

## **Environmental Information Regulations 2004**

### **Decision Notice**

**Date: 4 August 2011**

**Public Authority:** Carmarthenshire County Council  
**Address:** County Hall  
Carmarthen  
Carmarthenshire  
SA31 1JP

#### **Summary**

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The complainant made a request to inspect 23 building control files relating to the conversion of barns or other similar outbuildings to dwellings. The Council confirmed that it held 20 of the requested files (selected from a list provided to the complainant by the Council) but could not locate files for three other properties that the complainant had requested (these were not on the list provided by the Council). The Council considered that the findings of the Commissioner in decision notice FER0303754, regarding a previous complaint by the same individual, were directly relevant to this request. The Council therefore referred the complainant to that decision notice and stated that the 20 building control files he had requested were exempt from disclosure under regulation 13 of the EIR. The Commissioner considers that that the Council appropriately applied regulation 13 and requires no steps to be taken.

#### **The Commissioner's Role**

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

## Background

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3. Decision notice FER0303754 (appended to this notice and available via the Commissioner's website<sup>1</sup>) is directly relevant to this case. In that case the complainant requested on 25 February 2008 a copy of the full building control file for a specific property. Following the Council's refusal of that request the complainant requested, on 1 February 2010, access to "all the Council's Building Regulation files relating to barn or similar old building conversion projects." The Council refused that request on the basis that it was manifestly unreasonable under regulation 12(4)(b) of the EIR but entered into discussions with the complainant about how he might narrow the scope of his request. The outcome of those discussions was that the Council provided the complainant with a list of building control files involving the type of projects he was interested in and invited him to select a sample of files.
4. Paragraph three of decision notice FER0303750 provides background information regarding the Buildings Regulations that is relevant to this case.

## The Request

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5. On 24 April 2010 the complainant made the following request to the Council:

"Thank you for your letter dated 31<sup>st</sup> March 2010 enclosing a list of barn conversion Building Regulation applications.

I enclose a photocopy of this list with the files I wish to inspect highlighted in blue. I have selected 20 files."
6. The complainant went on ask for access to inspect building control files for three projects that were not on the list provided by the Council. The complainant provided the addresses of the properties and a map reference for each property.
7. The Council replied on 17 June 2010. It stated that it held the 20 files the complainant had selected from the list it had provided. However it said that it had been unable to locate information relevant to the three other properties identified by the complainant. The Council went on to say that

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<sup>1</sup> [http://www.ico.gov.uk/~/\\_media/documents/decisionnotices/2010/fer\\_0303754.ashx](http://www.ico.gov.uk/~/_media/documents/decisionnotices/2010/fer_0303754.ashx)

it considered the 20 files to be exempt from disclosure because it was personal data and that regulation 13 of the EIR was relevant. The Council referred to its decision on the complainant's request of 25 February 2008 and considered that its response to that request was directly relevant to his request of 24 April 2010. The Council noted that a complaint about the Council's handling of the request of 25 February 2008 had been made to the Commissioner. At that time it had been given a reference number – FER0303754 – and was awaiting allocation to a case officer. The Council acknowledged that the question of access to building control files was not straightforward and said that the Commissioner's view of complaint FER0303754 would be likely to influence the Council's view of the request of 24 April 2010. It stated that it would reconsider the matter once the Commissioner had made a decision on complaint FER0303754.

8. On 5 August 2010 the complainant requested an internal review of the Council's handling of his request of 24 April 2010. The Council issued a response on 5 November 2011 and referred to the decision notice issued by the Commissioner on case FER0303754. It said that in light of the Commissioner's decision it did not intend to disclose any information from the 20 files and that it considered the matter closed.
9. The complainant wrote further letters to the Council on 8 and 14 December 2010 and pointed out why he considered the Council's position to be flawed. The Council responded on 16 December 2010 and maintained its position that the information contained in the building control files was personal data and that disclosure would be unfair. The Council therefore continued to rely on the exception to disclosure provided by regulation 13 of the EIR.

## **The Investigation**

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### **Scope of the case**

10. On 14 February 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - The Council's refusal to allow him to inspect the 20 files referred to in his request.
  - The Council's failure to respond to subsequent requests for information.
  - The Commissioner's decisions in at least six cases set a precedent for allowing inspection of building control information.

