

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

**Decision notice**

**Date:** 5 November 2024

**Public Authority:** Epping Forest District Council  
**Address:** 323 High Street  
Epping  
CM16 4BZ

**Decision (including any steps ordered)**

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1. The complainant has requested that Epping Forest District Council (the council) provide a copy of any advice it gave to the complainant's neighbour, about the compliance of a building in the neighbour's garden with building regulations. The council relied on regulation 13 of the EIR (third party personal information) to withhold the information.
2. The Commissioner's decision is that the council has correctly relied on regulation 13 of the EIR to withhold the information.
3. The Commissioner does not require further steps to be taken.

**Request and response**

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4. On 6 February 2024, the complainant submitted the following request for information to the council:

"Is it possible you can release the advice given to the tenant [the complainant's neighbour], if any, in relation to the building?"

A quick question, you have sent me a copy of the job description for a *service manager*. I was discussing with [redacted] about [redacted] who holds the position of "service director".

I am sure the job description of "service director for property and housing" was the one that was supposed to be sent? If such job description exists, is it possible to get a copy? EFDC's structure of

management suggests service director and service manager are two different roles.”

5. On 19 February 2024, the council responded to the request. It withheld the information saying that it was “third party information”.
6. On 28 February 2024, the complainant wrote to the council expressing dissatisfaction with its handling of the request. The council acknowledged receipt of the complainant’s email on the same day and said that it will conduct an internal review of the request.
7. On 2 April 2024, the council wrote to the complainant referring to a decision made by the Local Government and Social Care Ombudsman (the ombudsman) on 6 March 2024 not to investigate their complaint (concerning a council employee’s claim to be a member of a professional body). The council said that in considering the decision, it had decided that the matter relating to the complainant’s request was now “closed”. Further emails were then exchanged between the complainant and the council.
8. On 3 April 2024, the council provided the complainant with the job description of the Service Manager. On 5 April 2024, the council wrote to the complainant again and provided the job description of the Service Director. It said that, following the ombudsman’s decision and its disclosure of the job description, it had “fully responded” to the complainant’s concerns.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 4 April 2024 to complain about the way their request for information had been handled.
10. The Commissioner notes that the council provided the complainant with the Service Director’s job description on 5 April 2024. However, the complainant is of the view that the document was copied and pasted from a different document. The complainant stated that the council previously said that no job description for the role existed, and therefore they question the legitimacy of the information.
11. In a telephone conversation between the complainant and a member of the Commissioner’s staff, it was agreed that the Commissioner could not consider the matter of whether the job description provided was “legitimate” on the basis that it appeared to the complainant to have been “copied and pasted”.

12. The Commissioner therefore considers that the scope of this case is to assess whether the council was entitled to withhold the advice that it provided to the complainant's neighbour under regulation 13(1) of the EIR.

## **Reasons for decision**

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### **Is the requested information environmental?**

13. The first question for the Commissioner to address here is whether the information is environmental in accordance with the definition given in regulation 2(1) of the EIR:

"any information in written, visual, aural, electronic or any other material form on –

- (a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...
- (b) factors, such as substances, energy, noise, radiation or waste, emissions...affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)..."

14. The Commissioner considers that the information in question does relate to "measures" that fall within the scope of regulation 2(1)(c). The information (i.e. the advice given to the neighbour) was generated because the works were subject to building regulations. The building works consisted of a garden building, which changes the exterior of the address concerned.
15. The Commissioner considers that the information relates to a "measure" that affects the landscape, which is an element of the environment set out in regulation 2(1)(a). Information relating to this would constitute "any information on" the application or measure. It is therefore clear to the Commissioner that the request was for environmental information. He has therefore assessed this case under the EIR.

### **Regulation 13 - personal information**

16. Regulation 13 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.
17. In this case the relevant condition is contained in regulation 13(2A). 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").
18. 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(2A) of the EIR cannot apply.
19. Secondly, if the Commissioner is satisfied that the requested information is personal data, he must then establish whether disclosure of that data would breach any of the DP principles.

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

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

"any information relating to an identified or identifiable living individual".

21. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
22. 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.
23. 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.
24. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information does relate to an identifiable living individual. The withheld information is advice held within a building control file relating to the garden building of a tenant at a specified property (i.e. the complainant's neighbour). The withheld information both relates to and identifies the neighbour.

25. This information therefore falls within the definition of “personal data” in section 3(2) of the DPA.
26. The fact that the information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
27. The most relevant DP principle in this case is the one under Article 5(1)(a) of the UK GDPR (“principle (a)”), which requires personal data to be processed fairly, lawfully, and transparently.

### **Would disclosure contravene principle (a)?**

28. Article 5(1)(a) of the UK GDPR states that:

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

29. 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.
30. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful (i.e. not in contravention of any other laws).

### **Lawful processing: Article 6(1)(f) of the UK GDPR**

31. The Commissioner considers that the lawful basis most applicable to disclosure under the EIR is that under article 6(1)(f) of the UK GDPR, which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”<sup>1</sup>.

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<sup>1</sup> Whilst Article 6 of UK GDPR normally prevents public authorities from relying on Article 6(1)(f) of the UK GDPR when processing personal data for the performance of their tasks, this prohibition does not apply to processing for the purpose of disclosing personal data under EIR, by virtue of [regulation 13\(6\) of the EIR](#) (as inserted by [Schedule 19 Paragraph 307 of the DPA](#)).

