

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

**Date:** 8 March 2016

**Public Authority:** London Borough of Camden  
**Address:** Town Hall  
Judd Street  
London  
WC1H 9JE

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to an insurance claim brought against the council relating to subsidence at a nearby property and remedial work intended to be carried out on a nearby tree.
2. The council refused to disclose a copy of the insurance claim, citing regulations 12(5)(b) and 13 of the EIR.
3. The Commissioner's decision is that regulation 13 of the EIR applies in this case. He therefore does not require any further action to be taken.

**Request and response**

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4. On 14 June 2015, the complainant wrote to the council and requested information in the following terms:  
  
"a) To see a copy of the insurance claim (redacted as required)  
  
b) that the pruning of the tree is postponed (it is currently due to take place on the 22nd of this month) until we have had a chance to see and review the insurance claim"

The request relates to an insurance claim brought against the council for subsidence relating to a nearby property, a tree nearby allegedly being the cause and the council's intentions to prune the tree.

5. The council responded on 10 July 2015. In relation to part (a) the council stated that the requested information is exempt from disclosure under regulation 12(5)(b) and 13 of the EIR. In respect of part (b) of the request the council confirmed that the crown reduction work to the said tree had been cancelled for the initial scheduled date to be rescheduled later.
6. The complainant requested an internal review on 20 July 2015. He stated that he does not agree with the application of regulation 12(5)(b) and 13 of the EIR, as he believes it is in the public interest to disclose this information. The complainant also stated that he had concerns that appropriate evidence had not been submitted to demonstrate that the tree was the cause of the subsidence and therefore the council may be acting hastily by reducing the crown of the tree concerned.
7. The council carried out an internal review and notified the complainant of its findings on 4 September 2015. It upheld the council's initial decision and referred the complainant to the Commissioner.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 21 September 2015 to complain about the way his request for information had been handled. Specifically, the complainant stated that he remains dissatisfied with the council's handling of element (a) of his request and believes he is entitled to access to the insurance claim it received.
9. During the Commissioner's investigation it was established that the council holds a covering email (rather than letter, as the internal review response suggested) and four reports, which constitute the 'insurance claim' the council received from a company representing the building insurer of the property concerned.
10. The Commissioner will consider the application of the exceptions cited to this information, commencing with regulation 13 of the EIR. He will only go on to consider the application of regulation 12(5)(b) of the EIR if it is found that some or all the information is not exempt from disclosure under regulation 13 of the EIR.

### **Reasons for decision**

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11. Regulation 13 of the EIR states that information is exempt from disclosure if it constitutes the personal data of a third party and its

disclosure would breach one of the data protection principles outlined in the Data Protection Act (DPA).

12. Personal data is defined as:

..."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,

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

13. The Commissioner considers the first data protection principle is most relevant in this case. The first data protection principle states -

"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. The Commissioner must first consider whether the requested information is personal data. If he is satisfied that it is, he then needs to consider whether disclosure of this information would be unfair and unlawful. If he finds that disclosure would be unfair and unlawful the information should not be disclosed and the consideration of regulation 13 of the EIR ends here. However, if he decides that disclosure would be fair and lawful on the data subjects concerned, the Commissioner then needs to go on to consider whether any of the conditions listed in schedule 2 and 3 of the DPA are also met.

### **Is the requested information personal data?**

15. The covering email and accompanying reports make up an insurance claim brought against the council by the insurers of the property concerned. The Commissioner understands the property is privately owned and it is alleged that the said tree nearby (to which crowning will take place) is the cause of subsidence at the property. Although submitted by a company representing the insurer of the property, the Commissioner considers the insurance claim as a whole (both covering email and accompanying reports) constitutes the personal data of the property owner. It relates to their property and issues they are

experiencing with it and to a claim that has been brought against the council by their insurer, as they and their insurer consider the council to be liable.

16. As the Commissioner is satisfied that the withheld information constitutes personal data, he now needs to consider whether the disclosure of this information would be unfair, unlawful and in breach of the first data protection principle.
17. Before he does, it is important to highlight here what disclosure under the EIR effectively means. Disclosure under the EIR is to the world at large; it is essentially saying that the information can be made public and be released into the public domain for anyone to see. The relevant consideration here is not whether the requested information can be disclosed to the complainant but whether the requested information can be released into the public domain.

### **Would disclosure be unfair?**

18. The Commissioner considers the property owner would hold no expectation that this information could be disclosed into the public domain. To the contrary, the owner would have expected the information to be held in confidence and to only be used to process the claim they and their insurer have made. They would not expect public disclosure, which is what disclosure under the EIR effectively means and would have only expected the withheld information to be circulated on a need to know basis.
19. The requested information relates to a claim against the council relating to alleged subsidence at the property; a private asset of the property owner. Disclosure would reveal information relating to their private life – where they live, the fact that they own the property and have current issues with possible subsidence. Disclosure of this sort of information would be unfair and potentially harmful to the owner's interests when they come to sell it. It would also constitute an unwarranted intrusion into their private life and their right to privacy.
20. For the above reasons, the Commissioner is satisfied that disclosure would be unfair and in breach of the first data protection principle.
21. The Commissioner acknowledges that there are legitimate public interests in the disclosure of this information. He accepts that the claim is against a public body and that any settlement would come from public funds. He also accepts that the complainant lives nearby, has experience in issues such as subsidence and wishes to know that any claim made is based on evidence. It is noted that a nearby tree has been labelled as the cause of the alleged subsidence and the council intended at the time

of the request to undertake significant crown reduction. The complainant does not consider such severe treatment is required and raised concerns over the impact such treatment would have on his nearby property.

22. However, the Commissioner considers any legitimate public interest in the withheld information must be weighed up against the harm and intrusion disclosure could cause the data subject (property owner). The Commissioner considers disclosure of this insurance claim itself would be potentially damaging to the property owner and would be an unwarranted intrusion into their private life. He also considers any public interest in this information could be met by the council keeping the complainant informed of the progress of this claim. If any settlement is required the council could explain briefly why the claim was accepted. In relation to the tree, the council could explain why remedial action is considered necessary and offer assurances that appropriate evidence to support this work and the claim if necessary has been received. This would satisfy any legitimate public interest or concerns without the need for disclosing personal data.
23. For the above reasons the Commissioner is satisfied that the requested information is exempt from disclosure under regulation 13 of the EIR.
24. As he is satisfied that regulation 13 of the EIR applies to the withheld information as a whole, there is no need for the Commissioner to go on to consider regulation 12(5)(b).

## Right of appeal

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25. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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** .....

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**