

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 March 2012

Public Authority: Bolton Metropolitan Borough Council
Address: Town Hall
Bolton
BL1 1RU

Decision

1. The complainant submitted 2 requests to Bolton Metropolitan Borough Council (the "council") asking for a range of information relating to properties in a residential cul-de-sac in Bolton.
2. In relation to the first request, the public authority provided some information and confirmed that further information was not held. In relation to the second request, the council refused to provide some information in the format requested because it considered that the information was already publically available and easily accessible to the complainant in another format. Other elements of the request were also refused because the council considered that disclosure of the information would result in a breach of principle 1 of the Data Protection Act 1998 (DPA).
3. The Commissioner's decision is that the council has provided all the relevant information it holds and correctly refused information under regulation 13 of the EIR. The Commissioner has also decided that the council correctly extended the time for responding to the requests under regulation 7(1) but that in providing some information after 40 working days it did not comply with regulation 5(1).
4. The Commissioner does not require the council to take any steps.

Background

5. Thicketford Close is a residential cul-de-sac comprising 7 houses and 18 bungalows. At the time of construction the properties had flat roofs but all were subsequently converted to pitch roof type. The complainant has

an interest in one of the properties in the cul-de-sac and, for comparative research, requested information relating to the conversion of all the residences.

6. The Building Regulations are made under powers provided in the Building Act 1984, and apply in England and Wales. The legislative framework is principally made up of the Building Regulations 2010 (the "Building Regulations") and The Building (Approved Inspectors etc.) Regulations 2010. Both came into force on the 1 October 2010.
7. Each local authority in England and Wales (Unitary, District and London Boroughs in England and County and County Borough Councils in Wales) has a Building Control section. The local authority has a general duty to see that building work complies with the Building Regulations except where it is formally under the control of an Approved Inspector. Approved Inspectors are companies or individuals authorised under the Building Act 1984 to carry out building control work in England and Wales¹.

Request and response

8. On 19 June 2011, the complainant wrote to the council and requested information relating to roof conversions carried out on properties in Thicketford Close in Bolton. The requested information was a mixture of numeric data, building plans and building inspector notes. Initially, the complainant submitted 3 separate requests but subsequently withdrew the third request. The requests – "Request 1" and "Request 2", are reproduced in the annex.
9. The council responded on 25 July 2011. In relation to the information specified in Request 1, it provided some information in the form of a spreadsheet. Where relevant information was not held, the council confirmed that it was relying on regulation 12(4)(a) of the EIR to refuse the request.
10. In relation to Request 2, the council confirmed that it was refusing to provide the specified information because it considered that some of the information was already easily accessible to the complainant in another form (regulation 6(1) of the EIR). Other information was withheld because the council believed that it constituted the personal information

¹ Further information about the Building Control process can be found here: <http://www.planningportal.gov.uk/buildingregulations/>

of a third party, the disclosure of which would result in a breach of the first principle of the DPA (regulation 13(1) of the EIR).

11. Following the complainant's request for clarification regarding a number of elements of the council's response, the council issued a further response on 25 August 2011 which contained an updated version of the spreadsheet originally provided.
12. Following an internal review the council wrote to the complainant on 12 October 2011. The review confirmed that all relevant information had been provided and upheld its decision to withhold some of the requested information.

Scope of the case

13. The complainant contacted the Commissioner to complain about the way their request for information had been handled. The initial complaint raised a considerable number of issues and, in order to facilitate resolution of the main areas of concern, the Commissioner invited the complainant to refine their complaint.
14. The complainant confirmed they wished the Commissioner to investigate the following:
 - (i) whether the council correctly handled the requests under the EIR or if they should have been processed under the Freedom of Information Act 2000 (FOIA).
 - (ii) whether the council was entitled to 'aggregate' Request 1 and Request 2.
 - (iii) whether the council complied with statutory time limits in responding to the requests.
 - (iv) whether the council has provided all the information falling within the scope of Request 1 and whether the information it has provided is accurate.
 - (v) whether it was reasonable for the council to make information specified in Request 2 available in a different form or format to that specified in the request.
 - (vi) whether the council correctly applied exceptions in refusing to provide the information in Request 2.
15. The Commissioner has confined the scope of his investigation to these 6 areas. In relation to the question of the accuracy of the information

provided (referred to in (iv), above), the Commissioner has only considered whether the information provided accurately reflects the information held by the council, rather than the question of the veracity of the information itself.

