

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

### **Decision notice**

**Date:** 7 November 2022

**Public Authority:** Warwick District Council  
**Address:** Riverside House  
Milverton Hill  
Leamington Spa  
CV32 5HZ

### **Decision**

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1. The complainant has requested information from Warwick District Council ("the Council") relating to a specific building regulations application. The Council refused to provide the requested information citing regulation 13(1) (personal data) of the EIR.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 13(1) of the EIR to refuse to provide information relating to an agent. However, the Council is not entitled to rely on regulation 13(1) to refuse to provide the remainder of the requested information.
3. The Commissioner requires the Council to disclose the requested information, except that which relates to an agent.

## Request and response

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4. The complainant made the following information request to the Council on 23 June 2022:

"Building Regs matter BC/87/001277

I am seeking a copy of the Building regs approval and supporting drawings, application forms and any relevant exchanges for the above matter for a property in Hampton on the Hill.

Please could I arrange to visit and obtain a copy of the file? Or if a copy is available electronically, obtain a copy of that?"

5. The Council refused to provide the requested information citing regulation 13 (personal data) of the EIR as its basis for doing so.

## Reasons for decision

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6. This reasoning covers whether the Council is entitled to rely on regulation 13(1) of the EIR to refuse to provide the requested information.
7. 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.
8. 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").
9. Section 3(2) of the Data Protection Act 2018 defines personal data as:
- "any information relating to an identified or identifiable living individual."
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. In this case, the complainant has requested information relating to a specific building regulations application made in 1987 for a property.

12. In its submissions to the Commissioner, the Council stated that it considers the requested information to be the personal data of the owner of the property which the building regulation application relates to or the personal data of the person intending to carry out the work on the property. It stated that the requested information "includes data which identifies an individual such as a name, contact details, property information."
13. The Council stated that the requested information also contains the name and contact details of an agent. The Council considers this information to be the personal data of the agent.
14. The complainant does not consider the requested information to be personal data. In their complaint to the Commissioner, the complainant stated that if the Council considers the requested information to be the personal data of the current owner of the property, the requested information is not that individual's personal data as that individual has died. If the Council considers the requested information to be the personal data of the individual who made the building regulation application in 1987, the requested information is not that individual's personal data as that individual has died.
15. Whilst the Commissioner understands that the Council considers some of the requested information to be the personal data of an agent, it is not completely clear to the Commissioner whose personal data the Council considers the remainder of the requested information to be. It is not clear to the Commissioner whether the Council considers the information to be the personal data of the current owner of the property which the building regulations application relates to or, the personal data of the individual who made the building regulation application in 1987 and carried out the works on the property.
16. Nevertheless, the Commissioner notes that both the current owner of the property which the building regulations application relates to and the individual who made the building regulations application in 1987 have died. As both individuals have died, the requested information does not relate to a living individual and therefore, the information is not personal data.
17. With regards to the information which the Council considers to be the personal data of an agent, the Commissioner is satisfied that the name and contact details of the agent would constitute personal data as the information both relates to and would identify the agent and therefore, falls within the definition of 'personal data' in section 3(2) of the DPA.
18. The Commissioner will now consider whether disclosure of the agent's name and contact would be in breach of any of the data protection

principles. The Commissioner has focussed here on principle (a), which states:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”

19. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
20. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
21. The Commissioner considers that the complainant is pursuing a legitimate interest in this case. The complainant has requested information relating to a building regulations application for a property which adjoins their own property. The complainant has requested this information so they can determine whether works carried out at the adjoining property has caused damage to their own property.
22. Whilst the Commissioner accepts that the complainant is pursuing a legitimate interest, he does not consider that disclosure of the name and contact details of the agent is necessary to meet that interest.
23. The Commissioner's decision is that the Council is entitled to rely on regulation 13(1) of the EIR to refuse to provide information relating to the agent. However, as the remainder of the requested information is not personal data, the Council is not entitled to rely on regulation 13(1) of the EIR to refuse to provide that information.
24. The Council is required to disclose the requested information, except that which relates to the agent.

## 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@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)

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 .....**

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