- The Council was wrong to tell the Commissioner that building control information about a building is private data to be kept secret between the building owner and the Council.
  - The Council was wrong to tell the Commissioner that building owners have an expectation of secrecy in the Council's administration of the building regulations.
  - The Council was wrong to tell the Commissioner that it does not divulge details of building regulation files because it does so regularly.
  - The Council failed to provide him with advice and assistance in accordance with regulation 9 of the EIR.
11. The Commissioner is unable to consider the complaint that the Council has failed to comply with subsequent requests because he has not been provided with copies of the complainant's request for an internal review of those requests. The Commissioner notes that at the time of the complaint to the Commissioner, the statutory time for compliance with subsequent requests had not expired. If the complainant wishes to raise complaints about the way subsequent requests for information have been handled by the Council he should do so separately. The complainant has been informed that the Commissioner is only investigating his complaint about the way his request of 24 April 2010 was handled. The Commissioner has considered whether the Council complied with the provisions of the EIR and has taken into account the complainant's comments. As he did not raise the issue, the Commissioner has not investigated the Council's statement that it did not hold files for the three properties referred to by the complainant.

### **Chronology**

12. Following receipt of the complaint the Commissioner wrote to the complainant to request copies of documents relevant to his complaint. These were provided on 20 March 2011.
13. The Commissioner wrote to the Council on 25 March 2011 to inform it that he had received a complaint and to ask for a copy of the withheld information. The Commissioner received an electronic copy of the withheld information on 18 April 2011.

## Analysis

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### Exceptions

#### Regulation 13

14. In arriving at his decision in this case the Commissioner has been mindful of his previous decision on case reference FER0303754 and he considers that it has direct relevance. For the sake of brevity he has therefore referred to relevant paragraphs and sections of that notice where appropriate.
15. Paragraphs 19-23 of decision notice FER0303754 set out the background to regulation 13 and the Commissioner considers that they are directly relevant to this case.
16. In addition, paragraph 24 of that decision notice is relevant in that the 20 building control files relevant to this case - namely file references 50194, 52516 and 57120 - also contain some generic manuals and brochures. The Commissioner considers that this small amount of information does not constitute the personal data of the owners of the properties in question. However, the Commissioner considers that the remainder of the information on the files relates to the design and construction of properties – namely the conversion of old barns and similar outbuildings to dwellings – and he is satisfied that this constitutes the personal data of the owner of the properties in question.

#### **Would disclosure breach any of the data protection principles?**

17. Paragraphs 28-30 of decision notice FER0303754 are relevant here. The Commissioner has considered whether granting access to inspect the 20 relevant building control files in their entirety would breach the first data protection principle.
18. The Commissioner considers that his assessment of fairness in decision notice FER0303754 is directly relevant to this case; he considers that granting access to inspect the relevant files in their entirety would be unfair and that regulation 13 of the EIR is engaged in relation to all information on the files, except for any generic manuals or brochures as referenced in paragraph 16, above.

#### **Issues raised by the complainant**

19. For completeness the Commissioner has summarised his position in relation to the key points raised by the complainant:

- The Commissioner does not consider that the case references quoted by the complainant provide a precedent for allowing access to inspect building control files in their entirety. The cases the complainant has referred to relate to requests to allow access to view information that answers specific questions on the Con29R form, which is completed in relation to property searches. The Commissioner's view is that applicants should be allowed to inspect such information free of charge but that is not the same as ruling that there should be unrestricted access to building control files in their entirety.
- The Commissioner does not agree with the complainant's point in relation to the private nature of building control information. The complainant's argument focuses on the purpose of the Buildings Regulations - which the Commissioner does not dispute – but he has seen no evidence to suggest that the Building Act 1984 makes provision for any and all information provided to the Council in its role of administering the Buildings Regulations to be put in the public domain.
- The complainant's argument regarding the expectation of privacy of the owners of the properties in question focuses on his belief that the Council are inappropriately administering aspects of the Building Regulations. These are matters that would be appropriately directed to the Public Services Ombudsman for Wales.
- The complainant's point about the Council regularly divulging details of building regulations files in relation to queries regarding Con29R forms has been addressed above. In addition, the Council has noted that some information relevant to a previous request has previously been disclosed to the complainant in error. This does not set a precedent for all building control files to be open to public scrutiny in their entirety.
- The Commissioner acknowledges that under regulation 9 of the EIR the Council has an obligation to provide applicants for information with advice and assistance. This does not extend to providing advice on how to obtain information that the Council considers to be exempt from disclosure. Regulation 9 requires that public authorities provide advice and assistance "so far as it would be reasonable to expect the authority to do so" but the Commissioner does not consider it reasonable to expect – as the complainant has indicated he does - the Council to write to the owners of the properties in question to seek their consent for him to inspect the building control files. The Commissioner considers that such an expectation would be over and

above the guidelines set out in the code of practice issued under regulation 16 of the EIR<sup>2</sup>.