Reasons for decision

Is it Environmental Information?

16. The Commissioner has considered whether Request 1 and Request 2 identify environmental information.

17. Regulation 2(1) of the EIR defines 'environmental information'. The relevant parts of the definition are found in 2(1)(a) to (c) and 2(1)(f) which state that it is information in any material form on:

"(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, 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, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements...

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or are likely to be affected by the state of the elements of the environment referred to in (a), or, through those elements, by any of the matters referred to in (b) and (c)."

18. In relation to parts of the requests which relate to roof conversions, plans for conversions and use of lintels in building structures, the council argued that this information concerns land and human health and safety and constitutes environmental information as defined in regulation 2(1)(f).

19. In relation to aspects of the requests which relate to plans and building control officer notes, the council argued that this constitutes information on measures which affect or are likely to affect the elements and factors referred to in regulation 2(1)(a) and 2(1)(b). The council concluded that Building Control and planning legislation and the activities of the relevant departments are designed to protect land and landscape and related information is therefore environmental as defined in regulations 2(1)(c).
20. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc. in question. In view of this, and having considered the arguments put forward by the council, the Commissioner is satisfied that all the information specified in Request 1 and 2 is environmental under the terms of regulation 2(1)(c) of the EIR. He has concluded that the council correctly handled both requests under the EIR.

'Aggregation' of requests

21. In acknowledging receipt of the complainant's (initially 3) requests the council explained that, as they related to substantially similar topics, they had been logged and 'aggregated' as a single request.
22. In cases where an authority receives 2 or more requests for the same or similar information it may, under the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations"), aggregate the requests for the purpose of determining the cost of compliance.
23. The provision for aggregating requests does not exist under the EIR. Paragraph 20 of the code of practice issued under regulation 16 of the EIR (the "EIR Code") explains:

"There is no EIR equivalent to the 'appropriate limit' under section 12 of the FOIA. A public authority is expected to deal with all requests for environmental information. However, cost may be relevant when considering whether to apply the exception relating to 'manifestly unreasonable'...."²

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http://www.ico.gov.uk/upload/documents/library/environmental_info_reg/detailed_specialist_guides/environmental_information_regulations_code_of_practice.pdf

24. In this instance, the council did not go on to refuse Request 1 and Request 2 on the grounds that they were manifestly unreasonable, as set in regulation 12(4)(c).
25. Aside from the incongruous and confusing references to 'aggregation' and the cost limits prescribed within the FOIA, the council's decision to deal with the requests in one response is not proscribed by the EIR.
26. In relation to this matter, therefore, the Commissioner has not recorded any breaches of the EIR although he has commented on the associated good practice issues in the other matters section of this decision notice.

Extension of time for compliance

27. Regulation 5(2) of the EIR states:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

28. Regulation 7(1) of the EIR states:

"Where a request is made under regulation 5, the public authority may extend the period of 20 working days referred to in the provisions in paragraph (2) to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so."

29. Regulation 7(3) of the EIR states:

"Where paragraph (1) applies the public authority shall notify the applicant accordingly as soon as possible and no later than 20 working days after the date of receipt of the request."

30. The Commissioner's guidance states that, in order to calculate the time for compliance, the working day clock starts the day *after* the public authority receives the request³. The requests were submitted on 19 June 2011 and the council acknowledged receipt on 20 June 2011. In this instance, therefore, the working day clock started ticking on 21 June 2011.

