

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

**Decision notice**

**Date:** 4 October 2018

**Public Authority:** London Borough of Tower Hamlets

**Address:** Town Hall  
Mulberry Place  
5 Clove Crescent  
London E14 2BG

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to pest control activity at a particular property.
2. The Commissioner's decision is that the London Borough of Tower Hamlets ("LBTH") is entitled to refuse to confirm or deny whether it holds that information and can rely on regulation 13 (unfair disclosure of personal data) of the EIR as its basis for doing so.
3. No steps are required.

**Request and response**

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4. On 11 September 2017 the complainant requested information of the following description:  
  
"Can [I] have some feedback as to reasons why [specified address in London E14], was fumigated in the past."
5. On 13 September 2017, LBTH responded. It issued a refusal notice. It argued that it was entitled to rely on regulation 13 of the EIR as its basis for doing so. This EIR exception applies where disclosure would contravene the requirements of the Data Protection Act 1998.
6. The complainant requested an internal review on 9 November 2017. LBTH sent them the outcome of its internal review on 5 December 2017. It upheld its original position.

## Scope of the case

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7. The complainant contacted the Commissioner on 20 December 2017 to complain about the way their request for information had been handled.
8. The Commissioner has looked at whether LBTH is entitled to rely on regulation 13 of the EIR as its basis for responding to the request.

## Reasons for decision

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9. The property in question is currently owned by One Housing Group who is the registered social landlord ("RSL") for the property.<sup>1</sup>
10. LBTH has stated that it does not hold any information of the nature described in the request longer than six years. This is in line with its retention schedule. The Commissioner is satisfied that this is reasonable in the circumstances. The Commissioner notes that LBTH's document retention schedule – as published online - has been recently updated but notes that this accords with paragraph 5.7 of the version available online.<sup>2</sup> Implicitly, if it did hold any information within the scope of the request it would not be older than six years old.
11. Regulation 13(5) of the Regulations states:

For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that

  - (a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998.
12. The Commissioner would note that this request predates the implementation of General Data Protection Regulation ("GDPR") into UK law as well as the Data Protection Act 2018 ("DPA2018"). The applicable data protection legislation is therefore the Data Protection Act 1998 ("DPA98").

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<sup>1</sup> <https://www.gov.uk/government/publications/current-registered-providers-of-social-housing>

<sup>2</sup> [https://www.towerhamlets.gov.uk/Documents/GDPR/Governance\\_Directorate.pdf](https://www.towerhamlets.gov.uk/Documents/GDPR/Governance_Directorate.pdf)

13. In the Commissioner's view, LBTH should have refused to confirm or deny that it held any recent information about pest control activity at the property in the circumstances of this case. Given LBTH's document retention policy outlined above, this would mean that it should have refused to confirm or deny whether it held information about pest control activity at the property that would have taken place in the last six years. The Commissioner is satisfied that, in the circumstances of this case, LBTH could readily explain that it held no information of this kind for more than six years without breaching the requirements of data protection legislation.
14. To explain how the Commissioner reached this decision, it is necessary to analyse how DPA98 applies here.
15. In order to engage regulation 13, the information sought by the requester must satisfy the definition of personal data provided by section 1(1) of the DPA98.
16. Section 1(1) of the DPA98 defines personal data 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."
17. Even if it is personal data, it can only be a breach of Regulation 13 if providing confirmation or denial as to whether it is held would contravene any of the data protection principles of DPA98. In this case, the first principle is most relevant. It 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."

