

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

**Date:** 15 September 2016

**Public Authority:** Wigan Council (the Council)  
**Address:** Wigan Council  
PO Box 100  
Town Hall  
Library Street  
Wigan  
WN1 3DS

**Decision (including any steps ordered)**

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1. The complainant made a request to the Council for a letter the Council sent to a third party regarding a property dispute between them. The Council refused to disclose the requested information under regulation 13 EIR.
2. The Commissioner's decision is that the Council has correctly applied regulation 13 EIR in this case.
3. The Commissioner requires no steps to be taken.

**Request and response**

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4. On 11 April 2016 the complainant requested information of the following description:  
  
"...I have not yet received a copy of the letter you have sent to [third party] as I requested and would therefore ask that this is forwarded to me as soon as possible."
5. On 14 April 2016 the Council responded. It refused to disclose the requested information under regulation 13 EIR as it said it contained third party personal data.

6. The complainant requested an internal review on 17 April 2016. The Council sent the outcome of its internal review on 26 April 2016. It upheld its original position.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 20 May 2016 to complain about the way his requests for information had been handled.
8. The Commissioner has considered whether the Council was correct to apply regulation 13 EIR in this case.

## **Reasons for decision**

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### **Regulation 13**

9. Regulation 13(1) EIR provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in regulation 13(2) or 13(3) EIR is satisfied.
10. One of the conditions, listed in regulation 13(2)(a)(i) EIR, is where the disclosure of the information to any member of the public would contravene any of the principles of the DPA.
11. The Commissioner has first considered whether the withheld information would constitute the personal data of third parties.
12. Section 1 of the DPA defines personal data as information which relates to a living individual who can be identified:
  - from that data,
  - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
13. In this instance the information in question is a letter sent from the Council to a member of the public regarding a dispute relating to their property. The Commissioner does consider that this is information from which the data subject would be identifiable and therefore does constitute personal data.
14. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first principle of the DPA. The first principle requires, amongst other things, that the processing of personal data is fair and lawful. The Commissioner has initially considered whether the disclosure would be fair.

15. When considering whether the disclosure of this information under the FOIA would be fair, the Commissioner has to take into account the fact that FOIA is applicant blind and that disclosure should be considered in the widest sense – that is, to the public at large. The Commissioner is not able to take into account the unique circumstances of the complainant. Instead the Commissioner has had to consider that if the information were to be disclosed, it would in principle be available to any member of the public.
16. The Council explained that the withheld information relates to the data subjects private life and the data subject would have no expectation that this would be disclosed into the public domain under EIR.
17. The Council also confirmed that it does not have the data subject's consent to disclosure.
18. In order to reach a view on whether the disclosure of this information would be fair or unfair, the Commissioner has considered the nature of the information itself.
19. The withheld information is a letter addressed to the data subject from the Council regarding a dispute over their property. This relates to the data subject's private life and given the nature of the correspondence the Commissioner accepts that there would have been a reasonable expectation that this would not be placed into the public domain.
20. The Commissioner has however gone on to consider whether any of the Schedule 2 conditions can be met, in particular whether there is a legitimate public interest in disclosure which would outweigh the rights of the data subject set out above.
21. Whilst the Commissioner understands that the complainant has a personal interest in the withheld information this is not a legitimate public interest. The Commissioner does consider however that there is some general public interest in the Council demonstrating that it is operating effectively.
22. After considering the nature of the withheld information, and the reasonable expectations of the data subject, the Commissioner believes that disclosure under EIR would be unfair and in breach of the first principle of the DPA and that any legitimate public interest would not outweigh the rights of the data subject in this case.
23. Therefore the Commissioner believes that regulation 13 EIR is engaged, and provides an exception from disclosure.

## **Right of appeal**

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24. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.
26. 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 .....**

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