

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

Date: 31 January 2023

Public Authority: Cardiff Council
Address: County Hall
Atlantic Wharf
Cardiff
CF10 4UW

Decision (including any steps ordered)

1. The complainant has requested building control information about a loft conversion at a neighbouring property. Cardiff Council ('the Council') refused the request, citing regulation 13 (Personal data) of the EIR.
2. The Commissioner's decision is that the Council was entitled to apply regulation 13 of the EIR to refuse the request.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 13 February 2022, the complainant wrote to the Council and requested information in the following terms:

"This is a request for information under the Environmental Information Regulations 2004 (the EIR) for the release of specific documents within the building control file for [address redacted]. I am the owner of [address redacted], which is the neighbouring property.

A: The information requested:

1. The building notice, along with the particulars and plans submitted under Regulation 13(1) and/or Regulation 13(2) of the Building Control Regulations 2010; and

2. All documents submitted and information held by the Council in respect of the following parts to Schedule 1 of the Building Regulations 2010:

Part A - Structure. The information requested under this part is that falling under A1 (Loading), A2 (Ground Movement) and A3 (Disproportionate Collapse).

Part B - Fire Safety. The information requested under this part is that falling under B4 (External Fire Spread)

Part E - Resistance to the passage of sound The information requested under this part is that falling under E1 (Protection against sound from other parts of the building and adjoining buildings)

3. Completion Certificate under Regulation 17 of the Building Control Regulations 2010."

5. The Council responded on 18 March 2022. It said that the requested information was the personal data of the neighbouring homeowner and that it was not required to disclose it, citing regulation 13 of the EIR. It maintained this position at internal review.

Reasons for decision

6. All parties to this request agree that it was a request for environmental information (within the definition at regulation 2(1) of the EIR) and that it fell to be dealt with under the EIR.
7. The complainant has requested the information because he believes that building work carried out by his neighbour may have an affect on building work he intends carrying out on his own property. He says he wishes to check information about structural, fire safety and sound insulation work carried out at the neighbouring property.
8. The Council has refused to disclose the information, citing regulation 13(1)(a) of the EIR. It has done so on the grounds that the requested information is the personal data of the complainant's neighbour.
9. Regulation 13(1)(a) of the EIR provides that information must not be disclosed if it is the personal data of an individual other than the requester, and where one of the conditions listed in regulation 13(2A) is satisfied.
10. As regards whether the request in this case is for personal data, although the request does not name the neighbour, it states the address of the neighbour's property. Following the Tribunal's decision in the case of England & L B of Bexley v Information Commissioner (EA/2006/0060

& 0066)¹, the Commissioner's established position is that the address of a private property constitutes the personal data of its owner/occupier². Therefore, even if the neighbour's name was redacted from the information (which the Commissioner has viewed) they would remain identifiable from the address. Furthermore, the neighbour is clearly known by the complainant. The requested information is, therefore, the personal data of the complainant's neighbour.

11. Turning to the conditions that must be satisfied for regulation 13(1)(a) of the EIR to apply, the Commissioner considers that regulation 13(2A)(a)³ is relevant here. This applies where the disclosure of the information to any 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'). The Commissioner has considered whether disclosure would breach principle (a) of Article 5(1), which states that personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to individuals ('lawfulness, fairness and transparency').

12. Disclosure under the EIR is effectively an unlimited disclosure to the world at large, without conditions. The Council argues that disclosing the neighbour's personal data in response to this EIR request would lead to a loss of privacy which, as it is not justified by any wider public interest in the information being placed in the public domain, would be unlawful and unfair.
13. The Commissioner acknowledges that the complainant considers that he has a legitimate interest in the disclosure of the withheld information.
14. However, the Commissioner must balance the complainant's legitimate interest in disclosure against the neighbour's interests or fundamental rights and freedoms. In the Commissioner's view, a key issue is whether the individual concerned has a reasonable expectation that their information will not be disclosed. These expectations can be shaped by

¹<https://informationrights.decisions.tribunals.gov.uk/dbfiles/decision/i146/en gland.pdf>

² See, for example, <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013677/fs50623497.pdf> and https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432001/fs_50558963.pdf

³ As amended by Schedule 19 Paragraph 307(3) DPA 2018.

factors such as their general expectation of privacy, whether the information relates to them in their professional role or to them as private individuals, and the purpose for which they provided their personal data.

15. In this case, the Commissioner is satisfied that the neighbour would have the reasonable expectation that their personal data, provided for the specific purpose of obtaining building regulation approval from the Council, would not be disclosed to the wider world in response to an EIR request; this information concerns them in a private, rather than public, capacity. He also notes that the Council says that, unlike planning application information, it does not routinely publish building control information online and is not legally required to. Disclosing the neighbour's personal data would therefore be unexpected and may cause them distress.
16. The Commissioner has not seen any evidence of any wider public interest in the disclosure of the withheld information. As regards the complainant's concerns about the effect of his neighbour's work on his own property, the Council has told him that a complaints mechanism exists whereby such concerns might be considered:

"[The Council has] explained to the requester that where concerns are raised regarding specific applications and the application of the Building Regulations, the public can submit a complaint to the Council and the Public Services Ombudsman for Wales where these concerns can be considered. As these complaint channels provide a less intrusive method of resolution for the Building Regulation applicant, the Council considers there is no necessity in breaching privacy rights and therefore no lawful basis for disclosure in line with the first principle of the UK GDPR – personal data shall be processed lawfully, fairly and in a transparent manner."
17. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest in disclosure to outweigh the data subject's fundamental rights and freedoms. Furthermore, it is not necessary for the information to be disclosed to the world at large, to enable the complainant to pursue any concerns he might have about the work done by his neighbour.
18. The Commissioner therefore considers that disclosing the withheld information would contravene principle (a) of Article 5(1) of the UK GDPR, as it would not be lawful. Therefore, regulation 13(1) of the EIR applies and the withheld information must not be disclosed in response to the request.

Right of appeal

19. 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

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

20. 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.
21. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF