

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

### **Decision notice**

**Date:** 10 October 2023

**Public Authority:** West Berkshire District Council  
**Address:** Council Offices  
Market Street  
Newbury  
Berks  
RG14 5LD

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

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1. The complainant has requested building control documents held by the council relating to a property owned by a third party. West Berkshire District Council ("the council") refused the request on the basis that Regulation 13 applies (personal data of third parties). On review it upheld its decision.
2. The Commissioner's decision is that the council was correct to apply Regulation 13 to withhold the information from disclosure.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 23 April 2023, the complainant wrote to the council and requested information in the following terms:  
  
*"I wish to receive a copy of all documents relating to Building Control for Planning Application [planning application details redacted by ICO] held by West Berks District Council."*
5. The council responded on 30 May 2023. It clarified that the request related to a private individual and refused to provide the requested information on the basis that Regulation 13 of the EIR applied (personal data of a third party). However, in response to the complainant's stated concerns, it confirmed that the individuals carrying out the works are entitled to take as long as they wish to complete them.
6. Following an internal review, the council wrote to the complainant on 30 June 2023 confirming its position. It upheld its previous decision.

## Scope of the case

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7. The complainant contacted the Commissioner on 7 July 2023 to complain about the way his request for information had been handled. He argues that he has not asked for any confidential information, and he just wishes to know what work has been carried out on the property. This follows his concerns that the owner of the property has not completed work which has been ongoing for a number of years.
8. The following decision notice therefore considers whether the council was correct to apply Regulation 13 of the EIR to withhold the requested information.

## Reasons for decision

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### **Regulation 13 – personal data of third parties**

9. This reasoning covers whether the council is entitled to rely on Regulation 13 to withhold the information from the complainant in response to his request for information.
10. Regulation 13 provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.

11. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then Regulation 13 of the EIR cannot apply.
12. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

13. Section 3(2) of the Data Protection Act 2018 defines personal data as:

"any information relating to an identified or identifiable living individual."

14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
15. The Commissioner is satisfied that the requested information is personal data. Following the Tribunal's decision in the case of England & L B of Bexley v Information Commissioner (EA/2006/0060 & 0066), the Commissioner's established position is that the address of a private property constitutes the personal data of its owner/occupier.
16. Therefore, even if the owner's name was redacted from the information, they would remain identifiable from the address, which the complainant already knows.
17. Information about work carried out on that property, and details about the property itself, also provides information relating to the owner – it provides insight into work carried out by the individual on their own private property.
18. The requested information is therefore personal data as it is information about a private property owned by an individual who can be identified via the address of the property.

Would a data protection principle apply

19. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."

20. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent
21. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.
22. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"<sup>1</sup>.*

Lawful processing: Article 6(1)(f) of the GDPR

23. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
24. The council argues that there is no legitimate interest in the disclosure of the withheld information. The Commissioner recognises that the public has a legitimate interest in understanding how building control requirements are administered and checked by the council, and a disclosure of the work carried out on individual properties can be extrapolated more widely to provide a picture of how the building control regulations work in practice.

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<sup>1</sup> Article 6(1) goes on to state that:-

*"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".*

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

*"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".*

25. The Commissioner further recognises that in order to be sure that the building control process has been correctly adhered to in the property in question, it would be necessary for the requested information to be disclosed in response to the request.
26. The next question is to determine whether the legitimate interests which have been identified override the rights and freedoms of the individual. The Commissioner must therefore balance the legitimate interests against the rights and freedoms of the individual whose data has been withheld. The Commissioner has determined this by balancing the legitimate interest of the complainant against the fact that the individual concerned would have a reasonable expectation that their information would not be disclosed to the public.
27. The Commissioner is satisfied that the individual would have a reasonable expectation that their personal data would be disclosed to the wider world in response to an EIR request. The information concerns them in a private capacity. It was provided for the specific purpose of obtaining building regulation approval from the council. They are required to go through the building control process relating to the work they are carrying out on their private property, and they would have no general expectation that the building control details about their private property would be disclosed to the whole world. Unlike planning application information, the council does not routinely publish building control information online, and it is not legally required to do so. The individual would not therefore expect that their personal data would be disclosed in response to an EIR request. Disclosing details about their private property, when that is not expected, would be seen as intrusive, and would be likely to cause them distress.
28. On the counter side, the legitimate interests in disclosure relate primarily to the process of building control. Information on building control, generally, and how it is administered, is widely available online.
29. Having considered the above, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals. Therefore, he considers that there is no legal basis for the council to disclose the requested information and to do so would be in breach of principle (a).
30. As the Commissioner has concluded that disclosure would not be lawful under Article 6(1)(f) of the UK GDPR, he has not gone on to separately consider whether disclosure would be fair or transparent.
31. The council was therefore correct to withhold the information under Regulation 13 of the EIR.

## Right of appeal

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32. 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)

33. 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.
34. 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**