

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

### **Decision notice**

**Date:** 14 October 2022

**Public Authority:** Cotswold District Council  
**Address:** Trinity Road  
Cirencester  
Gloucestershire  
GL7 1PX

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

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1. The complainant requested information from Cotswold District Council ("the Council") relating to the Council's Self-Build and Custom Housebuilding register.
2. The Council disclosed some information within the scope of the request but refused to provide the remainder citing section 40(2) (personal information) of the FOIA. The Council later accepted the Commissioner's view that the requested information is environmental and therefore, relied on regulation 13(1) (personal data) of the EIR to withhold the information.
3. The Commissioner's decision is that the withheld information is not personal data and therefore, the Council is not entitled to rely on regulation 13(1) to withhold the information.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Disclose the withheld information.
5. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## Request and response

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6. On 20 September 2021, the complainant wrote to the Council and requested information in the following terms:

"Can you please provide the following information in line with the provisions of the Freedom of Information Act:

1. The number of individuals that joined the Council's Self Build and Custom Housebuilding register in each of the following base periods as defined under the Self-Build and Custom Housebuilding Act 2015 (as amended):
  - a. Base Period 1 (from the start of the Self-Build Register up to 30 October 2016)
  - b. Base Period 2 (31 October 2016 to 30 October 2017)
  - c. Base Period 3 (31 October 2017 to 30 October 2018)
  - d. Base Period 4 (31 October 2018 to 30 October 2019)
  - e. Base Period 5 (31 October 2019 to 30 October 2020)
  - f. Base Period 6 (31 October 2020 to Present)
2. The number of associations of individuals that joined the Council's Self Build and Custom Housebuilding register in each of the following base periods as defined under the Self-Build and Custom Housebuilding Act 2015 (as amended) together with the number of individuals within each of those associations:
  - a. Base Period 1 (from the start of the Self-Build Register up to 30 October 2016)
  - b. Base Period 2 (31 October 2016 to 30 October 2017)
  - c. Base Period 3 (31 October 2017 to 30 October 2018)
  - d. Base Period 4 (31 October 2018 to 30 October 2019)
  - e. Base Period 5 (31 October 2019 to 30 October 2020)
  - f. Base Period 6 (31 October 2020 to Present)
3. The date on which the Council commenced its Self-Build and Custom Housebuilding register?
4. What are the Council's entry requirements for joining its Self-Build Register?
5. Whether the Council has undertaken any review(s) of its register and when did it occur, and in the process of doing so has the Council removed any entries from its register?
6. If yes to Q5:

- a. What were the grounds for the removal of these entries?
  - b. When did these removals occur?
  - c. How many entries were removed from each Base Period?
7. The number of Self-Build and/or Custom Housebuilding planning permissions and/or permissions in principle the Council has granted towards addressing demand arising from within each of the following Base Periods under Section 2A(2) of the Self-Build and Custom Housebuilding Act 2015 (as amended), together with the application reference numbers.
  - a. Base Period 1 (from the start of the Self-Build Register up to 30 October 2016)
  - b. Base Period 2 (31 October 2016 to 30 October 2017)
  - c. Base Period 3 (31 October 2017 to 30 October 2018)
  - d. Base Period 4 (31 October 2018 to 30 October 2019)
  - e. Base Period 5 (31 October 2019 to 30 October 2020)
  - f. Base Period 6 (31 October 2020 to Present)
8. The number of CIL Self-Build Exemption Form 7 Part 1's the Council have counted towards addressing demand arising from within each of the following Base Periods under Section 2A(2) of the Self-Build and Custom Housebuilding Act 2015 (as amended), together with the application reference numbers to which each CIL Form 7 Part 1 relates:
  - a. Base Period 1 (from the start of the Self-Build Register up to 30 October 2016)
  - b. Base Period 2 (31 October 2016 to 30 October 2017)
  - c. Base Period 3 (31 October 2017 to 30 October 2018)
  - d. Base Period 4 (31 October 2018 to 30 October 2019)
  - e. Base Period 5 (31 October 2019 to 30 October 2020)
  - f. Base Period 6 (31 October 2020 to Present)
9. The number of CIL Self-Build Exemption Form 7 Part 2's the Council have counted towards addressing demand arising from within each of the following Base Periods under Section 2A(2) of the Self-Build and Custom Housebuilding Act 2015 (as amended), together with the application reference numbers to which each CIL Form 7 Part 2 relates:
  - a. Base Period 1 (from the start of the Self-Build Register up to 30 October 2016)
  - b. Base Period 2 (31 October 2016 to 30 October 2017)
  - c. Base Period 3 (31 October 2017 to 30 October 2018)
  - d. Base Period 4 (31 October 2018 to 30 October 2019)
  - e. Base Period 5 (31 October 2019 to 30 October 2020)

