

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

### **Decision notice**

**Date:** 24 February 2014

**Public Authority:** Chesterfield Borough Council

**Address:** Town Hall  
Rose Hill  
Chesterfield  
Derbyshire  
S40 1LP

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

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1. The complainant has requested information relating to documents about asbestos relevant to his address and other properties in his street. Chesterfield Borough Council (the Council) provided some information to the complainant but withheld information identifying some third parties.
2. The Commissioner's decision is that the Council has provided all of the relevant information it holds and was entitled to withhold the personal data of third parties under regulation 13 of the EIR. In providing some of the information after the 20 working day statutory time limit, the Council breached regulation 5(2).
3. The Commissioner does not require the public authority to take any further steps.

### **Request and response**

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4. On 4 February 2013, the complainant wrote to the Council and requested information in the following terms:
  1. *A copy of all Asbestos reports including all emails and phone transcripts between the Council, Aspect Contracts and Broadlands relating to [the complainant's address]. (I already have the bulk samples paperwork re my ceilings from Broadlands)*

2. *A copy of all method statements relating to [the complainant's address] in particular to the replacement flooring done in Jan/Feb 2012 and of the central heating works.*
  3. *A copy of all method statements and asbestos bulk samples taken from other bungalow's in [the street in which the complainant lives]. Involving floor replacements, damage to ceilings and heating replacement.*
  4. *A copy of the Asbestos maintenance paper work relating to [the complainant's address] and for that matter in relation to all Bungalow's on [the street] going back from 2006-2013.*
  5. *A copy of all minutes relating to the Council holding meetings regarding me and [the complainant's address]. I am aware of such meetings taking place!*
  6. *A copy of any and all e mails between Council officers relating to myself or this address since Jan 9<sup>th</sup> 2012 to present day.*
  7. *A copy of anything with regards Chesterfield Borough Council warning tenants asbestos is present in the floors and ceiling of certain flats, same relates to the Bungalows of [the street]. Also have the Council tested any of there houses in relation to the floors and ceilings if so please provide me with this information.*
  8. *Can you also please provide me with the full address of Aspect contracts. So my Solicitors may contact them directly with regard my bedroom and other damaged ceilings".*
5. The Council responded on 4 March 2013. It provided a series of information in response to the requests and explained where some information had already been provided. It also explained that some information had been redacted where it relates to third parties.
  6. The complainant wrote further to the Council on 6 March 2013 and asked for information he felt had not been provided in the initial response, including names which had been redacted.
  7. The council responded on 12 June 2013 and provided some further information the applicant was seeking. It confirmed its view that information relating to third parties was exempt from disclosure and applied section 40(2) of the Freedom of Information Act 2000 (the FOIA).

## **Scope of the case**

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8. The complainant contacted the Commissioner on 11 July 2013 to complain about the way his request for information had been handled.

Specifically, he believed that he had not been provided with all of the information he is entitled to receive.

9. The Commissioner has conducted a separate assessment under the Data Protection Act 1998 (the DPA) in relation to the information covered by the request which is the complainant's own personal data. This assessment related primarily to requests 5 and 6 and concluded that it was likely the complainant has received the information he is entitled to receive in response to his subject access request.
10. During the course of the Commissioner's investigation, the Council disclosed further information to the complainant, including information which had already been provided but which the complainant considered unreadable, and information identifying third parties who are council employees.
11. The Commissioner considers the scope of this Decision Notice is to determine whether the Council has provided all of the information it holds in relation to the remaining elements of the request, and whether it is entitled to withhold some information identifying third parties who are not council employees.

## **Reasons for decision**

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### **Regulation 2 – environmental information**

12. In relation to information which is not the complainant's own personal data, the Commissioner notes that the initial request was considered under the FOIA. However, he has decided it should have been considered under the EIR. This is because the request relates to reports, plans and measures regarding the presence of asbestos, and is therefore defined as environmental information under regulation 2(1)(c).

### **Regulation 5 – duty to make environmental information available**

13. Regulation 5(1) provides that a public authority that holds environmental information should make it available on request. In this case the Council stated that it had provided the complainant with all of the information it holds, albeit with some third party personal data redacted.
14. In considering cases such as this, the Commissioner, in accordance with a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities. To reach a decision on this the Commissioner has considered the context of the case, the nature of the requested information, the authority's responses, the arguments

provided by the complainant and any evidence to suggest that the information in question is held.