- The Commissioner notes that that complainant says he has made subsequent requests to the Council and he should make separate complaints to the Commissioner if he is unhappy with the way in which they have been handled. The complainant should firstly exhaust any internal review procedure operated by the Council.

### **Procedural Requirements**

20. Regulation 14(2) of the EIR requires that, where a public authority is refusing a request for information, it should issue a refusal notice no later than 20 working days following the date of the receipt of the request. By failing to comply with this timescale the Council breached regulation 14(2).
21. Regulation 11(4) requires that public authorities should issue a response to a request for an internal review of the handling of a request for information within 40 working days. By failing to do so the Council breached regulation 11(4).
22. Regulations 5(1) and 5(2) of the EIR state that a public authority that holds environmental information shall (subject to exceptions to disclosure) make it available on request within 20 working days. By failing to make the small amount of information available from the files that the Commissioner does not consider to be personal data the Council breached those requirements.

### **The Decision**

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23. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - It correctly applied regulation 13 to the personal data contained within the building control files relevant to the request. This is the majority of the information.
24. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

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<sup>2</sup>[http://www.ico.gov.uk/upload/documents/library/environmental\\_info\\_reg/detailed\\_specialist\\_guides/environmental\\_information\\_regulations\\_code\\_of\\_practice.pdf](http://www.ico.gov.uk/upload/documents/library/environmental_info_reg/detailed_specialist_guides/environmental_information_regulations_code_of_practice.pdf)

- The Council inappropriately applied regulation 13 to a small amount of information contained within the files; namely generic brochures or other literature that is not specifically relevant to an individual property (other than that it is contained in a building control file).
- The Council breached regulations 14(2), 11(4), 5(1) and 5(2) of the EIR.

## **Steps Required**

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25. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- Offer the complainant the opportunity to inspect the limited amount of information contained in the 20 building control files that is not personal data. The Commissioner notes that such information appears on only 3 of the 20 files and is very limited in its nature.
26. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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27. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.



## Right of Appeal

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28. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 4<sup>th</sup> day of August 2011**

**Signed .....**

**Anne Jones  
Assistant Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

**Appendix: Decision Notice FER0303754**

**Freedom of Information Act 2000 (Section 50)  
Environmental Information Regulations 2004**

**Decision Notice**

**Date: 21 October 2010**

**Public Authority:** Carmarthenshire County Council  
**Address:** County Hall  
Carmarthen  
Carmarthenshire  
SA31 1JP

**Summary**

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The complainant requested the full building control file ("project file") relating to the design and construction of a particular property. The Council considered the request in accordance with the EIR and stated that the information requested was exempt under regulation 13. The Commissioner has investigated and finds that the Council correctly applied regulation 13 of the EIR to some of the withheld information but that other information should have been disclosed.

**The Commissioner's Role**

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner

(the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

## Background

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3. The Building Regulations are made under powers provided in the Building Act 1984, and apply in England and Wales. The current edition is the 'Building Regulations 2000' (as amended) and the majority of building projects are required to comply with them. They exist to ensure the health and safety of people in and around all types of buildings (i.e. domestic, commercial and industrial). They also provide for energy conservation, and access to and use of buildings.
4. The disputed information in this case is a project file relating to the design and construction of a particular property. The property in question is not the complainant's own. Since the improvement of this property was subject to Building Regulations, the property owners were required to seek Building Regulations approval. The Council is responsible for granting this approval once a construction is complete and monitoring the construction as it progresses, in line with the Building Regulations. The project file contains some personal data of the complainant and the owner of the property.

## The Request

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5. On 25 October 2008 the complainant wrote to the Council regarding Building Regulations relevant to the property in question and asked for:

*"the project file and to be supplied with copies of the structural appraisal/assessment as mentioned by [name of Council official]"*.

6. The Council responded to the request on 25 November 2008. The Council disclosed the structural appraisal/assessment. The Council withheld the remainder of the project file by virtue of regulation 13 of the EIR. The Council stated that included within the project file were copies of correspondence between the Council and the complainant, to which it assumed the complainant already had access. As such, the Council did not consider disclosure of this information to be necessary. The Council stated that the remainder of the file constituted the personal data of the owner of the property and that disclosure would breach the first data protection principle.

