

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

### **Decision notice**

**Date:** 14 May 2020

**Public Authority:** Buckinghamshire Council  
**Address:** The Gateway  
Gatehouse Road  
Aylesbury  
Buckinghamshire  
HP19 8FF

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

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1. The complainant requested photographs of a neighbouring property taken by the Aylesbury Vale District Council (AVDC) when assessing whether it met with permitted development rules. He also requested copies of the notes written by officers assessing the development. He considers that the council may not have assessed the development properly. The council applied Regulation 12(4)(b) (manifestly unreasonable requests), and Regulation 13(1) (personal data of third parties) and stated that it held no information in relation to officer's notes (Regulation 12(4)(a)). However, during the course of the Commissioner's investigation it carried out further searches and provided the complainant with an electronic copy of the officer's notes.
2. Aylesbury Vale District Council merged with other authorities to become Buckinghamshire Council on 1 April 2020.
3. The Commissioner's decision is that the council was not correct to apply Regulation 12(4)(b) to the information. She has also decided that the council failed to comply with Regulation 5(2) in that it did not provide copies of the officer's notes within 20 working days. She has however decided that the council was correct to apply Regulation 13 to withhold photographs taken on the property during the council's assessment of the development.
4. The Commissioner does not require the council to take any steps.

## Request and response

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5. On 9 March 2019, following significant previous correspondence between the parties, (and including a previous complaint to the Commissioner), the complainant wrote to the council and requested information in the following terms:

*"We request a copy of the notebook entries and site photographs mentioned in the response under the environmental information. We also asked for the professional qualifications held by the planning enforcement and planning officers who attended the site on the 27th July 2018. Not applicable is not an acceptable answer to our request. We request also as to why the information requested about the tape measure could not be provided as an asset of the council, full details should be available, it is not for the council to determine what is or is not applicable. We require the information pertaining to the class of tape measure used and at what temperature it was used at. We insist that you make a more detailed review of this case."*

6. The council responded on 5 April 2019. It applied Regulation 12(4)(b) (manifestly unreasonable request) to the request. However, it also confirmed that it holds the requested photographs, but it withheld these on the basis that Regulation 13(1) applied, (personal data).
7. It also said that it does not hold any notebook entries and therefore applied Regulation 12(4)(a).
8. Following an internal review, the council wrote to the complainant on 25 July 2019. It maintained its position as regards the application of Regulation 12(4)(b) and Regulation 13(1).
9. AVDC was replaced by Buckinghamshire Council on 1 April 2020. It has therefore taken over responsibility for AVDC's obligations under the EIR and the FOI Act.

## Scope of the case

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10. The complainant contacted the Commissioner 18 August 2019 to complain about the way his request for information had been handled.
11. He complained that the council had not disclosed the information which he had requested. He said that he wanted the Commissioner to consider whether:

*"AVDC's decision not to release the photographs requested under the EIR as they deemed them to be exempt by way of general data"*

*protection regulations is lawful. Given that the land immediately behind the property in question is overlooked by a permissive pathway. The land in question can be viewed by numerous means on the internet e.g. google earth, street view, defra, magic map etc. It could easily be photographed quite legally using drones."*

12. On 24 March 2020, following further searches requested by the Commissioner, the council disclosed electronic copies of the notes which its officer had made regarding the development to the complainant.
13. The Commissioner therefore considers that the complaint is whether the council was correct to rely upon Regulation 12(4)(b) to declare the request vexatious, and if it is not, whether it was correct to rely upon Regulation 13(1) to withhold the photographs from disclosure. She will also consider whether the council's disclosure of the officers' notes met with the requirements of Regulation 5(2).

