

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

### **Decision notice**

**Date:** 19 November 2024

**Public Authority:** Rhondda Cynon Taff County Borough Council  
**Address:** The Pavillions  
Cambrian Industrial Park  
Clydach Vale  
Tonypandy  
CF40 2XX

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

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1. The complainant requested all internal flooding investigations and reports following flooding at a named property from Rhondda Cynon Taff County Borough Council (the Council). The Council originally considered the request under the Freedom of Information Act 2000 (the FOIA) and cited section 21 (information accessible to the applicant by other means). However, during the course of the Commissioner's investigation, the Council reconsidered the request under the EIR and cited regulation 12(5)(b) (the course of justice) to refuse the request.
2. The Commissioner's decision is that the information held relevant to this request is the complainant's own personal data and that regulation 5(3) therefore applies. The Commissioner does not require any steps

#### **Request and response**

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3. On 10 January 2024, the complainant wrote to the Council and requested the following information in reference to flooding at their property:

"All internal flooding investigations and reports following flooding event at [complainant's address redacted by the ICO] on 13 November 2023".

4. The Council responded to the request on 10 April 2024. It stated that it was refusing the request on the basis of section 21 (information accessible to the applicant by other means) of the FOIA on the basis that the complainant could access the information via the Civil Procedure Rules.
5. Following an internal review the Council wrote to the complainant on 9 May 2024. It upheld its original decision to refuse the request on the basis of section 21 of the FOIA.

### **Scope of the case**

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6. The complainant initially contacted the Commissioner on 11 May 2024 to complain that the Council had not provided its internal review. Following confirmation from the complainant that the Council had conducted an internal review, the complaint became eligible for investigation under section 50 of the FOIA on 30 May 2024.
7. During the course of the Commissioner's investigation, the Council reconsidered the request under the EIR and cited regulation 12(5)(b) to the request.
8. Having considered the withheld information, which comprised one external and one internal report, the Commissioner has concluded that the external report is not within the scope of the request as the request asked for "all 'internal' flooding investigations and reports". He has also determined that the 'internal' report is the complainant's own personal data. For clarity, a requester's own personal data is exempt under regulation 5(3) of the EIR. Personal data is defined by the Data Protection Act 2018 (the DPA) as any information relating to a living and identifiable individual. The separate right of access provided by article 15 of the General Data Protection Regulation (the GDPR) therefore applies.
9. The scope of the Commissioner's investigation is to consider whether regulation 5(3) (complainant's own personal data) applies to the information withheld by the Council.

## Reasons for decision

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### Regulation 5(3) – the complainant’s own personal data

10. The duty to make environmental information available on request is imposed by regulation 5(1) of the EIR. Regulation 5(3) provides that where a request for information constitutes the personal data of which the applicant is the data subject, that regulation 5(1) does not apply.
11. Section 3(2) of the DPA defines personal data as: “any information relating to an identified or identifiable living individual”.
12. The two main elements of personal data are therefore that the information must relate to a living person, and that the person must be identifiable.
13. 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 or an online identifier; or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
14. 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.
15. In this case, the Commissioner has considered the withheld information which is a copy of an internal report following an investigation into flooding at the complainant’s own property. It is clear to the Commissioner that the complainant and the complainant’s address are identifiable from the information, and the information is significant and biographical to them.
16. Based on the above, the Commissioner is satisfied that this information constitutes the complainant’s own personal data and finds that the exception at regulation 5(3) of the EIR is engaged. The Council was not therefore obliged by the EIR to disclose the information in question.

### Other matters

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17. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern:

### **Correct access regime**

18. In this case, the Council failed to recognise that the complainant had requested their own personal data and did not consider the request under the DPA. Whilst the Commissioner cannot require a public authority to take action under the DPA via an EIR decision notice, in view of his decision that the requested information is the personal data of the complainant, the Council should consider providing a response to the complainant under the DPA in respect of the information they requested.
19. The Commissioner would point out that this does not necessarily mean that the complainant is entitled to receive this information. There are a number of reasons why a data controller may be entitled to withhold information from disclosure under a Subject Access Request (SAR). Inevitably therefore, there will be some information that the complainant is not entitled to receive either via the EIR or via a SAR.

## **Right of appeal**

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20. 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)

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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