7. On 2 December 2008, the complainant requested an internal review of the Council's decision.
8. On 9 January 2009, the Council issued the findings of its internal review. The Council upheld its decision to withhold the project file requested under the provisions of regulation 13 of the EIR.
9. On 18 November 2009, the complainant wrote a further letter to the Council. The complainant referred to three Decision Notices issued by the Commissioner in relation to similar requests, where the complaints had been upheld. The complainant invited the Council to reconsider its request.
10. The Council responded to the complainant on 15 December 2009. The Council explained that, in its view, the Decision Notices referred to related to requests for significantly different information to the project file that he had requested. The Council maintained that the information the complainant had requested was exempt under regulation 13 of the EIR.
11. Between December 2009 and February 2010 further exchanges between the complainant and the Council took place relating to concerns about the property in question. On or around 25 February 2010, the complainant wrote to the Council with the following request:

*"I will be grateful if you will supply me with copies of all documents from the above file [the project file] which provide proof that the roof, walls and foundations of this old building are capable of supporting the new loads to be imposed on them, i.e. structural engineer's letter and calculations"*
12. On 25 March 2010, the Council wrote to the complainant, providing some additional information within the scope of the request received on 25 February 2010. The Council advised that after careful consideration it had determined that the information disclosed related "only to a building with no reference to an individual". The Council has since explained to the Commissioner that this information should not have been disclosed to the complainant as it formed part of the project file in question.

## The Investigation

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### Scope of the case

13. On 25 March 2010, the complainant contacted the Commissioner to complain about the way his request of 25 October 2008 had been handled. The complainant specifically asked the Commissioner to consider whether the project file he had requested should be disclosed.
14. During the course of his investigation, the Commissioner determined that some information contained within the file had already been disclosed, as a result of the complainant's request of 25 February 2010. This information comprised of:
  - Structural appraisal/assessment which had been disclosed to the complainant on 25 November 2008
  - Letter from Atebglas Cyf Consulting Engineers to Roberts Building Consultants Ltd dated 31 July 2007 which had been disclosed to the complainant on 25 March 2010
  - Letter from Atebglas Cyf Consulting Engineers to Roberts Building Consultants Ltd dated 15 December 2008 which had been disclosed to the complainant on 25 March 2010
  - Letter from Atebglas Cyf Consulting Engineers to Roberts Building Consultants Ltd dated 5 July 2005 which had been disclosed to the complainant on 25 March 2010
  - Structural calculations for the "amended first-floor mezzanine" which had been disclosed to the complainant on 25 March 2010
  - Structural calculations for the "new first-floor mezzanine" which had been disclosed to the complainant on 25 March 2010
15. In addition, all correspondence between the Council and the complainant in reference to his information request and concerns about the property in question were also included within the project file.
16. On 2 September 2010, the Commissioner contacted the complainant to clarify whether the scope of his complaint included the items listed in paragraphs 14 and 15 of this Notice. The complainant confirmed that he wanted access to the project file in its entirety. The Commissioner therefore understands the scope of the complaint to concern that part of the project file which had not already been disclosed to the complainant as a result of his 25 February request.

## Chronology

17. Between 18 August 2010 and 26 August 2010, the Commissioner wrote to the Council on a number of occasions asking it to review the project file to identify any information that was not exempt under regulation 13 of the EIR. On 1 September 2010 the Council confirmed that the information listed in paragraph 14 of this Notice, had already been disclosed. The Council also confirmed that some information contained on the project file was publicly available; for example installation manuals related to solid masonry walls and an underground LPG tank. However, the Council maintained its view that building control project files, as a whole, constituted personal data and disclosure would breach the first data protection principle.
18. On 1 September 2010 the Commissioner wrote to the complainant to confirm whether he was interested in access to information which was already available in the public domain, for example the installation manuals. The complainant maintained that he wished to pursue his complaint in respect of the full project file.

## Analysis

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### Regulation 13(1)

19. The exception under regulation 13(1) applies to information that is the personal data of an individual other than the applicant (the complainant), where disclosure of that information would breach any of the data protection principles or section 10 of the Data Protection Act ("DPA").