## Reasons for decision

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### Regulation 12(4)(b) – manifestly unreasonable request

14. The background to this case is that the complainant has a dispute with the council over a planning matter. This dispute centres on measurements taken by the council to establish whether a development on his neighbour's property was or was not within the limits of permitted development. The complainant disputes the council's finding that the property is within the permitted development rules. This is an extension of a previous request dealt with by the Commissioner in case FS50813877<sup>1</sup>.
15. Regulation 12(4)(b) of the EIR provides that:

*"a public authority may refuse to disclose information to the extent that –*

*(b) the request for information is manifestly unreasonable;"*
16. Regulation 12(4)(b) of the EIR is designed to protect public authorities from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation in handling information requests. In effect, it works in similar regards to two exemptions within the Freedom of Information Act 2000 ('FOIA'): section 12, where the cost of

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615390/fs50813877.pdf>

complying with a request exceeds the appropriate limit and section 14, where a request is vexatious.

17. The Council has suggested that it considers that the request is vexatious and an improper use of procedure.
18. Regulation 12(4)(b) of the EIR provides an exception from disclosure to the extent that the request is manifestly unreasonable. This may also be applied by public authorities in circumstances where the request is considered to be vexatious in terms of it placing a disproportionate burden on the authority.
19. The term “manifestly unreasonable” is not defined in the EIR. However, the Commissioner follows the lead of the *Upper Tribunal in Craven v Information Commissioner & DECC*<sup>2</sup>. In this case the Tribunal found that there is, in practice, no difference between a request that is vexatious under the FOIA and one which is manifestly unreasonable under the EIR, save that the public authority must also consider the balance of public interest when refusing a request under the EIR.
20. A differently constituted Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield [2012] UKUT 440 (AAC)*. It commented that “vexatious” could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
21. Where this is not clear, the public authority should weigh the impact on the authority of complying with the request and balance this against the purpose and value of the request. In doing this, public authorities will inevitably need to take into account the wider factors such as the background and history of the request.

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<sup>2</sup> [2012] UKUT 442 (AAC)

*The complainant's position*

22. The complainant argues that his request for information is not vexatious. He argues that his request is to seek information and clarification on how the council surveyed a building to ensure that it was within permitted development guidelines, which the council has a statutory duty to ensure and enforce.
23. He argues that the fact that the building in question is situated close to his property has no bearing as to why he is seeking the information. He considers that it is in the public interest that local residents and taxpayers can obtain information on:
  - how their money is being spent.
  - that those employed by the council to ensure statutory legislation is enforced are professionally competent and qualified to do so.
  - that as a public authority, the council ensures accurate records are in order to ensure professional/industry standards are maintained and retained in line with the council's retention policy.
  - that the council takes seriously its statutory obligations as a public authority under the various acts & regulations pertaining to the open government ethos and governing citizens' rights to access information.

*The council's position*

24. The council argues that the request relates to details surrounding a planning enforcement matter. The enforcement decision has already been the subject of a complaint from the complainant which has been dealt with. It argues that the complainant could seek to formally challenge the decision made but appears instead to be fishing for any information possible with which to continue his dispute with the council. The complainant does not agree with the Council's decisions and has been seeking further information, but he has not taken any formal action to challenge the decisions.
25. It points out that, even if the complainant's arguments were proved to be correct and the development did need planning permission, the council has a discretion as to whether to take enforcement action in such instances. The Commissioner understands this argument to be that, even if the complainant's arguments were to be proved to be right, it is the council's decision as to whether it is necessary or appropriate to take any further action over the issue. Therefore, little difference would be made by any disclosure of information which might have proved the complainant argument correct, which it disputes.

