

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

### **Decision notice**

**Date:** 9 February 2022

**Public Authority:** City of York Council  
**Address:** West Offices  
Station Rise  
York  
YO1 6GA

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

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1. The complainant requested a copy of the HMO (House in Multiple Occupation) database held by City of York Council (the council) for the purposes of planning.
2. Whilst the council provided some information to the complainant, it refused to provide details which would reveal the addresses of student occupied properties, citing regulation 12(5)(a) - public safety, and regulation 12(5)(b) - the course of justice. It then later advised that it was also relying on regulation 13 - personal data.
3. The Commissioner's decision is that the council is entitled to rely on regulation 12(5)(a), when withholding the street addresses of student HMO's.
4. However, as the council failed to provide some of the information, and also its refusal notice, within 20 working days, the Commissioner has found there to be a breach of regulation 5(2), and regulation 14(2), of the EIR.
5. The Commissioner does not require the council to take any steps as a result of this decision notice.

## Request and response

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6. On 25 October 2020, the complainant wrote to the council and requested information in the following terms:

'I wish to request under the FOI act a full copy of the CYC [City of York Council] HMO [house in multiple occupation] 'database' that I will circulate publicly.'
7. The council provided its response on 13 November 2020, advising the complainant that it had applied section 21 (information reasonably accessible by other means) of the FOIA to his request. It went on to provide a link to information published on its website that it believed to be relevant to the complainant's request.
8. On 14 November 2020, the complainant contacted the council again and advised of the following:

'I did not request information regarding 'licensed HMOs', I requested the CYC HMO Database derived from council tax records that identifies student HMOs and is the 'database' used for planning purposes.'
9. The council wrote to the complainant on 21 January 2021, to advise that it had carried out a review of its handling of his request. It stated that whilst previous correspondence he had sent to the planning department had referred to the identification of student HMO's, it had been unclear what he had actually required. The council stated that it had therefore asked for clarification from the complainant, and that on 25 October 2020, he had responded with a new request for information. The council advised that having considered this request, it was satisfied that the complainant had not provided any indication that he specifically required the HMO database which is used for planning (that would identify student HMO's).
10. The council said that it therefore believed that its initial response to the request of 25 October 2020, was correct.
11. The council went on to confirm that it was to deal with the complainant's correspondence of 14 November 2020, as a new request for information; this was because he had now asked for the specific HMO database used by the council for planning purposes (which is derived from council tax data and identifies student HMO's). The council confirmed that it would attempt to provide a response to this new request within 20 working days.
12. On 8 February 2021, the council provided its response to the complainant. It confirmed that whilst the complainant's previous request

for a list of HMO's had been dealt with under the FOIA, it regarded the EIR to be relevant to his most recent request. This was because he had now asked for a copy of the HMO database which was used for planning purposes, and this was information which was considered to have an impact on the environment.

13. The council provided the complainant with a spreadsheet which included all HMO's; however, it advised that it had withheld some information under regulation 12(5)(a), and also regulation 12(5)(b), in order to prevent identification of specific properties used by students.
14. The council went on to explain to the complainant why it believed the public interest favoured withholding the information in this case.

### **Scope of the case**

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15. The complainant first contacted the Commissioner about matters that relate to the requests that are under consideration on 17 August 2020. He then subsequently raised further concerns following the submission of his request of 25 October 2020.
16. The complainant believes that it should have been apparent from the terms of his request of 25 October 2020, and information he had attached, that he required the HMO database which was used for planning purposes. He has also questioned the council's decision to deal with his correspondence of 14 November 2020, as a new request for information.
17. However, the complainant's primary concern appears to be that the council has determined that student HMO information should be withheld, despite the fact that another council makes such information routinely available.
18. During the course of the Commissioner's investigation, the council confirmed that it is prepared to release information which would provide the ward area of student HMO's, without allowing for the identification of specific properties and their occupants.
19. Whilst these are details which are likely assist the complainant, the Commissioner cannot require the council to release this information, as it does not fall within the terms of the complainant's request.
20. The council has also confirmed to the Commissioner that it now wishes to also rely on regulation 13 of the EIR, when withholding the information that is relevant to the request.

21. The Commissioner is to examine the following:

- whether the council was correct to deal with the complainant's correspondence of 14 November 2020, as a new request for information;
- whether the requested information falls under the scope of the EIR, or the FOIA;
- whether the council was entitled to withhold details of student HMO's in response to the complainant's request; and,
- certain procedural matters.

22. With regards to bullet point 3 above, if the Commissioner finds that the withheld information does fall within the scope of the EIR, he intends to firstly consider whether regulation 12(5)(a) of the EIR is engaged. If he finds that the council is not entitled to rely on this exemption when withholding information relevant to the request, he will then go on to consider whether it can rely on regulation 12(5)(b) of the EIR, or regulation 13 of the EIR.

## Reasons for decision

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### Requests for information

23. The Commissioner is aware that, on 28 June 2020, the complainant had requested that the council provide him with a copy of its updated HMO 'database'; he also asked why it was so difficult to get this information, stating that Leeds City Council makes '*such information readily available to the public*'.
24. On 13 August 2020, the council provided its response to the complainant. The council confirmed that it had contacted Leeds City Council about the HMO database which it publishes via the Government source website<sup>1</sup> (with the inclusion of the addresses of exempt council tax properties). However, the council advised that it was of the view that the HMO data which it collects from its council tax records should be withheld. It stated that this was because it identifies student households, and that it believed to disclose such information would breach the data protection legislation.

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<sup>1</sup> [HMO and student housing register - data.gov.uk](https://data.gov.uk)

25. The council went on to advise the complainant that it would only be able to share the information about exempt council tax properties if he was able to confirm that he would be using the information solely for his own purposes in his role as a councillor (under 'councillor privilege'). The council also asked, if he still required this information, to clarify which wards he wanted the HMO information to cover.
26. On 13 August 2020, the complainant advised the council that he intended to ask the ICO for a 'judgement' on the matter, as he did not believe Leeds City Council and York City Council could both be correct in their approach to the publication of data held about HMO properties.
27. The complainant then contacted the Commissioner for a 'judgement'; however, the Commissioner advised him that he would need to complete the internal review process before the matter could be considered further.
28. On 25 October 2020, the complainant then made the request for information which is set out in paragraph 6 of this decision notice. It would seem apparent from the content of the complainant's correspondence that he expected the council to consider this as a new request for information.
29. The Commissioner notes that the complainant had raised previous queries with the council about HMO data (including student HMO's) held for the purposes of planning. However, it is his opinion that it was not sufficiently clear that the complainant required a copy of the particular HMO database which is used for the purpose of planning (and identifies student HMO properties by address) in response to his request of 25 October 2020.
30. The Commissioner has therefore decided that the council gave an appropriate response to the complainant's request of 25 October 2020, when it confirmed that its HMO database was already publicly accessible, and that it was also correct to consider the complainant's correspondence of 14 November 2020, as a new request for information.

### **Correct Access Regime**

31. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR, rather than the FOIA, if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.
32. Regulation 2(1)(c) of the EIR says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information.

33. 'Any information on' means environmental information covers any information about, concerning or relating to the various factors, elements and other items stated. Public authorities should interpret 'any information on' broadly. Information that would inform the public about matters affecting the environment or enable them to participate in decision making, and help to achieve that purpose is likely to be environmental information, even if the information itself does not directly mention the environment.
34. The council has advised that, in order to manage the impact of HMO's on local communities, it introduced an Article 4 Directive under The Planning Act; this removed the permitted Development Rights relating to the ability to change a residential property into a HMO. The council states that the environmental impacts include increased levels of parking, emissions, noise pollution and waste and potential reduced levels of property maintenance and repair, and the need for property alteration, extension, and sub division.
35. The council has advised that the database requested by the complainant on 14 November 2020 is used to assess the level and impact, including environmental impact, of HMOs as part of the planning process. It therefore believes that it can be regarded to be a measure under regulation 2(1)(c) of the EIR, affecting the elements and factors referred to in regulation 2(1)(a) and (b) as well as being a measure designed to protect those elements.
36. The Commissioner, having considered the explanations provided by the council, and the purposes for which the particular data requested is held, is persuaded that the information that is relevant to the request is environmental and so the council was correct to consider the request under the EIR.
37. The Commissioner will now go on to examine whether the council is entitled to rely on regulation 12(5)(a) of the EIR when withholding information which would reveal the street addresses of student HMO's.

**Regulation 12(5)(a) – international relations, defence, national security, public safety**

38. Regulation 12(5)(a) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety. In this case, the council considers that there would be an adverse effect on public safety.

39. The Commissioner guidance<sup>2</sup> on the exception states that :

“Public safety’ may be interpreted widely. The exception covers information that, if disclosed, would adversely affect the ability to protect the public, public buildings and industrial sites from accident or acts of sabotage; and where disclosing information would harm the public’s health and safety.’

40. The guidance therefore makes it clear that the exception can be used to protect the public as a whole, and can relate to potentially targeted sites/buildings, as well as to individuals.

41. Regulation 12(5)(a) is also a qualified exception, meaning that even if the exception is engaged, the information should only be withheld if the balance of the public interest favours maintaining the exception.

#### The council’s position

42. The council has advised that it considers that students can be at more risk of some types of crime than the general population. It refers to a lack of property security, particularly in dispersed student accommodation, (which it states that this request refers to), and a lack of risk awareness and risk averse behaviour within the student community.

43. The council has drawn the Commissioner’s attention to ‘the Crime Prevention website’<sup>3</sup>, which publishes statistical data regarding crime, and the increased risks to students from incidents of burglary, theft, vehicle crimes, and violent crime.

44. The council states that it considers that releasing the details of where students are living in HMO’s (in privately rented properties and in groups away from the security of main campus) is likely to lead to students being more easily targeted for certain types of crime.

45. The council goes on to say that it is also aware that, at the time of the request, concerns were being raised, both at a local level and nationally, about the potential role students might be having in the spread of the Covid 19 pandemic.

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<sup>2</sup> [International relations defence national security or public safety \(regulation 12\(5\)\(a\)\)-v1.1- EIR guidance - 20203112 \(ico.org.uk\)](#)

<sup>3</sup> [Student Security | The Crime Prevention Website](#)



46. The council also refers to the number of international students that choose to study, and live, in York. It states that during the Covid 19 pandemic, there was an increase in hate crimes and attacks on certain ethnic minority groups, and that this was not only happening on a national level, but in York itself.<sup>4</sup>
47. The council goes on to say that it believes that releasing specific addresses of where students live will mean that it will be easier to identify where students from certain ethnic backgrounds are likely to be living; it considers that the release of this information into the public domain increases the likelihood of risk to their physical and psychological safety and wellbeing.

#### The complainant's position

48. The complainant's main concern appears to be that the council has refused public access to certain information that he is aware is made readily accessible by at least one other public authority (Leeds City Council).
49. The complainant has argued that the council's reasoning for withholding the relevant information is '*not credible*'. He states that if the council's arguments were reliable, then there would be statistics to prove that students living in HMO's in Leeds are made more vulnerable to crime and anti social behaviour by their formal identification from the data published by Leeds City Council, but that this is not the case.
50. The complainant points out that York and Leeds are geographically very close; he therefore questions how the councils can reach what he believes to be two very different conclusions about the disclosure of the type of data in question.

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<sup>4</sup> [University of York condemns abuse and racism linked to coronavirus | York Press](#)

[Coronavirus: Concerns raised over racism against Chinese students in York | Bradford Telegraph and Argus \(thetelegraphandargus.co.uk\)](#)

[Far right using coronavirus as excuse to attack Asians, say police | Hate crime | The Guardian](#)

[Chinese groups in UK are being taught how to handle Covid hate crimes after brutal attack on lecturer | The Independent](#)



The Commissioner's analysis

51. It is the Commissioner's view that the disclosure of the student HMO's in response to an information request would promote the availability of this information, and it would increase the awareness of the precise properties where students live.
52. When considering the exception under regulation 12(5)(a), the test is whether disclosing the information 'would adversely affect' public safety. It is not possible to say with absolute certainty what will happen in the future following the disclosure of information, but the term 'would adversely affect' is taken to mean that it has to be more likely than not that the harm envisaged would occur.
53. The Commissioner has therefore gone on to consider any risk that would be caused by disclosing the information, and whether making that information freely available would make it easier for anyone planning to target students, and/or their homes.
54. It is the Commissioner's view that the withheld information would provide significant intelligence to any person seeking to commit a crime targeted at a student property, and could be used to inform a decision about which properties to target.
55. The complainant has indicated that the publication of similar information by Leeds City Council has not increased the risks to students in the Leeds area. However, the Commissioner is aware of no evidence on this point. In any event, it is his opinion that it would not be appropriate to directly compare the positions of the two public authorities. Whilst the two areas may be geographically close, there will be a number of factors which could reasonably lead to the different approaches taken by each public authority. Prevalence of attacks on the student population may be one example of this.
56. The Commissioner accepts that there will be a number of reasons why a certain person, or group, may be, or is, more vulnerable to being the target of a crime in any one area. However, he considers that publishing a list that places each property's address alongside whether it is student occupied would make it more likely for individuals, and properties, to be targeted.
57. Furthermore, the Commissioner is satisfied that an increased risk of harm to individuals and properties as described by the council would constitute an adverse effect to public safety, and that there is a causal link between the disclosure of the requested information and this adverse effect. That is, in the Commissioner's view, the disclosure of the requested information would increase the risk. It is also the

Commissioner's view, from the evidence available to him, that the adverse effect described by the council would be more probable than not to occur.

58. The Commissioner therefore finds that regulation 12(5)(a) is engaged as disclosure of the requested information would have an adverse effect to public safety. He has gone on to consider the public interest test.

**Regulation 12(1)(b) – public interest test**

59. The complainant has advised that the availability and publication of a student HMO database is very important in the context of planning applications for new HMO's in York. He states that one of the main criteria for determining planning consent for new HMOs is the percentage of HMOs at street level, and neighbourhood level.
60. The complainant argues that residents who live near to proposed new HMOs need to be able to access the information requested in order to be able to assess the accuracy of the existing percentages that the council is using to determine such applications. He states that in his capacity as a councillor, he has been able to access the HMO database he has requested, and that he is aware that it has previously contained inaccurate and out of date information.
61. The council has advised that it understands that there is a genuine public interest in understanding which properties have been granted a HMO, and also how many of these are for student use.
62. The council also states that it accepts that there is a strong public interest in the public being able to understand any relationship between the movement of students and the number of positive Covid 19 cases in particular areas; it also refers to there being a strong health and public interest in being able to hold relevant authorities including the council to account regarding the movement of students and the management of Covid 19.
63. However, the council then goes on to say that it believes that should the information requested be published, students will be at a greater risk of some types of targeted crime, including assaults, robbery and theft, leading also to an increased risk of physical and psychological harm.
64. The council states that it has released some information about HMOs as it was in the public interest to do so, but it believes that the public interest in releasing the specific addresses where students live is limited.
65. The council argues that the weight of the public interest in maintaining the security, safety and wellbeing of students and the properties where

they live significantly outweighs any public interest in identifying where students are living.

66. The Commissioner, when considering the balance of the public interest, has taken into account the presumption in favour of the disclosure of environmental information, under regulation 12(2).
67. In finding the exception engaged, the Commissioner has already accepted that the disclosure of the requested information would have an adverse effect on public safety; that is, that there would be an increased risk of harm occurring in and around the properties identified as student HMO's.
68. The Commissioner regards the evidence provided by the council of certain crimes already committed in York, and statistical analysis of the increased risk of a student being a victim of crime, to carry some weight in favour of withholding the information in this case. If the precise addresses of students were known, and this data was used to aid with the committing of any crime, then the consequences of this would be serious, and would ultimately lead to situations endangering public health and safety. As covered above when finding the exception engaged, the Commissioner believes that the risk of this occurring, should the information be disclosed, is real and significant. There is a weighty public interest in avoiding this outcome and hence in favour of maintenance of the exception.
69. The Commissioner accepts that there is a strong argument for full transparency and openness about the data which is held regarding HMOs for the purposes of planning and licencing matters. However, he believes that the information which has been released, and also that which the council has now confirmed that it is willing to disclose (which provides student HMOs by ward), goes some way in satisfying the public interest in this instance.
70. The Commissioner, having taken all factors into account, considers the risk to the safety of certain individuals, groups, and their homes, should the information be released, to weigh the public interest heavily in favour of withholding the information in this case.
71. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019):

'If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure...' and 'the presumption serves two purposes: (1) to provide

the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations' (paragraph 19).

72. As covered above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(5)(a) was applied correctly.
73. Whilst the Commissioner would add that he has some particular concerns that the disclosure of the withheld information would have breached the data protection principles, as he is satisfied that regulation 12(5)(a) is engaged, he has not considered it to be necessary to consider this and the council's application of regulation 13 further, or its application of regulation 12(5)(b) of the EIR.

## **Procedural matters**

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### **Regulation 5(2) – time for compliance**

74. Regulation 5(2) of the EIR states that information should be made available as soon as possible, and within 20 working days of receipt of the request.
75. The complainant submitted his request on 14 November 2020. The council only provided him with copies of information relevant to his request on 8 February 2021.
76. As a result, the council has failed to comply with the requirements of regulation 5(2) of the EIR.

### **Regulation 14 – Refusal to disclose information**

77. Under regulation 14(2) of the EIR, if a request for environmental information is refused by a public authority under regulation 12, the refusal must be made as soon as possible, and no later than 20 working days after the date of receipt of the request.
78. In this case, as the council only issued its refusal notice on 8 February 2021, the Commissioner has found a breach of regulation 14(2) of the EIR.

## Right of appeal

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79. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

80. 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.
81. 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 .....**

**Suzanne McKay**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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