### Is the information personal data?

20. In considering whether the Council has correctly applied regulation 13(1) of the EIR to the withheld information, the Commissioner has first considered whether the withheld information can be considered to be 'personal data'.
21. According to section 1(1) of the DPA, personal data can be defined as follows:

*"personal data" means data which relate to a living individual who can be identified –*  
*a) from those data*

*b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller or any other person in respect of the individual"*

*and includes any expression of opinion about the individual and any indication of intentions of the data controller or any other person in respect of the individual".*

22. In considering whether the information requested is 'personal data', the Commissioner has also taken into account his own guidance on the issue.
23. The two main elements of personal data are that the information must "relate to" a living person, and that person must be identifiable. Information will "relate to" a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
24. The Commissioner notes that two generic installation manuals are included on the file. These documents are manuals relating to the construction of solid masonry walls and an underground LPG tank. They do not relate directly to the property in question and therefore the Commissioner does not consider them to be personal data. As such, in respect of the two installation manuals, regulation 13 does not apply and the Commissioner considers that these manuals should not have been withheld by the Council.
25. Part of the project file consists of correspondence between the Council and the complainant, dated between July 2005 and April 2009. In its initial refusal notice to the complainant of 25 November 2008, the Council stated that "part of the file is comprised of correspondence between the Authority and yourself, which it is assumed will already be in your possession".
26. The Commissioner considers the correspondence between the Council and the complainant to be the personal data of the complainant, and, accordingly, this information is exempt from disclosure under regulation 5(3). Instead the access route for this information would be via a subject access request under the DPA. Further, this information was provided to the Commissioner by the complainant as well as the Council, so this information is clearly already accessible by the complainant. The subject access matters in respect of the personal data of the complainant have been addressed separately under the DPA by the Commissioner.

27. The remainder of the project file relates to the design and construction of a specific property. All information (apart from the manuals referred to in paragraph 24) contained within the file relates to the property in question. 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. He is therefore satisfied that the information contained within the remainder of the project file relates to a living individual (the owner of the property), and that the individual can be identified from the information in question.

### **Would disclosure contravene any of the principles of the DPA?**

28. As the Commissioner is satisfied that the remainder of the requested information (that is, apart from the installation manuals and the personal information of the complainant) constitutes the personal data of the owner of the property in question, he has next considered whether disclosure would breach any of the data protection principles. The Council stated that it considered disclosure of the withheld information would breach the first data protection principle.

### **First data protection principle**

29. The first data protection principle has two main components. They are as follows:
- a) The requirement to process all personal data fairly and lawfully; and
  - b) The requirement to satisfy at least one DPA Schedule 2 condition for the processing of all personal data.
30. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing (including disclosure as a result of an information request) will not be in accordance with the first data protection principle. The Commissioner's general approach to cases involving personal data is to consider the fairness element first. Only if he believes that disclosure would be fair would he move on to consider the other elements of the first data protection principle.

### **Would disclosure of the information be fair?**

31. For the reasons set out in paragraph 24 above, the Commissioner has concluded that the generic installation manuals do not constitute personal data, and therefore considers that the exception is not engaged in respect of this information. The Commissioner also considers that the



access route for the complainant's personal information would be via a subject access request under the Data Protection Act. Therefore he is not required to consider fairness in respect of this information. The Commissioner has gone on to assess the fairness of disclosing the remainder of the project file.

32. In assessing fairness, the Commissioner has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced these against the general principles of accountability, transparency and considered whether there was a legitimate public interest in disclosure.

**a) Expectations of the individuals concerned**

33. The Council confirmed to the Commissioner that, as a matter of practice, it does not divulge details of Building Regulation files. Neither is the Council required to make such information publicly available by law.
34. The Council is of the view that disclosure of the withheld information would be unfair. The Council has explained that the legal framework for processing and determining planning applications is different from the legal process for building applications. Whilst planning applicants are aware that their applications are subject to a statutory consultation process and certain details of their applications will be in the public domain, applicants for Building Regulations consent are not subject to the same public transparency under the Building Act 1984.
35. As a result, the Council argues that applicants for Building Regulations consent will have a reasonable expectation that their applications are not subject to public disclosure. The Council explained that only a limited number of people are likely to be affected by the outcome of a Building Regulations application and that the existing process is in place to entrust local authorities to make the required technical decisions on behalf of the public and in the absence of public scrutiny.
36. The remainder of the project file contains information documenting the property owner's adherence to the Building Regulations. In this case, the property owners were required to apply for Building Regulations consent in respect of the construction of the new building. The Commissioner is satisfied that, in this particular case, the information was provided to the Council with an expectation that it would not be disclosed.