26. It notes that the complainant states that he is requesting the information in order to ensure that the Council is undertaking its statutory duties professionally and refutes that his requests are vexatious or unreasonable and relates to his dispute with this neighbour. The council argues that the nature of the requests would indicate that if this were the case, the complainant would already be well known to the enforcement department in relation to numerous other matters. It argues that the fact that he is not, and this matter relates purely to a structure which is obviously and easily visible from the complainant's garden, indicates that the complainant is using the regulations for his own private interests, and this amounts in this case to a vexatious request.
27. It further argues that it is in the public interest that the legislation is used correctly and that challenges are made in the correct way to ensure that public resources are being used in the most efficient way. The complainant is seeking to request the same information in different ways and is therefore being vexatious. Neither vexatious requests nor duplication are in the public interest. The complainant does not like the decisions made by the Council but has chosen not to formally challenge the decisions through the proper channels. It therefore argues that the request is vexatious and Regulation 12(4)(b) should apply.

#### The Commissioner's analysis

28. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues:
  - (a) the burden imposed by the request (on the public and its staff);
  - (b) the motive of the requester;
  - (c) the value or serious purpose of the request; and
  - (d) and harassment or distress of and to staff.
29. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

*"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"* (paragraph 45).

30. The Commissioner has also identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests<sup>3</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
31. Following the above, the Commissioner essentially needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
- (a) The burden imposed by the request
32. The Commissioner has therefore considered the councils arguments in respect of the factors listed above. When doing so she has borne in mind that the request in this instance is not burdensome.
33. The council however argues that the request follows a long history of similar requests and complaints over the same issue, and when seen in this context, the requests are vexatious. The council has not however provided evidence that the number of requests, nor their manner, have been particularly burdensome per se. As noted, the Commissioner has however considered a previous complaint over an issue related to the same wider issues which are in dispute in this case.
- (b) The motive of the requester
34. The Commissioner has addressed the councils view that the complainant's request is simply a way of questioning it further regarding his dispute and continuing to press his arguments regarding this.
35. Regardless of the complainant's arguments to the contrary, the complainant has provided no evidence or suggestion of any wider concerns regarding the council enforcement procedures nor its wider enforcement statistics. The request in question clearly follows on from his previous dispute relating specifically to the development on the complainant's neighbour's property. It specifically follows on from the matters considered in the Commissioner's decision notice in case FS50813877.

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

36. The Commissioner considers that the council is correct, and that the complainant's request clearly relates to his ongoing dispute with the council, and ultimately with his neighbour. She considers that the request is an extension of his previous complaints regarding his neighbour's development.
37. That being said, it is not necessarily vexatious to be persistent regarding information which is required.

(c) the value or serious purpose of the request

38. Regarding his request, the complainant argues:

*"I am seeking information & clarification as to how AVDC surveyed a building to ensure that it was within permitted development guidelines which AVDC have a statutory duty to ensure and enforce."*

39. He argues therefore that his own personal dispute has little bearing on the reason for his request, and that his actual reason for requesting the information is to create greater transparency on the council's working methods as regards this area.
40. The Commissioner notes that the purpose of the request for information is to question the council's decision that the development is a permitted development and does not need planning permission. However, the council pointed out that even if the complainant were to prove that the council's measurements were incorrect, and that planning permissions was required, it has discretion as to whether to take further action or not. The council also noted that the complainant has other routes available to question the decision of the council as regards its decisions on this particular development, which he has not chosen to take forward. The Commissioner considers that its argument is that the complainant's ability to take formal action negates the need to request the information, and therefore undermines the serious value and purpose of the request.
41. The Commissioner considers, however, that the arguments submitted by the complainant do have some merit. There is a public interest in the council demonstrating that it does use the right procedures and have the correct equipment to ensure that its planning enforcement activities are carried out appropriately.
42. However, the complainant has shown no evidence that he intends to use this information to consider any wider public purpose. Taken in context with the specific nature of his request, together with the details of his former complaint, the Commissioner can place little weight on this. There is little wider purpose in the information being disclosed given that the requested information relates specifically to one particular



property. She has also taken into account that the request is purely for photographs and officer notes. This information would have little bearing, and would provide little information, on the council's wider actions in this respect.

(d) harassment or distress of and to staff

43. The council has provided no evidence that the request or the issues overall have caused any harassment or distress to staff. It has also not demonstrated that the intention behind the request was to do so.

The Commissioner's conclusions

44. The Commissioner's decision is that the Council has failed to provide sufficient evidence to support its arguments. It has not provided evidence of a significant number of requests being received from the complainant, nor any specific harassment which has resulted.
45. She accepts the council's argument that the request is clearly an extension of the complainant's previous requests relating to his dispute, however, she does not consider that, in this instance, this provides a significant reason to consider the request to be vexatious or manifestly unreasonable for the purposes of Regulation 12(4)(b).
46. The Commissioner is also not persuaded that the request places a disproportionate burden on the council, and the council has submitted no evidence that that overall, that is the case.
47. The Commissioner accepts that the complainant's reason for making the request may be misplaced, and that it is fairly clear that the only reason this building is of any interest at all is because it is adjacent to the requestor's property. The Commissioner also agrees that the request is a means of continuing the dispute with the council when there are other, formal routes of appealing the overall decision available. The Commissioner is mindful of the fact that the EIR are not a replacement for the formal oversight procedures in place for planning matters.
48. However, taking a holistic view, the Commissioner has not been persuaded by the council's arguments that the request is sufficiently valueless as to be able to engage the exception. She considers that there is not enough evidence demonstrating that this request is manifestly unreasonable on grounds of it being vexatious, which brings with it a high hurdle of engagement. She has therefore decided that the exception in Regulation 12(4)(b) is not engaged.
49. Since the exception is not engaged the Commissioner does not need to go on to consider the public interest in the disclosure of the information.

### **Regulation 13 - personal data**

50. The council applied Regulation 13(1) to withhold a copy of photographs which it took on the property. It also argues that part of two other neighbouring properties appear in the photographs and disclosing this information would breach the rights of the individuals involved under the Data Protection Act 2018.
51. The complainant argues that the photographs will show the properties but that the same view can be seen from a public path that runs at the back of them. He also argues that they can be viewed on websites such as google maps. He argues therefore that, even if the information is classed as personal data, the presumption towards disclosure in the EIR should outweigh the rights of any individuals whose personal data the photographs would disclose.
52. The council argued that the request relates to his own personal interests. However, the complainant argues that the council has not used appropriate processes when finding that the property falls within the permitted development requirements (and therefore presumably that retrospective planning permission would then need to be obtained by the property owner for the development). Again, the council disputes that that would be the case in any event.
53. The complainant has widened his argument in this respect to state that the public has a legitimate interest in knowing whether the council's approach to such checks is appropriate, and whether it therefore carries out its functions in this respect correctly.

#### Analysis

54. Regulation 13(1) 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) of the Data Protection Act 2018 is satisfied.
55. In this case the relevant condition is contained in regulation 13(2A)(a)<sup>4</sup> of the Data Protection Act 2018. 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

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<sup>4</sup> As amended by Schedule 19 Paragraph 307(3) DPA 2018.

principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').

56. 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 of the EIR cannot apply.
57. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

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

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

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

59. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
60. 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.
61. 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.
62. The withheld data is photographs of the outside of two privately owned properties. The owners of the properties are known to the complainant. Their details will also be available to the public via entries in the Land Registry. A disclosure of the photographs would provide details of their properties and would therefore provide biographical details about the owners.
63. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the owners of the properties, that they are known to the complainant, and that they would be identifiable by members of the public.
64. The Commissioner has therefore decided that the information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
65. The fact that 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.

66. The most relevant DP principle in this case is principle (a).

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

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

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

68. 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.

69. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

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

70. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "*processing shall be lawful only if and to the extent that at least one of the*" lawful bases for processing listed in the Article applies.

71. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) 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>5</sup>.*

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<sup>5</sup> Article 6(1) goes on to state that:-

*"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".*

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA) provides that:-

*"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".*

72. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

73. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

#### *Legitimate interests*

74. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.

75. 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.

76. The Commissioner notes that the main interests of the complainant is a personal interest in this instance. He disagrees that the council's assessment of the development has been carried out appropriately or correctly and he believes that a disclosure of the photographs will provide him with information which will provide evidence to that effect.

77. The legitimate interest in the disclosure of the information which the complainant has identified relates to creating greater transparency over whether the council's planning and building control measures are being carried out effectively and appropriately.

#### *Is disclosure necessary?*

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78. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, 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 aim in question.
79. The council argues that a disclosure of the photographs is not necessary because: *"the complainant's questions have however already been answered in different ways, just not to the satisfaction of the complainant..."*
80. The information requested would provide the complainant with details regarding the weather at the time that the measurements and the photographs were taken, although information relating to this has already been provided to him regarding his complaint, (see para. 7 of decision notice FS50813877). He has suggested previously that the council has not provided evidence that it has properly taken into account weather conditions when taking measurements, and that measuring tapes need to be properly calibrated to take account of the weather on the day that the measurements are taken. He argues that a measuring tape's reading may be affected by the weather. Although the council has said that it has told him what the weather conditions were like on the day, the photographs in question would provide more substantial evidence of that.
81. In order to satisfy the complainant's interests, it would be necessary to disclose the photographs to him to meet his own legitimate interests.
82. The Commissioner recognises that the wider public does have a legitimate interest in the disclosure of this specific information. The general arguments submitted by the complainant relating to the council's transparency over this area of its work do have a degree of merit. The Commissioner has noted above, however, that these interests will be minimal as the withheld information only relates to one particular property.
83. Nevertheless, a legitimate interest can include a complainant's own legitimate interests, and therefore the Commissioner accepts that in order to meet this in this case the complainant has a legitimate interest in having access to the photographs. She does not however consider that this interest is particularly strong in this case.
84. As the Commissioner has decided in this case that disclosure is necessary in order to meet the legitimate interest in disclosure, she has gone on to conduct the balancing test.

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

85. 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 legitimate interests in disclosure.
86. 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.
87. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not 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.
88. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

*The potential harm or distress that disclosure may cause;*

89. The harm which would be caused would be a general loss of privacy together with the potential distress of photographs taken of their private property being disclosed to the whole world in response to a request for information.
90. Photographs of their properties would be disclosed. Additionally, the owner of the property has been told by the council that their development meets permitted development requirements. It would be likely to be of distress to them if information is subsequently disclosed about them and their property to the whole world purely on the basis that a member of the public disagrees with the council's measurements and its planning decision.
91. This may cause all of the party's a degree of distress. The complainant argues that due to a footpath, and the ability to see similar information via web-based maps this, would be unlikely to be substantial in the case

of the neighbouring properties. The Commissioner is satisfied that, nevertheless, this could cause a degree of distress to the property owners. This needs to be measured and balanced against the legitimate interest in the information being disclosed.

*Whether the information is already in the public domain;*

92. As noted above, similar information may already be in the public domain, via google and other mapping websites, but it has not been disclosed in association with a complaint to the council of this nature previously. Additionally, the views provided by these websites will be different to the actual photographs taken, and it is likely that they will have been taken at a different time.
93. Having considered the withheld photographs the Commissioner is also satisfied the other means of seeing the property would not provide the depth and detail of the information which the photographs provide.
94. Although the properties may be visible to those passing the properties in question, this is not the same as a disclosure of the photographs of the properties. A disclosure of information under the EIR is considered to be to the whole world, whereas in order to view the properties an individual would need to physically walk past them. A disclosure under these circumstances must be considered to be to a much wider audience.

*Whether the information is already known to some individuals;*

95. The information will contain information about the properties which is not in the public domain. The photographs will be associated with a complaint to the council regarding the council's effective conduct in carrying out its planning and building control functions. This will draw attention to the main property's owners, and, to a much lesser extent, involve the personal data of neighbours who have little, or nothing to do with the complaint or the planning issues involved.

*Whether the individual expressed concern to the disclosure*

96. The council has not stated whether the property owners have expressed any concerns about the disclosure, however under the circumstances it would be likely that they would not welcome the infringement into their personal privacy, barring the complainant himself.



*The reasonable expectations of the individuals.*

97. The Commissioner is satisfied that none of the individuals would welcome, or expect, that information relating to the properties to be disclosed as part of a public authority disclosure regarding a complaint about compliance with permitted development rules and a subsequent complaint about the council's processes in this respect.
98. The main property owner has complied with the requirement to allow council investigators on site to ensure that his property meets permitted development requirements. The council has agreed that the property complies with permitted development rules, however the requestor has taken issue with this.
99. The property owner would not expect that information about their property would be disclosed into the public domain as it falls outside of the normal planning application rules and the associated transparency which this generally requires. The council has decided that the development does not need planning permission. The property owner is unlikely to expect that photographs of the house would subsequently be disclosed to the whole world in response to a complaint that the council has not carried out its functions correctly.
100. The neighbours would have no expectations regarding their own personal data whatsoever unless they were involved with the complaint, and the request specifically.

*Conclusion of the balancing test*

101. The complainant has raised an issue as regards the council's compliance with building development requirements. These specifically relate to a prior request for information, and to a complaint which he raised regarding the property in question. He has now widened this aspect of his complaint to state that he now desires this information in order to see that the council is transparent about the way it carries out this function.
102. The Commissioner recognises that the complainant's wider argument can be addressed without specifically requiring that this information, on this specific property, is disclosed.
103. The complainant can ask for the details of the compliance checks it is meant to carry out, and for further information on how it goes about meeting those requirements. He is able to ask questions about what equipment calibration is required by law, and what steps the council has in place to ensure that its officers meet these requirements. The Commissioner understands that the complainant has asked some of these questions, and that the complainant is aware of the council's responses

in this respect. Insofar as meeting the legitimate interest in ensuring that the council's actions are transparent and that its decisions in this respect are appropriate, this would aid in providing information which would allow a judgement of this.

104. The complainant does not accept the council's assurances that the property meets the appropriate permitted development rules. A disclosure of the photographs would not highlight whether that was correct but would supply a degree of information which he argues might lead to evidence as to why its decisions were (in his opinion) not correct. For instance, he argues that the weather on the day in which the measurements were taken could affect the measurement equipment.
105. However, even if it is accepted that this information might be of minor help to the complainant in achieving his aims, this level of scrutiny would impinge upon the personal data of third parties and impact upon the privacy of the individuals concerned. As the council has also stated, even if the complainant's arguments were to be proved to be correct, which it disputes, it has discretion as to whether to take further action.
106. Ultimately, if the complainant remains unhappy with the council's final position as regards the property, the council argues that he is able to seek legal advice as to whether he is able to take legal action himself over the council's decisions, if that is possible. He may also be able to make a complaint to other organisations such as the Planning Inspectorate or the Local Government Ombudsman.
107. With these alternative methods of seeking a resolution, the Commissioner considers that legitimate interest of the public in having access to the photographs does not outweigh that in the rights of the individuals concerned under the DPA.

### Conclusions

108. 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 there is no Article 6 basis for processing and so the disclosure of the information would be lawful.
109. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.

**Regulation 5(2)**

110. Regulation 5(2) provides that "*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*".
111. The complainant made his request for information on 18 August 2019. The council did not provide copies of the notes of officers until 24 March 2020. This falls outside of the 20 working days required by Regulation 5(2).
112. The Commissioner has therefore decided that the council did not comply with the requirements of Regulation 5(2).

## Right of appeal

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113. 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](mailto:grc@justice.gov.uk)

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

114. 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.

115. 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 .....**

**Andrew White**  
**Head of FOI Casework and Appeals**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**