32. When considering whether Article 6(1)(f) applies to the disclosure of information in response to a particular request under the EIR, it is necessary to consider the following three-part test:
- i) **Purpose test:** is a legitimate interest being pursued?
  - ii) **Necessity test:** is the disclosure of the information necessary for that purpose?
  - iii) **Balancing test:** do the data subject's interests or fundamental rights and freedoms override the legitimate interest?
33. The Commissioner considers that the test of "necessity" under stage (ii) must be met before the balancing test under stage (iii) is applied.

### **Purpose test**

34. In considering any legitimate interests in the disclosure of the requested information under the EIR, the Commissioner recognises that such interests can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
35. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
36. The withheld information in this case is the advice provided by the council to the complainant's neighbour about their garden building's compliance with building regulations, which is the cause of a dispute between the complainant and their neighbour.
37. The complainant has stated that they were advised by "the head of buildings control" that advice was given to the neighbour. They would like to know whether the advice was to move the garden building away from their property, which the complainant believes to pose a "fire risk" due to its distance from their property. The complainant believes this advice about the fire risk should have been given to the neighbour and has requested the information for confirmation of this.
38. The Commissioner accepts that the complainant has a legitimate interest in pursuing access to the withheld information.

### **Necessity test**

39. "Necessary" means more than desirable but less than indispensable or an absolute necessity. Accordingly, this part of the test is one of

reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate interest in question.

40. The council has stated that it considered the legitimate interests of the complainant and the neighbour. However, it considers that the complainant's legitimate interests have been satisfied to an extent through its determination that the garden building complies with regulations and meets with the conditions required. It also referred to the ombudsman's determination about their complaint on the same matter.
41. Whilst the Commissioner recognises the council's arguments in this regard, it is clear that the complainant remains dissatisfied with the outcome of their complaints to the council and the ombudsman. In this case, the specific interest being pursued is to understand whether specific advice was given to the complainant's neighbour by the council. The Commissioner is unaware of any other avenue by which the complainant could obtain this information.
42. The Commissioner is therefore satisfied in this case that there are no less intrusive means of achieving the legitimate interest identified, and the disclosure would therefore be necessary to satisfy that legitimate interest.

### **Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms**

43. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the EIR in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override the legitimate interests in disclosure.
44. In considering this balancing test, the Commissioner has taken into account the following factors:
  - the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;



- whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
45. In the Commissioner's view, a key issue is whether the data subject (in this case, the complainant's neighbour) would have a reasonable expectation that their information would be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data to the public authority.
  46. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
  47. The council considers that this matter is a neighbour dispute, and it would be both unfair and inappropriate to provide a disgruntled neighbour with the means to place unnecessary financial and legal burdens on what it considers to be a compliant resident.
  48. The council also considers that the communications between the neighbour and the council could be misused and misconstrued if not viewed in the light in which they were originally written.
  49. It is also the Commissioner's view that the data subject would have a reasonable expectation that their communications with the council would not be shared with any other party, particularly in view of the fact that disclosure under the EIR is not limited to only the requester, but to the world at large. The council does not appear to have sought the consent of the individual concerned; however, the Commissioner considers that it is unlikely to have been appropriate to do so in this case.
  50. The Commissioner also notes that whilst he does not consider the council and ombudsman complaints procedures to completely satisfy the specific legitimate interest identified in this case, they do go some way to satisfying the more general interests in planning laws being upheld.
  51. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that Article 6(1)(f) does not apply in this case, and so there is no Article 6 lawful basis that can be relied on to make the disclosure of the requested information lawful.
  52. Given the above conclusion that disclosure would be unlawful, the Commissioner does not need to go on to consider whether disclosure would be fair or transparent.



## Other matters

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### Internal review

53. The complainant raised a concern about the council only conducting an internal review of the part of their request for the Service Director's job description, and not the part for the advice given to the tenant.
54. The Commissioner notes that the section 45 Code of Practice<sup>2</sup> recommends that public authorities complete the internal review process, notify the complainant of its findings, and that the procedure should provide a fair and thorough review of decisions.
55. In this case, the Commissioner notes that in its review, the council (in relation to the advice given to the tenant) simply referred to the decision made by the ombudsman on the matter and said that this had addressed the concerns raised by the complainant.
56. The Commissioner therefore recommends that the council ensure that it conducts reviews in accordance with the requirements of the section 45 Code of Practice in relation to future requests.

### Information provided by the Council in this case

57. The Commissioner initially wrote to the council asking it a series of questions to assist with his determination in this matter. He asked the council to ensure it provided full and adequate responses that related to the specific circumstances of the request/case.
58. The council requested an extension so that it could discuss the handling of the request with the relevant member of staff. The council then provided a submission containing predominantly one-line responses to his questions. It also referred the Commissioner to decision FER0574247<sup>3</sup> relating to the application of regulation 13(1) in another case to support its handling of the request in this matter.
59. The Commissioner is disappointed that despite being granted an extension, the Council has provided only cursory responses to the

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<sup>2</sup> [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf \(publishing.service.gov.uk\)](#)

<sup>33</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432127/fer\\_0574247.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432127/fer_0574247.pdf)

questions asked and referred him to a previous decision. He also notes that FER0574247 is a decision that was made in 2015 concerning the application of regulation 13 under the then DPA 1998.

60. The Commissioner recommends that when providing submissions in the future, the Council ensures that it provides full and adequate responses relating to the specific circumstances of the request / case concerned.
61. For the avoidance of doubt, whilst the Commissioner was not satisfied by the level of detail provided by the council in response to his enquiries, this does not affect his decision that disclosure of the requested information to the world at large would contravene the data protection principles in this case, as explained in this decision notice.

## **Right of appeal**

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62. 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)

63. 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.
64. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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