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http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Environmental_info_reg/Practical_application/EIR_TIME_FOR_COMPLAINCE_FAQS.ashx

31. On 18 July 2011, on the twentieth working day, the council wrote to the complainant and confirmed that it was extending the time for response to 40 working days because of the complexity and volume of the request.
32. The Commissioner has considered whether the council was entitled to extend the time to respond to the request.
33. In its responses the council explained why it considered the additional time was warranted. It confirmed that the requested information was held in various formats, including electronic, paper and microfiche. It stated that the collation of the information required the use of a specialist/qualified member of staff.
34. The council confirmed that, at the time of requesting an extension, it had already spent in excess of 18 hours interrogating the sources of information. In citing this timescale, the council alluded to the Fees Regulations which sets the time authorities are required to spend locating, retrieving and extracting information specified in a request at an 'appropriate limit' of 18 hours⁴.
35. Although there is no equivalent to the 'appropriate limit' under the EIR, the Commissioner considers that the Fees Regulations are a useful starting point for determining whether requests satisfy the conditions for a time extension under regulation 7.
36. The Commissioner has also considered wider factors, such as the number of requests submitted by the complainant (initially, 3 requests containing a number of different queries) on the same day and the extent to which the council had to utilize specialist staff, potentially diverting resources from its core functions.
37. The Commissioner has concluded that, on the available evidence, it was reasonable for the council to believe that it was impracticable to comply with the request within 20 working days. In using the relevant extension granted, the council complied with regulation 7(1) of the EIR.

Has all the relevant information been provided?

Request 1

38. Regulation 5(1) of the EIR states:

⁴ The Fees Regulations are published online here:
<http://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request."

39. The complainant has raised concerns that the council has not provided all the relevant information it holds and that the information it has provided contains inaccuracies.
40. The focus of these concerns relates to the information provided in response to Request 1 in spreadsheet form. In its initial response the council confirmed that information relating to some of the properties specified in the request was either not held by the council or could not be located. In relation to these elements of the request the council confirmed that it was relying on regulation 12(4)(a) – the exception to the duty to disclose where information is not held.
41. The complainant contacted the council in relation to this matter on 27 July 2011 and on 25 August 2011 the council provided additional information and confirmed some corrections to the information initially provided. At the internal review stage and in subsequent correspondence with the Commissioner the council has confirmed that it has provided all the relevant information it holds.
42. The Commissioner does not have a role to play in disputes regarding the content of information provided in response to requests, providing that this accurately reflects the information which is held at the time the request is received. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time a request is received, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities"⁵.
43. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any evidence that further information *is* held, including whether it is inherently unlikely that the information so far located represents the total information held.

⁵ This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072.

What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?

44. The council confirmed to the Commissioner that it conducted searches on the "Accolaid" system for each relevant property. It explained that, if a full plan application is made then there would be building plans and application forms. If an application was submitted via a building notice then there is no requirement to submit drawings. Only in instances where 'full' applications are held would the council be able to identify information in the scope of the request⁶. Plans are scanned onto microfilm, originals are destroyed and the information is not retained anywhere else.

If the information were held, in what format would this be?

45. The council confirmed that the information would be held on Microfiche (as manual records) and on Accolaid (electronically) but the master register is held electronically.

Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?

46. The council confirmed to the Commissioner that no relevant information has been deleted or destroyed.

If recorded information was held but is no longer held, when did the council cease to retain this information?

47. The council explained that, in relation to one property in Thicketford Close, searches could not locate the relevant microfiche and it had concluded that this was 'missing'.

What does the council's formal records management policy say about the retention and deletion of records of this type?

48. The council provided the Commissioner with a copy of its Corporate Records Retention and Disposal Policy and the schedule relating to

⁶ Regulation 13 of the Building Regulations 2010 states: "(1) A building notice shall state the name and address of the person intending to carry out the work and shall be signed by that person or on that person's behalf, and shall contain or be accompanied by—
(a) a statement that it is given for the purpose of regulation 12(2)(a);
(b) a description of the proposed building work, renovation or replacement of a thermal element, change to the building's energy status or material change of use; and
(c) particulars of the location of the building to which the proposal relates and the use or intended use of that building."

building records. In relation to the retention of information relating to approved applications, the council confirmed that, in setting this at 15 years, its schedule conforms to standard 7 of the "Building Control Performance Standards"⁷. Although the creation date of the missing microfiche places it within the scope of the specified retention period relevant searches did not retrieve the information.

Are there any statutory requirements upon the council to retain the requested information?

49. The council confirmed that it is required by section 56 of the Building Act 1984 and regulation 30 of the Building (Approved Inspectors etc.) Regulations 2010 to retain such information.

Is there a business purpose for which the requested information should be held? If so, what is this purpose?

50. The council confirmed that the information would be used for future extensions or alterations to premises in order to assess a building's foundations, drainage or layout of a building. The information could also be used to identify what work the council has approved and certified.

Conclusion

51. In weighing the balance of probabilities the Commissioner has considered the explanations provided by the council and the likelihood of further recorded information being held. He has also referred to the relevant statutory requirements regarding the retention of such information provided by Building (Approved Inspectors etc.) Regulations 2010.

52. Having considered the council's explicit confirmation that it has provided all the relevant information it holds and its explanation regarding the small quantity of missing information, he has concluded that, on the balance of probabilities, the council has provided all the relevant information it holds. However, in the other matters section of this notice, the Commissioner has commented on the practice issues raised by the small quantity of missing information identified above.

53. In providing some of the requested information on 25 August 2011, 48 working days after the date of the request and further information

⁷ Published by the Department for Communities and Local Government, available online here: http://www.planningportal.gov.uk/uploads/br/bcpi/building-control-performance-standards_june06.pdf

during the Commissioner's investigation, the council breached regulation 5(1) of the EIR.

Form and format of information

Request 2 – Copies of all relevant plans submitted to the Planning Department

54. Regulation 6(1) of the EIR states:

"Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless-

(a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publically available and easily accessible to the applicant in another form or format."

55. In responding to this element of the request, the council explained that copies of plans submitted to its Planning Department were publically available and easily accessible. It confirmed that documents submitted between 1974 and 2007 were available to view, by appointment, in Bolton Central Library and documents from 2007 to the present day were published online on the council's website.

56. In upholding its decision to rely on regulation 6(1), the council's internal review explained that it had referred to the Commissioner's guidance on the application of section 21 of the FOIA. The relevant section states:

"If the normal means by which a public authority publishes information is by making it available for inspection but the applicant either lives a considerable distance away or has mobility problems, then the authority should consider providing a hard copy of the information."⁸

57. The council confirmed that it considered that the complainant did not live a considerable distance from the inspection point, nor did it have evidence that the complainant had mobility problems. The council also directed the complainant to its publication scheme, published under

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http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/awareness_guidance_6_-_information_reasonably_accessible_to_the_applicant_by_other_means.ashx

section 19 of the FOIA which confirmed that the information in question was available via inspection.

58. In order to determine whether the council has correctly applied regulation 6(1) in declining to provide the complainant with copies of the requested information, the Commissioner has considered all the available evidence. Prior to reaching a determination the Commissioner has also established that all the requested information is accessible via the media set out in the council's response.
59. Neither the EIR nor the code of practice issued under regulation 16 of the EIR (the "EIR code") provides a definition of 'easily accessible'. Although section 21 of the FOIA is not applicable in this instance, this exemption provides for a request to be refused in cases where information is already '*reasonably* accessible' to an applicant. The Commissioner accepts that the meanings of the conditions for accessibility are not exactly synonymous. However, he considers that there are sufficient similarities in the wider functioning of section 21 and regulation 6(1) for analogies to be drawn.
60. The Commissioner's guidance on the functioning of section 21 suggests that, where there is not a considerable distance between an applicant and a viewing site and where there are no mobility issues, information can be said to be (reasonably or easily) accessible to an applicant. His view is that a similar approach can be applied in cases where the application of regulation 6(1) of the EIR is under consideration.
61. In reaching a conclusion the Commissioner has also referred to his policy guidance which states:

*"If the applicant has asked for a **copy** of the information and the public authority has refused to provide a copy because the information is already publicly available in another format then we would consider that Regulation 6(1)(b) applies and... the public authority has no duty to make the information available under regulation 5."*⁹

62. The Commissioner's position in this respect is informed by Article 3(4) of the Directive 2003/4/EC Of The European Parliament and Of The Council (the "Directive") which states:

"Where an applicant requests a public authority to make environmental information available in a specific form or format (including in the form of copies), the public authority shall make it so available unless:

⁹ <http://www.ico.gov.uk/foikb/FOIPolicyInter-realtionbetweens21s39FOIAandtheEIRs.htm>

(a) it is already publicly available in another form or format....which is easily accessible by applicants..."¹⁰

63. The Commissioner has concluded that in this case, the council correctly applied regulation 6(1) and that in making the relevant information available via inspection it complied with its duty under regulation 5.

Personal Data

Request 2 – Copies of plans and officers' site visit notes submitted to Building Control Department

64. Regulation 13 of the EIR provides an exception from the duty to disclose in cases where the requested information falls into the category of 'personal data' as defined by the DPA and where releasing such information would breach any of the data protection principles.
65. The Commissioner's guidance states that anonymised information is not personal data and can, therefore, be disclosed without reference to the DPA¹¹. During the course of the Commissioner's investigation, the council disclosed to the complainant redacted versions of officers' site visit notes. The Commissioner has considered whether the council has correctly withheld the remaining information.

Is the information personal data?

66. In considering whether the council has correctly applied regulation 13(1) of the EIR to the withheld information, the Commissioner has first considered whether the withheld information is 'personal data'.
67. The two main elements of personal data are that the information must "relate to" a living person, and that person must be identifiable. Information will "relate to" a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.

¹⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ%3AL%3A2003%3A041%3A0026%3A0032%3AEN%3APDF>

¹¹ <http://www.ico.gov.uk/foikb/PolicyLines/FOIPolicyPersonaldata-anonymisedstatistics.htm>

68. It is the Commissioner's view that an individual or individuals can often be identified from a postal address through sources such as the Land Registry and the electoral roll¹². The Commissioner also considers that, by extrapolating the same argument, a plan of a dwelling which identifies distinguishing features can lead to an address and an individual or individuals being identified. The possibility of identification is stronger where the plans or other information in question relate to a clearly defined and limited geographical area.
69. The Commissioner has concluded that the officers' site visit notes and plans requested, therefore, relate to identifiable living persons, specifically the individuals who submitted the applications, and the council correctly defined this information as personal data.

Would disclosure of the information contravene any data protection principles?

70. In refusing to provide the information the council has argued that disclosure would contravene the first data protection principle.
71. The first data protection principle states that:
- "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".
72. In deciding whether disclosure of personal data would be unfair the Commissioner has taken into account the following factors:
- The individuals' reasonable expectations of what would happen to their personal data.
 - The consequences of disclosure.
 - The legitimate interests of the public.

Reasonable Expectations

¹² See, for example a decision notice issued to Carmarthenshire County Council:
http://www.ico.gov.uk/~media/documents/decisionnotices/2010/fer_0303754.ashx

73. The council has argued that, as a matter of general practice, details of Building Regulations files are not made public. It explained that, under section 56 of the Building Act 1984, authorities are required to make available a register; however, the information contained in the register does not include the requested plans or officers' site visit notes.
74. The council explained that the legal framework for the processing of building regulations submissions is different to that for determining planning applications. Individuals submitting planning applications will have an expectation that certain details will be made publically available. Beyond the information contained in the register, those submitting applications under the Building Regulations will have an expectation that further details of their applications will not be made available.
75. In clarifying the context within which approval is sought under the Building Regulations and the associated expectations of what will happen to applicants' data, the council has also pointed to the role of the Approved Inspector in the process.
76. In cases where an individual chooses to use an Approved Inspector rather than an authority's Building Control section, the council explained that there is no obligation for applicants to provide information to an authority. In such scenarios, the responsibility for approving that building work complies with the Building Regulations rests with the Approved Inspector¹³.
77. So, in providing applicants with the opportunity to avoid the direct involvement of an authority in the approval process, it is possible to argue that it cannot have been the intention of the Building Regulations to provide for all information relating to applications to be routinely disclosed. In any event, it is clear to the Commissioner that, both in terms of the legislative framework and existing practices, applicants would have had a reasonable expectation that the requested information would not be disclosed.

The consequences of disclosure

78. The requested information relates to those individuals who submitted applications in respect of the properties and is processed by the council

¹³ See:

<http://www.planningportal.gov.uk/buildingregulations/howtogetapproval/howtogetapprovalcontent>

to determine whether they have complied with the Building Regulations. Where a structure is found not to be in compliance with Building Regulations, action is taken by the council against the applicant (not the contractor or agent involved in the construction).

79. The Commissioner agrees with the council's argument that the building control process is in place to entrust the council to make technical decisions on behalf of the public. The council is required to follow strict procedures in ensuring that constructions are built in accordance with the Building Regulations.
80. As such, the Commissioner is persuaded that disclosure would be unwarranted since such information is, by its nature, private to the applicant, relates to their individual circumstances and not information that they would want or expect to be disclosed into the public domain.
81. Having considered the council's arguments and the nature of the withheld information, the Commissioner is satisfied that disclosure of the information and the associated loss of privacy has the potential to cause unexpected distress, unwarranted intrusion and unjustified detriment to the affected individuals in this case.

The legitimate interests of the public

82. The complainant has indicated that they consider that disclosure of the withheld information is necessary to ensure that the council has followed the correct procedures.
83. The council has acknowledged that there is a legitimate public interest in being assured that the council has properly assessed compliance, or otherwise, with the Building Regulations. However, the council considers in this case that the interest here has been met by the disclosure of the information contained in the spreadsheets provided to the complainant.
84. The Commissioner acknowledges that there is a legitimate public interest in knowing that Building Regulations have been properly applied and accepts that the withheld information would further transparency public confidence. However, whilst the disclosure of further information would facilitate greater transparency, any potential benefits must be set against the effects of disclosure on the individuals concerned. The Commissioner considers that, in this case, the legitimate interests of the public are not sufficient (particularly taking into account the information that the council has released) to outweigh the prejudice to the rights and freedoms of the data subjects (i.e. the applicants) if the withheld information were disclosed. Therefore he has concluded that disclosure of the withheld information would result in unwarranted prejudice to the rights and freedoms of those individuals and would therefore be unfair.

85. As the Commissioner has decided that disclosure would be unfair, there is no need for him to go on to consider the other elements of the first data protection principle. The Commissioner therefore upholds the council's application of regulation 13(1) because disclosure of this information would breach the first data protection principle.

Other matters

86. Although they do not form part of this decision notice, the Commissioner wishes to note the following matters of concern.

"Aggregation" of Requests

87. In its initial responses to the requests submitted by the complainant the council explained that the requests were being 'aggregated' and considered together for "cost calculation purposes". Although, in this instance, this approach did not result in the requests being refused on cost grounds the Commissioner is concerned that the reference to 'aggregation' was inappropriate in the context of an EIR request and might have caused confusion.

88. In light of this the Commissioner has concerns that staff dealing with requests at the council might not have been provided with adequate training. He, therefore, advises that the council refers to the code of practice issued under regulation 16 of the EIR, with particular reference to paragraph 1, which contains recommendations regarding staff training¹⁴.

¹⁴http://www.ico.gov.uk/upload/documents/library/environmental_info_reg/detailed_specialist_guides/environmental_information_regulations_code_of_practice.pdf

Records Management

89. Although this decision notice addresses compliance with the EIR, as a public authority, the council is also subject to the FOIA. The code of practice issued under section 46 of the FOIA (the "section 46 code") provides guidance to all relevant authorities as to the practice which it would, in the opinion of the Lord Chancellor, be desirable for them to follow in connection with the keeping, management and destruction of their records¹⁵.
90. The section 46 code recommends that authorities should define how long they need to keep particular records, should dispose of them when they are no longer needed and should be able to explain why records are no longer held. Information designated to be kept as records should be stored in such a way that it can be easily and quickly retrieved for business purposes or to respond to a request.
91. The Commissioner considers that, in losing or misplacing some of the information which fell within the scope of the request, the council has not displayed best practice. He expects that its future practice in this regard will conform to the recommendations of the section 46 code.

¹⁵ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section-46-code-of-practice.pdf>

Right of appeal

92. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

93. 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.
94. 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

Jo Pedder
Group Manager
Information Commissioner's Office
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Water Lane
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Annex – Requests

“Request 1”

This request relates to the conversion of flat to pitched roofs for domestic dwellings in Thicketford Close Tonge Moor Bolton.

