

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

### **Decision notice**

**Date:** 31 January 2023

**Public Authority:** Great Yarmouth Borough Council

**Address:** Town Hall  
Hall Plain  
Great Yarmouth  
NR30 2QF

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

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1. The complainant has requested information with regards to her own property. Great Yarmouth Borough Council (the council) responded under the Freedom of Information Act 2000 (the FOIA) providing some information and advising the remaining is not held.
2. 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.
3. The Commissioner does not require any steps.

## Request and response

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4. On 21 February 2022 the complainant made the following information request to the council:

"A full copy of all of [name redacted] reports – I did request this previously but [name redacted] only sent me one report – Report issue no 4. There should now be 5 reports.

A full copy of [name redacted] report from when he visited with [name redacted].

The full report of the new roof, including who authorised it being done correctly and who signed it off at the end.

Evidence of the amount of skips hired for the first new roof compared to the second new roof being done. Also the materials ordered and paid for, for the first roof compared to the second roof being done.

The amount of times previous tenants of [address redacted] have complained about repairs and problems within the property due to damp, mould, humidity and silverfish."

5. The council responded to the request on 21 March 2022 under the FOIA providing some information and advising that it does not hold other information.
6. The complainant requested an internal review on 24 March 2022 as she considered further information is held. The council provided its internal review on the 8 April 2022 upholding its initial response.

## Scope of the case

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7. The complainant wrote to the Commissioner on 28 September 2022 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of the case is to determine whether the request falls under the EIR rather than the FOIA.
9. The Commissioner has also used his discretion to determine whether the request is a request for the complainant's own personal data.

## **Reasons for decision**

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### **Is the request a request for environmental information?**

10. The Commissioner has first considered whether the requested information would constitute environmental information as defined by regulation 2(1) of the EIR.
11. Having reviewed the request and the complainant's complaint, the request is all in relation to the state and condition of the property where the complainant lives, which includes the replacement of the properties roof.
12. The Commissioner is therefore satisfied that the request does fall under the EIR. Regulation 2(1)(f) is relevant – the state of human health and safety and conditions of human life and built structures in conjunction with (a) the landscape and (c) measures affecting or likely to affect the elements in (a).

### **Regulation 5(3) of the EIR**

13. Regulation 5(3) of the EIR provides that any information to which a request for information relates, is exempt information if it constitutes personal data of which the requester is the data subject.
14. Section 3(2) of the Data Protection Act 2018 ("the DPA") defines personal data as: "any information relating to an identified or identifiable living individual".
15. The two main elements of personal data are therefore that the information must relate to a living person, and that the person must be identifiable.
16. 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.
17. 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
18. In this case, the Commissioner has considered the request and the matter to which it relates – the state and condition of the complainant's property. It is clear to the Commissioner that it relates to the complainant who would be identifiable in relation to that information.

19. 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.
20. 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.
21. 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
22. The Commissioner would add that some of the requested information may be the personal data of third parties. However, as this information, if held, would also be the personal data of the complainant, he does not regard it necessary to consider regulation 13 of the EIR (which relates to the personal data of third parties) within this decision notice.
23. 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.
24. As the exception provided at regulation 5(3) is engaged the council was not obliged by the EIR to disclose the requested information.

### **Other matters**

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25. In this case, the council failed to recognise that the request was for the complainant's own personal data and did not consider the request under the General Data Protection Regulation (UK GDPR). Whilst the Commissioner cannot require a public authority to take action under the UK GDPR via a FOIA decision notice, in view of his decision above, he would recommend that the council now reconsider the request as a subject access request for the complainant's own personal data, and respond accordingly

## Right of appeal

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26. 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)

27. 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.
28. 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 .....**

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