

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 September 2014

Public Authority: London Borough of Richmond upon Thames

Address: Civic Centre
44 York Street
Twickenham
TW1 3BZ

Decision (including any steps ordered)

1. The complainant has requested from London Borough of Richmond upon Thames (the "Council") information relating to a planning complaint which resulted in an inspection visit to a property of a named resident at named address. The complainant made this request on behalf of the named individual.
2. The Council refused to disclose this information, arguing that it was the personal data of the named resident. During the investigation of this case the Council cited regulation 5(3) of the EIR.
3. The Commissioner's decision is that the requested information is the personal data of the named resident. Therefore regulation 5(3) applies. The Commissioner does not require the Council to take any steps. .

Background

4. The complainant has previously made a complaint to the Commissioner about the way in which the Council dealt with a Subject Access Request (SAR) under the Data Protection Act 1998 (the "DPA") submitted by the named resident on 4 February 2014.
5. In addition to this, the complainant made further specific requests which he asked to be considered under the FOIA. The focus of this case is the Council's handling of these requests.

Request and response

6. On 12 March 2014, the complainant wrote to the Council and requested information in the following terms:

"i) Please reveal the nature/content of the planning complaint which gave reason for [named individual] to make an unannounced inspection visit onto the property of [named resident] at [named address] on 2.10.13.

ii) Please advise whether and in what form did [named individual] have a bona fide complaint about wall rendering at [named address] which precipitated his enforcement notice of 28.10.13."

7. The Council responded on the same day and referred to its previous response to the SAR. It stated that it was not appropriate to disclose specific planning enforcement complaints as this would disclose information about third parties.
8. Following an internal review the Council wrote to the complainant on 3 April 2014. It stated that the FOIA, "...would not be the appropriate legislation to obtain the information you are requesting, given the nature of the request and the fact that the exemptions...sections 40 and 41 would mean the entire request would be refused." It went on to consider whether the requested information should be disclosed to the named resident as a SAR under the DPA, but stated that it would not disclose this information as to do so would disclose information about third parties.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. During the investigation of this case the Council informed the Commissioner that it considered that the information in question was environmental information. As such it was applying regulation 5(3) of the EIR.
11. Therefore the scope of this case has been to consider whether the Council was correct to apply regulation 5(3).

Reasons for decision

Regulation 5(3)

12. The duty to make environmental information available on request is imposed by regulation 5(1) of the EIR. Regulation 5(3) provides that regulation 5(1) does not apply to information that is the personal data of the requester. The task for the Commissioner here is to consider whether the requested information is the personal data of the complainant. If it is, the EIR does not require the Council to disclose this information.
13. The definition of personal data is given in section 1(1) of the Data Protection Act 1998 (the "DPA"):
"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".
14. As referred to above, when responding to this request, the Council stated that the requested information was the personal data of the named resident.
15. The Council has provided the Commissioner with its reasons why it considered that the request made by the complainant on behalf of the named resident was a request for her personal information.
16. It is clear to the Commissioner that the information requested by the complainant is based on planning issues regarding the named resident's property. Therefore, as it relates to the named individual's property this information identifies the individual.

Conclusion

17. The conclusion of the Commissioner is that the information falling within the scope of the request is the personal data of the named resident. Therefore regulation 5(3) applies and the Council was not obliged to disclose this information under the EIR.

Right of appeal

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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

Rachael Cragg
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