15. In order to assist with this determination the Commissioner asked the Council a range of questions.
16. The Commissioner notes that the Council had appointed a single point of contact for the complainant. The single point of contact has provided full responses to the Commissioner's questions.
17. The Council confirmed that relevant electronic searches had been conducted using the search reference of name and address which would bring up all relevant information. Information is held electronically with some files printed off where necessary. This search would have highlighted any information held on either of two drives, one for Operational Services Division and another for the Town Hall. The search engine would also have brought up files and e mails on any personal devices which are networked.
18. The Council has confirmed that it is not aware of the destruction or deletion of any documents pertinent to the request. The Council has provided the Commissioner with a copy of its Records Management policy and its Corporate Record Retention and Disposal Schedule. The latter confirms that, after the end of their administrative use, Property Asbestos Files are transferred to permanent storage in accordance with Statutory instrument 1992 number 3068.
19. During the course of the investigation, the Commissioner addressed the issue of screenshots which had been provided to the complainant but which were unreadable. The complainant had been advised that it was impossible to obtain a printout of the screenshots. Following the Commissioner's intervention the Council reconsidered this matter and reproduced the information in a clearer format. This information has been provided to the complainant by the Council.
20. The Commissioner has considered the submissions put forward by the council and those by the complainant and finds that on the balance of probabilities, the Council has provided all of the available information relevant to the request. He considers the Council to have conducted appropriate searches and is satisfied that those searches would identify all relevant recorded information held in relation to the request.
21. However, the Commissioner also notes that the council provided some information to the complainant after more than 20 working days following receipt of the request. It therefore breached regulation 5(2) of the EIR.

## **Regulation 13 – personal data**

22. The request relates to environmental information and regulation 13 of the EIR provides an exception where a request relates to third party personal data.

23. Regulation 13(1) EIR states that:

*"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".*

24. Regulation 13(2) EIR states that:

*"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*

25. He also notes that during the course of his investigation, the Council dropped its reliance on regulation 13(2) EIR to withhold information relating to Council employees. The Council provided the complainant with a set of documents where the details of Council employees were no longer redacted. It also disclosed information relating to some individuals who are not Council employees but who have consented to disclosure.

26. However, the Council has withheld information which identifies third parties who are not council employees and who have not consented to disclosure of their personal data. The Commissioner is satisfied that the names and additional details of these individuals is defined under section 1(1) of the DPA as personal data.

27. The Commissioner has then gone on to consider whether disclosure of the personal data would breach any of the data protection principles.

28. The first principle of the DPA states that personal data shall be processed fairly and lawfully. The Council has explained it contacted each of the individuals identified in the information to establish whether they were prepared to consent to disclosure of their personal data. It received a mix of responses, while some did not respond. Subsequently,

the Council has disclosed information relating to the third parties who have consented to disclosure. In relation to the remaining individuals who either objected to the disclosure or did not respond, the Council believes that the disclosure of their names and other details would be unfair and would contravene the first data protection principle. The Council considers the withheld information to be biographically significant to each individual.

29. The Commissioner notes that the Council was not obliged to seek consent from the third parties in this case. The fact that some individuals consented to disclosure of their personal data in this case does not have any bearing on his consideration of whether disclosing the personal data of other third parties would be fair.
30. The Council believes that because the withheld information relates to the personal data of individuals who are not Council employees and who have not consented to disclosure, those individuals would not reasonably expect to be identified in information disclosed. It has noted that disclosure under the EIR would place their personal data into the public domain.
31. The Commissioner considers that, although the individuals may have been acting in a professional capacity for other organisations working with or alongside the Council in relation to asbestos, they are not Council employees and therefore their roles with those organisations would not carry the same expectation of scrutiny or accountability as those who work within the Council. In light of this, the Commissioner also takes the view that there is a likelihood the individuals would be caused some distress if their personal data was disclosed to the wider world.
32. The Commissioner also notes that a large amount of information has already been disclosed in relation to the request, and this includes information relating to Council employees involved in the matter the complainant is concerned about. He is satisfied that this information adequately addresses any legitimate public interest which may be served by the request. The Commissioner does not consider that disclosure of the identities of non-Council employees would increase the Council's accountability or serve any further legitimate interest in this case.
33. The Commissioner therefore finds that regulation 13 is engaged in relation to the withheld information.

## Right of appeal

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34. 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: [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)

35. 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.
36. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**