

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

Decision notice

Date: 27 March 2013

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

Decision (including any steps ordered)

1. The complainant requested information in respect of a named property. He asked to be informed of the current status of the Section 36 Building Act notice and a copy of a particular surveyor's report. Carmarthenshire County Council refused to confirm or deny whether it held relevant information by virtue of Regulation 13 of the Environmental Information Regulations 2004 ('the EIR').
2. The Commissioner's decision is that Carmarthenshire County Council has correctly relied on regulation 13(5) of the EIR.
3. The Commissioner requires no steps.

Request and response

4. On 10 July 2012, the complainant wrote to the Council and requested the following information in respect of a named property:
*"1. The current status of the Section 36 Building Act notice.
2. A copy of the surveyor's report."*
5. The Council responded on 21 August 2012. It stated that:
"The information you have requested, if held, would...constitute the personal data of a third party."

The Council refused to either confirm or deny whether it held the information by virtue of regulation 13(5) of the EIR.

6. Following an internal review the Council wrote to the complainant on 4 September 2012. It repeated its comments in the refusal notice that it was relying on regulation 13(5) to neither confirm or deny whether it held information relevant to the request.

Scope of the case

7. The complainant contacted the Commissioner on 8 September 2012 to complain about the way his request for information had been handled. The complainant stated that the information he requested should be available under a public register.
8. Whilst the Commissioner acknowledges that the complainant has a personal interest in the information, the EIR is both applicant and purpose blind. He cannot therefore take into account either the identity of the requestor or the purpose of the request. The scope of his investigation is therefore limited to whether it would be appropriate for the Council to either confirm or deny whether relevant information existed.

Reasons for decision

Regulation 13 – Personal data

9. Regulation 13(5) of the EIR provides an exception from the duty to confirm or deny where to do so would disclose personal data and the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exception is therefore a two-stage process; first, confirmation or denial in response to the request must involve the disclosure of personal data. Secondly, this confirmation or denial must be in breach of at least one of the data protection principles.

Would confirmation or denial disclose personal data?

10. Turning first to whether confirmation or denial would disclose personal data. Personal data is defined in section 1(1) of the Data Protection Act 1998 ('the DPA') as follows:

“personal data’ means data which relate to a living individual who can be identified-

- (a) *From those data, or*
 - (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"*
11. The Commissioner notes that the request is not explicitly about an individual, but for information regarding a specific address. However, 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 register. He is therefore satisfied that the confirmation or denial of information relevant to the request does relate to a living individual (the owner of the property) and that the individual could be identified from the address in question.

Would disclosure contravene any of the principles of the DPA?

12. As the Commissioner is satisfied that the first stage in the process of considering whether regulation 13(5) of the EIR applies, he has next considered whether confirmation or denial would breach any of the data protection principles. The Council considers that confirmation or denial of whether it holds relevant information would breach the first data protection principle.

The first data protection principle

13. The first data protection principle has two main components. They are as follows:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

- (a) *At least one of the conditions in Schedule 2 is met, and,*
 - (b) *in the case of sensitive personal data, at least one of the conditions in schedule 3 is also met."*
14. 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.
15. The Commissioner's general approach to cases involving personal data is to consider the fairness element first. Only if he believes that the confirmation or denial of relevant information would be fair, would he move on to consider the other elements of the first data protection principle.

Would confirmation or denial be fair?

16. In assessing fairness, the Commissioner has considered the reasonable expectations of a hypothetical data subject in this situation and the consequences of disclosure should the information exist. He has then balanced these against the general principles of accountability and transparency and considered whether there is a legitimate public interest in such a confirmation or denial.

Reasonable expectations

17. The Council has confirmed to the Commissioner that there is no requirement for it to disclose details of whether enforcement action has been taken under the Building Act 1984 and it does not therefore disclose this information to the public. The complainant on the other hand has argued that the Council is required to provide a public register of such notices. The complainant has further argued that the Council's own website confirms that it does have a public register but that it cannot be accessed.

18. The Commissioner therefore queried this with the Council. The Council has confirmed that the public register referred to on its website is in connection with Planning Enforcement Notices which are issued under the Town & Country Planning Act 199 which is an entirely separate piece of legislation to the enforcement action taken under section 36 of the Building Act.

19. The Commissioner notes that under the Building Act, if an owner of a property does not follow the building control procedures or carries out work which does not comply with the requirements contained within the Building Regulations, they will have contravened these regulations. He also notes that local authorities have a general duty to enforce the Building Regulations and will seek to do so wherever possible by informal means. However, where necessary, they have various enforcement powers including the option to serve an enforcement notice requiring the owner of a property to either undertake alterations or remove the building work completely

20. The Council considers that as there is no requirement under the Building Act 1984 to publish a register, that the reasonable expectations of any individual subject to such an enforcement notice, would be that such information is not disclosed to the public.

21. The Commissioner accepts the arguments put forward by the Council in paragraph 20 of this notice. The Commissioner also notes that the information concerns the homes or at least the property of individuals

and that they would not expect information relating to their private properties to be made available to the public.

Consequences of confirmation or denial

22. The Council also considers that disclosing information of this nature would cause considerable distress to the data subject(s) as an individual would not like it to be public knowledge that the Council had taken enforcement action against his or her property.
23. The Commissioner also considers that this distress would be increased due to the level of expectation that information relating to their private property would be made available to the public.

Legitimate public interest

24. The Commissioner has therefore considered whether there is a legitimate public interest in the confirmation or denial of whether the Council holds such information.
25. The Council considers that such enforcement action is only of interest to a very limited number of people,(mainly those living in close proximity to the property subject to the enforcement action). However, the Commissioner is mindful that for an enforcement notice to be issued there must be some sort of contravention of the building regulations. He therefore asked the Council if section 36 enforcement notices are issued in respect of properties that are unsafe or could be considered a danger to the public. The Council confirmed that whilst there is nothing in the Building Act which prevents a section 36 notice being issued in respect of a property that is in a dangerous condition, the Building Act contains separate provisions (sections 77 and 78) which are designed to deal with dangerous structures.
26. The Commissioner would therefore disagree with the Council that section 36 enforcement action is only of interest to a very limited number of people, and has concluded that there is a legitimate public interest, however small in such confirmation or denial.
27. However, in balancing the reasonable expectations and consequences of such confirmation or denial with the legitimate public interest in disclosure, whilst the Commissioner accepts that there is a legitimate public interest in disclosure, he considers that the weight of the legitimate interest does not outweigh the reasonable expectations of the data subject or the consequences of such confirmation or denial. The Commissioner has therefore concluded that the Council was correct to rely on regulation 13(5) in respect of this request for information.

Right of appeal

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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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.

Signed

Anne Jones
Assistant Commissioner
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Wycliffe House
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