

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 September 2024

Public Authority: London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant has requested, from the London Borough of Croydon (the Council), a copy of a building control certificate regarding a specified property. The Council refused to disclose the requested information, citing regulations 13 (personal data) and 12(5)(d) (confidentiality of proceedings) of the EIR as its basis for doing so.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 13 of the EIR as its basis for refusing to disclose the requested information. He also finds that, as the Council's refusal and internal review response were late, the Council breached regulations 14 and 11 respectively.
3. The Commissioner doesn't require any steps in response to this decision notice.

Request and response

4. On 22 September 2023, the complainant made the following request for information from the Council:

"... the Application Completion Date for works under Initial Notice [property details redacted] was [date redacted] ... Please provide a copy of the Final Certificate from the Approved Inspector ..."

5. The Council responded on 26 January 2024 and refused to disclose the requested information, citing regulations 12(3) and 13 (personal data) and 12(5)(d) of the EIR.
6. The complainant requested an internal review on 11 February 2024, and on 16 April 2024 the Council provided the outcome of its internal review, in which it maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 21 April 2024 to complain about the way their request for information had been handled.
8. They dispute the exceptions that the Council cited.
9. The Commissioner considers that the scope of this case is to decide whether the Council was entitled to refuse to disclose the requested information on the basis of any of the exceptions the Council has cited; he'll also consider procedural matters.
10. The Commissioner is satisfied that the requested information falls under the EIR. There are many published decision notices on his website involving complaints relating to requests for building control documents, that he's addressed under the EIR.
11. First he'll consider regulation 13. He'll only consider regulation 12(5)(d) if he finds that regulation 13 doesn't apply.

Reasons for decision

Regulation 13

12. Regulation 13(1) of the EIR provides that, to the extent the requested information includes the personal data of an individual other than the requester, and where one of the conditions in regulation 13(2A), (2B) or (3A) is satisfied, a public authority must not disclose the personal data.

13. As noted above (paragraph 10), there are many published decision notices on the Commissioner's website involving complaints relating to requests for building control documents. Those decision notices explain that the Commissioner's established position is that this type of information about a private property constitutes the personal data of its owner or occupier¹.
14. In this instance, the complainant has argued that the property in question is owned by a company, not an individual; furthermore, the complainant provided the Commissioner with a copy of a HM Land Registry form, and argued that "the freehold of the property (and leasehold of all the flats within it) are still with limited companies, rather than individuals".
15. The Commissioner has considered that argument. He notes that the HM Land Registry form provided by the complainant contains references to applications to register leases apparently made between two companies.
16. However, he notes that the leases listed in the form all post-date the complainant's request of 22 September 2023, by several months. He also notes that not all leases must be registered with HM Land Registry.
17. Furthermore, he notes that the complainant themselves, in their comments about their request correspondence with the Council, has indicated that the property in question has or had individuals occupying it. For instance, the complainant referenced "an occupier" expressing concerns about drainage; and the existence of a "nuisance to occupiers", from alleged breaches of planning control.
18. He also notes that the Council told the complainant that "individuals reside within" the property, and that the property is a residential one.
19. In its submissions during the Commissioner's investigation, the Council repeated that the property is residential, and has referred to "individuals residing at this property".

¹ For example, see <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4023955/ic-172338-n8c6.pdf>

20. The complainant, in their ICO complaint form, said that when the certificate in question was issued, the property was unoccupied – even if that's so, the Commissioner notes that the complainant didn't say it was unoccupied when the request was made.
21. The Commissioner is satisfied, based on the information available to him, that the requested information does amount to the personal data of the occupier(s) of the property.
22. Turning to the conditions that must be satisfied for regulation 13(1) of the EIR to apply, the Commissioner considers that regulation 13(2A)(a) is relevant here.
23. This applies where the disclosure of the information to a member of the public would contravene any of the data protection principles relating to the processing of personal data, as set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).
24. The Commissioner has considered whether disclosure would breach principle (a) of Article 5(1), which states that personal data shall be "processed lawfully, fairly and in a transparent manner in relation to the data subject".
25. Disclosure under the EIR is a disclosure 'to the world'.
26. The Commissioner's understanding, based on the complainant's comments, is that the complainant is concerned that certain building work was 'signed off', wants to check what was signed off, and believes that a Final Certificate shouldn't have been issued.
27. The Council has argued, in its submissions, that residents in the property wouldn't reasonably expect the requested building control Final Certificate – relating to their residence – to enter the public domain.
28. The Commissioner accepts the complainant's desire for transparency regarding the Final Certificate as a legitimate interest in disclosure.
29. However, he notes that the Council has explained, at internal review stage, that it provides access to building control and planning information via statutory registers, available for public inspection.

30. The Council also highlighted, in its submissions to the Commissioner, that this includes the information that the Council is required to provide in respect of building control issues.
31. The Council has also highlighted that relevant complaint mechanisms exist, whereby members of the public are able to raise concerns about building control and planning matters.
32. The Commissioner therefore considers that it's not necessary to disclose the requested information to the world under the EIR. He notes that he reached the same conclusion in the decision notice he cited in paragraph 13 above (see especially paragraphs 16 and 17 of that decision notice).
33. Consequently, he considers that disclosure wouldn't be lawful, and that it would contravene principle (a) of Article 5(1) of the UK GDPR.
34. The Commissioner therefore finds that the Council was correct to rely on regulation 13 of the EIR.
35. In light of his finding on regulation 13, the Commissioner hasn't gone on to consider regulation 12(5)(d).

Procedural matters

36. The Commissioner finds a breach of regulation 14 of the EIR, as the Council took more than 20 working days to provide its refusal to disclose the requested information.
37. The Commissioner also finds a breach of regulation 11, as the Council took more than 40 working days to provide its internal review response.

Right of appeal

38. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Kennedy
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Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF