulation 13.

### **Regulation 5(2) – Time for compliance**

34. Under Regulation 5(1) of the EIR, a public authority holding environmental information is obliged to make that information available

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<sup>1</sup> <http://www.lgo.org.uk/publications/fact-sheets/complaints-about-building-control/> 29 June 2015

on request. Regulation 5(2) sets out the timescales for this and states that:

*"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."*

35. The complainant's request was dated 7 November 2014. The council states that it was received on 12 November 2014. However, it did not provide its response until 22 December 2014. In its internal review the council acknowledged and apologised for responding outside 20 working days.
36. The Council's failure to provide a response within 20 working days therefore represents a breach of regulation 5(2) of the EIR.



## Right of appeal

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37. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**