A) Of the two storey houses in Thicketford Close Tonge Moor Bolton:

1. How many specified: -

- a. Catnic lintels (or similar lintels designed to straddle both cavity walls)
- b. The use of two RSJs, one being attached to each of the two leaves of the cavity wall
- c. The use of a single RSJ, attached to the inner leaf of the cavity wall
- d. The use of a single RSJ, attached to the outer leaf of the cavity wall,

as the means of bridging the existing window openings in the plans submitted to Building Control for approval?

2. How many had plans approved by Building Control: -

- a. for a Catnic lintel (or similar) to be used
- b. for two RSJs to be used
- c. for a single RSJ, attached to the inner leaf of the cavity wall, to be used
- d. for a single RSJ, attached to the outer leaf of the cavity wall, to be used,

as the means of bridging the existing window openings in the building?

3. On how many occasions during roof replacement construction work did Building Control Officers allow deviation regarding the nature or type of the supporting lintel from the agreed plans

- a. with consultation/agreement with the owner of the property?
- b. without consultation/agreement with the owner of the property?

4. On how many occasions during roof replacement construction work did Building Control Officers allow deviation regarding the location of the supporting lintel from the agreed plans

- a. with consultation/agreement with the owner of the property?
- b. without consultation/agreement with the owner of the property?

5. How many of the houses had plans submitted to Building Control for the wall-plate used to secure the roof trusses to be attached
 - a. to the inner leaf of the cavity wall?
 - b. to the outer leaf of the cavity wall.

6. How many of the houses had plans approved by Building Control for the wall-plate used to secure the roof trusses to be attached
 - a. to the inner leaf of the cavity wall?
 - b. to the outer leaf of the cavity wall?

7. On how many occasions during roof replacement construction work did Building Control Officers allow deviation regarding the position of the wall-plate from the agreed plans
 - a. with consultation/agreement with the owner of the property?
 - b. without consultation/agreement with the owner of the property?

B) Of the single storey houses/bungalows in Thicketford Close Tonge Moor Bolton: -

8. How many specified: -
 - a. Catnic lintels (or similar lintels designed to straddle both cavity walls)
 - b. the use of two RSJs, one being attached to each of the two leaves of the cavity wall
 - c. the use of a single RSJ, attached to the inner leaf of the cavity wall
 - d. the use of a single RSJ, attached to the outer leaf of the cavity wall,

as the means of bridging the existing window openings in the plans submitted to Building Control for approval?

9. How many had plans approved by Building Control: -
 - a. for a Catnic lintel (or similar) to be used
 - b. for two RSJs to be used
 - c. for a single RSJ, attached to the inner leaf of the cavity wall to be used
 - d. for a single RSJ, attached to the outer leaf of the cavity wall to be used,

as the means of bridging the existing window openings in the building?

10. On how many occasions during roof replacement construction work did Building Control Officers allow deviation regarding the nature or type of the supporting lintel from the agreed plans

- a. with consultation/agreement with the owner of the property?
- b. without consultation/agreement with the owner of the property?

11. On how many occasions during roof replacement construction work did Building Control Officers allow deviation regarding the location of the supporting lintel from the agreed plans

- a. with consultation/agreement with the owner of the property?
- b. without consultation/agreement with the owner of the property?

12. How many of the houses had plans submitted to Building Control for the wall-plate used to secure the roof trusses to be attached

- a. to the inner leaf of the cavity wall?
- b. To the outer leaf of the cavity wall?

13. How many of the houses had plans approved by Building Control for the wall-plate used to secure the roof-trusses to be attached

- a. to the inner leaf of the cavity wall?
- b. to the outer leaf of the cavity wall?

14. On how many occasions during roof replacement construction work did Building Control Officers allow deviation regarding the position of the wall-plate from the agreed plans

- a. with consultation/agreement with the owner of the property?
- b. without consultation/agreement with the owner of the property?

"Request 2"

Please supply the following information relating to the flat to pitched roof conversions of numbers 1-17 Thicketford Close and to number 157 Thicketford Road: -

1. Copies of all plans submitted to the Planning and Building Control departments in relation to the above work at the specified properties.
2. Copies of the Building Control Officer's site visit notes for all the above conversions.