

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 11 July 2023

Public Authority: West Oxfordshire District Council
Address: Woodgreen
Witney
Oxfordshire
OX28 1NB

Decision (including any steps ordered)

1. The complainant requested information about a planning application that they submitted to the Council. West Oxfordshire District Council (the Council) stated that all information relating to the planning application was available on its website. In its internal review response the Council sought to apply regulation 12(4)(b) (manifestly unreasonable) of the EIR to the request. The Commissioner's decision is that the request falls under the EIR, but that regulation 5(3) of the EIR applies as the information is the complainant's own personal data. This means that the Council was not obliged to comply with the request. The Commissioner does not require any steps.

Request and response

2. On 13 February 2023 the complainant wrote to the Council and requested information in the following terms:

"I am writing to request a copy of all information you hold regarding my planning application [reference number redacted] to be sent within the 20 days required to send this to me".
3. The Council responded on 13 February 2023 and stated that all information relating to the planning application was available on its website and provided a link.

4. On 14 February 2023 the complainant requested an internal review into the handling of their request as they did not consider that all relevant information was published on the website.
5. The Council provided the outcome of its internal review on 17 February 2023 and upheld its position that all relevant information was published on its website. However, in its internal review the Council also sought to apply regulation 12(4)(b) stating that it considered the request to be manifestly unreasonable on the grounds of cost and diversion of resources.

Scope of the case

6. The complainant wrote to the Commissioner on 17 May 2023 to complain about the Council's application of regulation 12(4)(b) to their request.
7. The Commissioner has used his discretion to firstly determine whether the request is a request for the complainant's own personal data. If appropriate, the Commissioner will then decide whether the Council was correct to apply regulation 12(4)(b) to the request.

Reasons for decision

Regulation 5(3) – the exemption for personal data - the complainant's own personal data

8. The duty to make environmental information available on request is imposed by regulation 5(1) of the EIR. Regulation 5(3) provides that regulation 5(1) does not apply to information that is the personal data of the requester. The Commissioner has first considered whether any of the requested information is the personal data of the complainant. If it is, the EIR did not require the Council to disclose this information.
9. Section 3(2) of the DPA defines personal data as:
"any information relating to an identified or identifiable living individual".
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable. 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 or an online identifier; or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual. 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.

11. In this case, the Commissioner has considered the request and the matter to which it relates – a planning application which the complainant has submitted in respect of a property that they own. It is clear to the Commissioner that the complainant is identifiable from the information and the information is significant and biographical to them.
12. When deciding whether a request relates to an individual, it is important to consider the circumstances in which the relevant information is held. For example, it may be the case that certain information held by a public authority may not be personal data when held in isolation. However, if it is subsequently used for another purpose, for example, in order to make decisions that directly affect or have an impact on an individual, or individuals, it could then become personal data.
13. Having considered the complainant's request and the purposes for which it has been made, the Commissioner is satisfied that it relates to the complainant. It is a request for information that is connected to, and reveals something about them; it concerns matters that directly affect the complainant, and would be processed for purposes that will have an impact on them.
14. Therefore, the Commissioner concludes that as the request for this type of information identifies and relates to the complainant, it is a request for their own personal data.
15. As the Commissioner is satisfied that the request relates to the complainant's own personal data, he finds that the exception at regulation 5(3) of the EIR is engaged.
16. As the exception provided at regulation 5(3) is engaged the Council was not obliged by the EIR to disclose the requested information.
17. In light of the, the Commissioner has not gone on to consider the Council's application of regulation 12(4)(b) to the request.

Other matters

18. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern:

Correct access regime

19. In this case, the Council failed to recognise that the complainant had requested their own personal data and did not consider the request under the Data Protection Act 2018 (DPA). Whilst the Commissioner cannot require a public authority to take action under the DPA via a EIR decision notice, in view of his decision that the requested information is the personal data of the complainant, the Council should consider providing a response to the complainant under the DPA in respect of the information they requested

Right of appeal

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

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

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

21. 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.
22. 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

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