*Is the requested information personal data?*

18. Personal data is information about living identifiable individuals and is biographically significant about them.<sup>3</sup>
19. LBTH acknowledged that the requested information is not obviously about living identifiable individuals. It explained why it would, however, be easy to make a connection with living identifiable individuals, that is, any current or recently former residents of the property. It would give information about whether or not pest control activity had taken place at the property. The fact of pest control activity tells the public something about the living conditions at the property and that any residents of that property have had to endure pest related challenges in the last six years. The Commissioner agrees that this is biographically significant information.
20. In light of the above, the Commissioner is satisfied that information about pest control activity is held is personal data. It tells the public something about current or recently former residents of the property and given that the names of these individuals and their period of residence would be readily known by e.g. neighbours or those who corresponded with them at the property, it would be relatively straightforward to connect named individuals' periods of residence and the fact that there may well have been pest control activity at the property while they were resident there.
21. Having concluded that the requested information is personal data, the Commissioner went on to consider whether it would breach the first data protection principle of DPA98 to confirm or deny whether the information was held.

*Would it contravene DPA98 to provide confirmation or denial?*

22. The important point to note here is the need to be consistent. If, for example, LBTH readily denied holding pest control activity information when it did not hold it but refused to confirm or deny holding it when it did hold it, it would be reasonable to deduce that refusal to confirm or deny actually meant confirmation that information is held. The Commissioner has therefore looked at whether it would contravene DPA98 to provide confirmation or denial in the circumstances of this case.
23. In considering fairness, it is necessary to balance the reasonable expectations of the data subject and the potential consequences of the

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf>

providing confirmation or denial against the legitimate interest in making that confirmation or denial public.

24. The complainant has set out for the Commissioner her clear concerns about pest control activity at the property and her reasons why she is interested in it. The Commissioner acknowledges that although the complainant has her own personal legitimate reasons for being interested in this subject, this also reflects a wider public interest in knowing more about how LBTH manages its pest control obligations in the borough of Tower Hamlets. It is important that the general public has confidence in the way LBTH conducts itself in respect of this question, particularly where this relates to public housing or housing association properties. There are broader and important discussions about the extent to which local authorities remain active in or have oversight of public housing or housing association properties. Confirmation or denial in this case would add to the discussion, albeit in a small way about a specific property.
25. However, while pest related challenges in residential properties are unfortunately more common than is generally appreciated, they are often accompanied by negative associations in respect of the residents themselves. Even if there is no clear causal connection (for example, pest control maybe necessary because of external and/or neighbouring factors), there is, nevertheless, link made between the pest control activity and the residents of the property. Even if it was an external factor that gave rise to the pest control activity at the property, revealing that it had taken place tells the public something about daily life for any current or former residents at the property that was not previously known.
26. The Commissioner has considered whether provision of such confirmation or denial would, nevertheless, be in the reasonable expectations of the residents of the property. She has concluded that it would not. It is irrelevant whether the residents were owners of the property or rented the property or whether their period of residence was short or long term. Pest control activity is, by its very nature, intrusive and relates to an unpleasant matter – pests in a domestic environment.
27. In light of the above, the Commissioner has concluded that it would be unfair and in breach of the first data protection principle of DPA 98 to confirm or deny whether LBTH held any information (that was six years old or more recent) within the scope of the complainant's request. There is a compelling and wholly legitimate interest in understanding how LBTH conducts or is otherwise responsible for pest control activities in the local area. This may well be served by knowing more about those activities at an individual property as an example for how this subject is addressed in the area, even if it is no more than confirming or denying that it took place. However, it is in the legitimate interests of the current

and former residents of the property (who will certainly be known and identifiable locally) to keep the fact of any pest control activity there private. This legitimate interest is stronger in the circumstances of this case than the wider interest in informing the public about such activity at that property. In practical terms, this means that LBTH should maintain a refusal to confirm or deny whether it holds the requested information. It is entirely appropriate for LBTH to explain its document retention policy when doing so. Providing such an explanation does not, in the circumstances of this case, contravene the requirements of DPA98.

28. For the above reasons, the Commissioner is satisfied that providing confirmation or denial would contravene the requirements of the first data protection principle of the DPA98. As a consequence, LBTH is entitled to rely on regulation 13 of the EIR as its basis for refusing to do so.

## Right of appeal

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29. 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)

30. 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.
31. 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 .....**

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