

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

### **Decision notice**

**Date:** 10 March 2023

**Public Authority:** Cheshire West and Chester Council  
**Address:** The Portal  
Wellington Road  
Ellesmere Port  
CH65 0BA

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

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1. The complainant requested the identity of the individual who provided specific photographs in respect of a particular planning application. Cheshire West and Chester Council (the Council) withheld the information requested under regulation 13 (personal data) of the EIR. The Commissioner has determined that the Council has correctly applied regulation 13 to the withheld information. He does not require any steps to be taken.

#### **Request and response**

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2. Following the disclosure of planning information relating to a neighbouring property, in relation to an earlier request for information, on 20 May 2022 the complainant wrote to the Council and requested information in the following terms:

“Thank you for providing the additional information. I would like to request further clarification on a couple of these please?”

- There is no indication of the origin of the photographs, can you please confirm the author of these?

- One of these images is referred to in the email of the 15th September at 15.04 from the Principal Planning Officer. I consider that in this regard the identity of the officer should be made available.
  - Can you please confirm that there are no records or notes of any internal or external telephone discussions that took place?"
3. The Council responded on 15 June 2022 and provided the names of two officers in relation to parts 1 and 2 of the request and stated that no information was held in relation to part 3 of the request.
  4. On 23 June 2022 the complainant wrote back to the Council and confirmed the titles of the images relevant to the request. They added that the images were referred to in two emails dated 15 September 2021. The complainant pointed out that they understood that the officer that the Council had stated had provided the images in response to part 1 of the request had not had any involvement in the planning case until 23 September 2021. In addition, the complainant stated that, as far as they were aware, the officer had not visited the site until October 2021. As such, the complainant was of the view that the officer could not have taken or provided the images in question. The complainant repeated that they wanted to know "the origin of the images".
  5. On 27 June 2022 the Council responded and apologised for misreading part 1 of the request and confirmed that a third party had provided the photographs in question. The Council confirmed that the identity of the third party was exempt under regulation 13 of the EIR. The Council upheld this position at the time of its internal review on 17 August 2022.

## **Reasons for decision**

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6. This reasoning covers whether the Council is entitled to rely on regulation 13 of the EIR to refuse to provide the requested information.

## **Regulation 13 - personal data**

7. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) of the Data Protection Act 2018 (DPA) is satisfied.
8. The Council has withheld the name of the individual who provided a number of photographs in respect of a specific planning application. The Commissioner is satisfied that this information clearly relates to a third party. He is satisfied that the information both relates to, and identifies the third party concerned. This information therefore falls within the definition of "personal data" in section 3(2) of the DPA.

9. Turning to the conditions that must be satisfied for regulation 13(1)(a) of the EIR to apply, the Commissioner considers that regulation 13(2A)(a) is relevant here. This applies where the disclosure of the information to any member of the public would contravene any of the data protection principles relating to the processing of personal data, as set out in Article 5 of the UK General Data Protection Regulation (UK GDPR). The Commissioner has considered whether disclosure would breach principle (a) of Article 5(1), which states that personal data shall be:
  - (a) processed lawfully, fairly and in a transparent manner in relation to individuals ('lawfulness, fairness and transparency').
10. Disclosure under the EIR is effectively an unlimited disclosure to the world at large, without conditions.
11. The Commissioner acknowledges that the complainant considers that they have a legitimate interest in disclosure of the withheld information as the planning application relates to a neighbouring property.
12. However, the Commissioner must balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms.
13. In this case, the Commissioner is satisfied that the individual concerned would have had a reasonable expectation that their personal data would not be disclosed to the wider world in response to an EIR request. The Commissioner also considers that disclosing their personal data would be an invasion of their privacy.
14. The Commissioner struggles to see any compelling wider legitimate interest that would necessitate publishing the identity of the individual who submitted the photographs in question to the Council. He is not persuaded that the legitimate interests of the complainant override the interests or fundamental rights and freedoms of the data subject in this case.
15. The Commissioner notes that the Council has disclosed copies of the actual photographs referred to in the request along with other information concerning the planning application, including information about changes made to the original application. The only information that the Council has withheld is the identity of the individual who provided the photographs. The Commissioner considers that this meets any legitimate interest in transparency of decision making without undue interference into the privacy rights of individuals.
16. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest in disclosure to outweigh the data

subject's fundamental rights and freedoms. Furthermore, it is not necessary for the information to be disclosed to the world at large, to enable the complainant to pursue any concerns they might have about the planning application in question.

17. The Commissioner therefore considers that disclosing the withheld information would contravene principle (a) of Article 5(1) of the UK GDPR, as it would not be lawful. In light of this, the Commissioner's decision is that the Council was entitled to withhold the information under regulation 13(1) of the EIR.

## Right of appeal

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18. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

19. 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.
20. 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 .....**

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