

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 26 January 2016

**Public Authority:** Birmingham City Council  
**Address:** Council House  
Victoria Square  
Birmingham  
B1 1BB

**Decision (including any steps ordered)**

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1. The complainant has requested to view a copy of an application form made by his neighbour to the council under the Building Regulations 2010 relating to a loft conversion. The council applied Regulation 13(1) to withhold the information (personal data).
2. The Commissioner's decision is that council has correctly applied Regulation 13(1) to the information.
3. The Commissioner does not require the council to take any steps.

**Request and response**

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4. The complainant wrote to council (the complainant has not provided the date of the request) and requested information in the following terms:  
  
*"The residents of [address redacted] have made a Building Regulation application for the loft conversion. As I am not internet competent it is my wish as a member of the public to view this application. Where can I view this information supplying me with an address and contact number."*
5. The council responded on 5 August 2015 and refused the request under Regulation 13(1) (personal data).

6. Following an internal review the council wrote to the complainant on 9 September 2015. It upheld its initial decision that the information was exempt under Regulation 13(1).

### **Scope of the case**

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7. The complainant contacted the Commissioner on 20 September 2015 to complain about the way his request for information had been handled. His view is that the council should have disclosed the information to him and that the exemption was wrongly applied.
8. The complainant's initial request was for details of where he could view the application, to which the council's answer was effectively that it could not be viewed as the information was exempt. At this point the focus of the request changed from details of where the file could be viewed, to whether the file could be viewed, and it is this aspect which the complainant has complained to the Commissioner about.
9. The Commissioner considers that the complaint is that the council has wrongly applied Regulation 13(1) to withhold the information.

### **Reasons for decision**

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#### Regulation 13(1) – Third party personal data

10. This exception provides that third party personal data is exempt if its disclosure would contravene any of the data protection principles set out in Schedule 1 of the Data Protection Act 1998 ("the DPA").

#### Is the information personal data?

11. The withheld information is an application made to the council by the complainant's neighbour. By definition the name and contact address of an individual will be personal data relating to that person; it identifies the individual, informs the recipient of their address and the application which they have made to the council regarding a loft conversion.
12. The Commissioner is therefore satisfied that the information is personal data as defined in The Data Protection Act 1998 (the DPA).
13. The Commissioner has considered and rejected the potential for the individual's name, address and other identifiers to be redacted from the documents. The complainant has clearly stipulated that he wishes the information about his neighbour's house and so redacting this would not

anonymise the data insofar as he is concerned. He would still know that the information related to his neighbour and his property.

Would disclosure breach the Data Protection Principles?

14. The Data Protection Principles are set out in Schedule 1 of the DPA. The council has considered the first principle as most relevant in this case. Amongst other things, this states that personal data should only be disclosed in fair and lawful circumstances.
15. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subject (i.e. the neighbour), and the potential consequences of disclosure and balanced the rights and freedoms of the data subject with the legitimate public interest in disclosing the information.

Nature of the information and reasonable expectations

16. The neighbour's primary purpose in submitting an application under the Building Regulations is to obtain approval for work which he wishes to carry out. Planning laws require an application for certain types of work to be approved prior to the work being considered lawful.
17. When submitting the application the individual would have expected the details which he provided on the form to be used for the purpose of establishing what the application was for, who the application was made by and examining whether the plans meet the requirements of building regulations.
18. Whilst under normal, full planning applications there is a general expectation that the application and copies of the plans will be published and open for comment and objection by members of the public, the council has confirmed that there is no requirement for it to do so with Building Regulations applications. It does not therefore publish these or make them available to other parties generally. It clarified however that an owner of a property can view previous applications (i.e. from previous owners of the same property) in order to establish work carried out on the property under some circumstances.
19. The council also provided a copy of the application form, which includes a stipulation within the attached notes highlighting to those completing the form the restricted purposes for which a disclosure of the information might occur. The notification states:

*"We must protect public funds and may use the information provided on this form to prevent and detect fraud. We may also share this*

*information for the same purpose with other organisations who handle public funds."*

20. The council argues that the absence of any notification of any wider purposes would compound the expectation that information would not be disclosed for unrestricted purposes such as a disclosure under the EIR. A disclosure under the EIR is considered to be to the whole world, rather than simply the applicant. The test which the Commissioner must consider is whether a disclosure to any member of the public would be fair under the circumstances of the case.
21. The Commissioner considers that it would be relatively obvious that the notification does not provide an exhaustive description of the purposes with which information might be disclosed. It would however create an expectation that the uses of the information would be restricted to limited, official purposes. He considers that the individual would have no expectation that his information would be used for any purpose other than for the council to consider the application or for obvious formal reasons beyond that such as the collection of payments or enforcement reasons etc.
22. The Commissioner therefore considers that the individual would not expect that the application would be disclosed to the whole world in response to a request for information under the EIR.

#### The consequences of disclosure

23. As to the consequences of disclosure, whilst the complainant is already aware of the application he is not aware of the specific details of it. The wider public would have no awareness of it. A disclosure of this information provides biographical details about the person, their property and, to an extent, the state of their personal finances in that they are considering carrying out the work which the application outlines. A disclosure may not particularly cause any wider detriment to the individual other than a general loss of privacy, however in the case of a private citizen carrying out their legitimate interests on their own private property this general expectation of privacy carries a relatively strong weight
24. Although requests are treated as from any member of the public, the council also said that it was aware of a long running dispute between the individual and his neighbour which would potentially be heightened by a disclosure of the information; hence it did not approach the neighbour for his consent to disclose the information. A disclosure of the information could potentially create greater tension between the parties which would be of detriment to the individual.

25. The Commissioner therefore considers that, on the face of it, a disclosure of the information would be unfair to the individual concerned.
26. The Commissioner has therefore gone on to consider whether there is a pressing social need for the information to be disclosed which might make a disclosure under the circumstances fair, in spite of the individuals expectations. The question is whether the public has a legitimate interest in the disclosure of the information to the public which outweighs any unwarranted intrusion into the rights of the individual to have his information remain private.
27. The complainant has outlined his view that the council should disclose the information to him because (he alleges) that it has previously disclosed information about him in breach of his rights under the DPA. He considers that if the council can disclose information about him in breach of the Act then it should be able to disclose the information he wishes given the circumstances of his case. For the absence of doubt, whether or not the alleged disclosure of the complainant's own information took place, he is referring to a completely separate matter which has no bearing on the current complaint. The Commissioner is not therefore able to take this issue into account in his decision on this request.
28. Other than the complainant's own private interest in the information being disclosed the Commissioner has failed to establish any pressing social need for the information to be disclosed.
29. In effect the issue is a private issue between the complainant's neighbour and the council, bearing in mind the potential for a small degree of interruption to direct neighbours when work is being carried out. The only legitimate interest which the wider public may have in having access to the information rests in creating greater transparency on the issue of the Building Regulations, and more widely, whether the work would constitute a health and safety risk to any parties (which the council has stipulated it does not).
30. In any event, the request only encompasses the application, not the process of approval undertaken after that point, and so such information would not fall within the scope of the request if it existed. This should be weighed against the loss of privacy to the individual should the application be disclosed.
31. The Commissioner therefore considers that a disclosure of the information would be unfair under the circumstances of this case. A disclosure of the information would therefore breach the provisions of the first data protection principle.

32. The Commissioner is therefore satisfied that the council was correct apply Regulation 13(1) in this instance.

## Right of appeal

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33. 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)

34. 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.
35. 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** .....

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**