- f. Base Period 6 (31 October 2020 to Present)
10. A copy of the Council's CIL Form 7 Part 2 Notification of Self-Build Relief letter.
  11. How does the Council monitor Self Build and Custom Housebuilding permissions and completions?
  12. How does the Council alert individuals and associations of individuals on its Self-Build and Custom Housebuilding Register to any self-build and custom housebuilding permissions it grants?
  13. How has the Council publicised the existence of its Self-Build and Custom Housebuilding Register?
  14. If the Council has publicised the existence of its Self-Build and Custom Housebuilding register, when did this take place and by what means?"
7. The Council responded on 1 February 2022 and provided the complainant with some information within the scope of their request. However, the Council withheld the reference numbers of self-build applications made prior to June 2019 as it considered the information to be personal data.
  8. On 1 February 2022 the complainant requested an internal review.
  9. Following an internal review, the Council wrote to the complainant on 4 February 2022. The Council maintained that the withheld information is personal data and confirmed that it was relying on section 40(2) (personal information) of the FOIA as its basis for refusing to provide the withheld information.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 25 February 2022 to complain about the way their request for information had been handled.
11. During the course of his investigation, the Commissioner wrote to the Council and set out his view that the requested information was likely to constitute environmental information as defined in regulation 2(1) of the EIR. The Council therefore revised its position and relied on regulation 13(1) (personal information) of the EIR to withhold some of the requested information.

12. The scope of this case and the following analysis is to determine whether the Council has correctly cited regulation 13(1) of the EIR to refuse to provide the withheld information.

## **Reasons for decision**

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### **Regulation 13(1) – personal information**

13. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
14. In this case the relevant condition is contained in regulation 13(2A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data (“the DP principles”), as set out in Article 5 of the UK General Data Protection Regulation (“UK GDPR”).
15. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 (“DPA”). If it is not personal data, then regulation 13 of the EIR cannot apply.
16. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

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

17. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.
18. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
19. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
20. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

21. In this case, the Council has withheld the reference numbers of self-build applications made prior to June 2019 as it considers the information to be the personal data of individuals who have submitted self-build applications prior to June 2019.
22. As part of his investigation, the Commissioner wrote to the Council and asked it to explain why it considers the withheld information to be the personal data of individuals who submitted self-build applications prior to 2019 and to explain how the individuals who submitted the self-build applications would be identified from the withheld information. The Commissioner also asked the Council to provide him with an example of a self-build application reference number from before June 2019.
23. In its submissions, the Council provided the Commissioner with the reference number '12/23456/FUL' as an example of a self-build application reference number from before 2019. The Council explained that it considers the withheld information to be the personal data of individuals who submitted self-build applications prior to June 2019 as each self-build application reference number is unique. The Council considers that an individual who submitted the self-build application could be identified from the unique reference number.
24. Based on the example reference number provided by the Council, it appears to the Commissioner that the format of self-build application reference numbers from before June 2019 are identical to the format of reference numbers given to self-build applications made after June 2019. Given that the reference numbers of self-build applications made before June 2019 and after June 2019 are identical, it is not clear to the Commissioner why the Council cannot disclose the reference number of self-build applications made before June 2019 but can disclose the reference number of applications made after June 2019.
25. Furthermore, it is not obvious to the Commissioner how the individuals who submitted self-build applications prior to June 2019 could be identified from the withheld information. The Commissioner does not consider the arguments provided by the Council to explain how the individuals who submitted self-build applications prior to June 2019 could be identified from the withheld information to be convincing.
26. Therefore, as the individuals who submitted self-build applications prior to June 2019 could not be identified from the withheld information, the Commissioner does not consider the withheld information to be personal data.
27. The Commissioner's decision is that as the withheld information is not personal data, the Council is not entitled to rely on regulation 13(1) of the EIR to refuse to provide the withheld information.

## 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,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

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 .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**