**b) Consequences of disclosure**

37. All of the data contained in the remainder of the project file relates to the owner of the property, and is processed by the Council to determine whether he or she has complied with the Building Regulations. Where a structure is found not to be in compliance with Building Regulations, action is taken by the Council against the property owner (not the contractor or agent involved in the construction).
38. The Commissioner agrees with the Council's argument that the building control process is in place to entrust the Council to make technical decisions on behalf of the public. The Council is required to follow strict procedures in ensuring that constructions are built in accordance with the Building Regulations.
39. As such, the Commissioner is persuaded that, where information contained on the project file is not already in the public domain, its disclosure would be unwarranted since such information is, by its nature, private to the property owner and not information that he would want or expect to be disclosed into the public domain. The Commissioner does not consider there to be an overwhelming public interest in disclosure because the building control process is well established and, in itself, provides reassurance that a construction has been built in line with the regulations.
40. The Commissioner has considered the submissions made by the Council and the nature of the withheld information and he is satisfied that disclosure of the remainder of the project file and the associated loss of privacy has the potential to cause unjustified detriment to the individual in this case.

**c) General principles of accountability and transparency**

41. The complainant indicated that he considered disclosure of the withheld information necessary to ensure that the correct process had been followed by the Council. The complainant stated that the proper administration of the Building Regulations is of general public interest to ensure that building work is being carried out safely and in accordance with the law. The complainant also stated that he considered "any papers on the file that may show personal data can be photocopied, redacted, and these redacted copies placed on the file for me to see" but that information relating to Building Regulations should be publicly available in order to meet the public expectation for open and transparent processes.

42. The Council has recognised that there is a legitimate public interest in being assured that the Council has properly assessed compliance, or otherwise, with the Building Regulations. The Council considers in this case, however, that the interest here has been met by the disclosure of the appraisal document.
43. The Commissioner acknowledges that there is a legitimate public interest in the building control process to determine that Building Regulations have been properly applied. However, in this case, he does not consider there to be sufficient legitimate interest to warrant circumvention of the existing Building Regulations processes and procedures. The Commissioner considers that the process has been introduced with the specific aim of entrusting the Council to apply the Building Regulations appropriately. The Commissioner considers that to some extent the information that the Council has already disclosed in this case, satisfies this interest. The Commissioner also believes that in this case there is a greater interest in protecting the integrity of the building consent application process and that disclosure could damage the public trust in the Building Regulations processes.
44. The Commissioner recognises that the legitimate interests of the public must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests of the data subject (i.e. the property owner). After considering these factors, the Commissioner has come to the conclusion that the disclosure of the requested information would be unfair to the data subject.
45. As the Commissioner has decided that disclosure would be unfair, there is no need for him to go on to consider the other elements of the first data protection principle. The Commissioner therefore upholds the Council's application of regulation 13(1) in respect of the remainder of the project file because disclosure of this information would breach the first data protection principle.

## **The Decision**

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46. The Commissioner finds that the public authority was correct to apply regulation 13(1) of the EIR to the information that is the personal data of the property owner.
47. The Commissioner finds that the public authority incorrectly withheld some elements of the withheld information to the extent that some information is not the personal data of the property owner.

## **Steps Required**

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48. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Disclose to the complainant the information that is not the personal data of the property owner or the complainant. For clarity, this information is the following:

- Instruction manuals described in paragraph 24 above.

49. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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50. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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51. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 21st day of October 2010**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### **Regulation 5 - Duty to make available environmental information on request**

#### **Regulation 5(1)**

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

#### **Regulation 5(2)**

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.

### **Regulation 11 - Representation and reconsideration**

#### **Regulation 11(1)**

Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

#### **Regulation 11(2)**

Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

#### **Regulation 11(3)**

The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

### **Regulation 11(4)**

A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations.

## **Regulation 13 - Personal data**

### **Regulation 13(1)**

To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

### **Regulation 13(2)**

The first condition is –

(a) in a case where the information falls within any paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –

- (i) any of the data protection principles; or
- (ii) section 10 of the Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998(a) (which relates to manual data held by public authorities) were disregarded.

## **Regulation 14 - Refusal to disclose information**

### **Regulation 14(1)**

If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

**Regulation 14(2)**

The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.