

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

**Decision notice**

**Date:** 21 January 2014

**Public Authority:** South Oxfordshire District Council  
**Address:** Benson Lane  
Crowmarsh Gifford  
Wallingford  
OX10 8ED

**Decision (including any steps ordered)**

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1. The complainant requested all the information held in an enforcement file relating to the installation of solar panels at a named address. The public authority disclosed the information requested save the name and contact details of the individual who had complained to the public authority regarding the installation.
2. The Commissioner's decision is that the public authority was entitled to withhold the name and contact details of the individual (the disputed information) on the basis of the exception at regulation 12(3) of the EIR.
3. No steps are required.

**Request and response**

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4. On 4 July 2013 the complainant wrote to the public authority and requested information in the following terms:  
*'.....under the Freedom of Information Act, your Planning Office file on my appeal...'*
5. The public authority subsequently clarified the request was for:  
*A copy of the Enforcement File relating to the investigation into Solar Panels at [Named address].*

6. On 8 July 2013 the public authority supplied the complainant with a redacted copy of the Enforcement File. It claimed that the information redacted was exempt from disclosure on the basis of section 40(2) FOIA.
7. Following an internal review the public authority wrote to the complainant on 25 July 2013. The decision to withhold the redacted information was upheld.

### **Scope of the case**

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8. On 18 July 2013<sup>1</sup> the complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The complainant explained that he had only received parts of the Enforcement File and that he would like a complete copy of the file *'with complainants [sic] name [and] address removed if absolutely necessary.'*
10. During the course of the Commissioner's investigation, the public authority informed the Commissioner that it had previously disclosed all of the information in the Enforcement File excluding the information redacted on the basis of section 40(2). However, the public authority could not provide the Commissioner with copies of the previously disclosed material because it had not made a copy.
11. The Commissioner therefore asked the public authority to provide the complainant with copies of the information it did not consider exempt once again and explain why it was withholding any redacted information. He also asked the public authority to consider whether the request should be handled under the terms of the EIR, rather than the FOIA.
12. The public authority provided the complainant with all of the information in the file save the name and contact details of the individual who had complained to the public authority about the installation. It explained that the name and contact details were exempt from disclosure on the basis of the exception at regulation 12(3) of the EIR.<sup>2</sup>

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<sup>1</sup> However, the complaint was not accepted for investigation until 12 August 2013 following the completion of the internal review.

<sup>2</sup> The public authority decided that the request should have been handled under the EIR.

13. The complainant however disagreed with the public authority's decision to redact information from the Enforcement File.
14. The complainant also clarified that he would like to inspect the original copy of the Enforcement File.
15. On 2 January 2014 the public authority invited the complainant to inspect an electronic copy of the Enforcement File save the information redacted on the basis of regulation 12(3). The public authority explained that it did not retain original paperwork for all of its Planning files once a case is closed.
16. The scope of the investigation therefore was to determine;
  - Whether the public authority was entitled to withhold the name and contact details of the individual<sup>3</sup> on the basis of regulation 12(3) of the EIR.
  - The Commissioner has however commented on whether the public authority has met its obligation to provide the complainant with the opportunity to inspect the information disclosed.

## **Reasons for decision**

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### **Is the information requested environmental information?**

17. For the avoidance of doubt, the Commissioner is satisfied that the disputed information is *environmental information* within the meaning in regulation 2(1)(C) of the EIR. It is information on an activity affecting or likely to affect any of the elements and/or factors in regulation 2(1)(a).

### **Inspecting the Enforcement File**

18. The Commissioner considers that regulation 6(1) should be construed broadly to include requests for inspection of environmental information.
  19. The public authority does not object to the complainant inspecting the Enforcement File (save the disputed information). However, it has only
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<sup>3</sup> Hereinafter referred to interchangeably as 'the disputed information'.

retained an electronic copy of the file. The Commissioner has no reason to question the public authority's position that it does not hold the original copy of the Enforcement File. Clearly, the complainant would be able to inspect the original copy if it had been retained by the public authority.

20. The Commissioner is satisfied that the public authority has met its obligation to provide the complainant the opportunity to inspect the information disclosed to him albeit an electronic copy.

### **Regulation 12(3)**

21. Information is exempt from disclosure on the basis of regulation 12(3) if it constitutes third party personal data (i.e. the personal data of an individual other than the person making the request) and the conditions in regulation 13 are not satisfied.

#### Is the disputed information third party personal data?

22. Personal data is defined in section 1 of the Data Protection Act 1998 (DPA) as:

*'.....data which relate to a living individual who can be identified from those data or from those data and other information which is likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual.'*

23. The name and contact details of the individual who made the complainant relate to him/her and it is information which he/she can be identified from. The information is therefore personal data within the meaning in the DPA.

#### Would the disclosure of the disputed information contravene any of the data protection principles?

24. As mentioned, for regulation 12(3) to apply, the conditions set out in regulation 13 must be met.

25. Regulation 13(1) states:

*'To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below [in regulation 13(2)] is satisfied, a public authority shall not disclose the personal data.'*

26. The first condition in regulation 13(2) states that disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.
27. The public authority explained that the individual who made the complaint requested anonymity. It would therefore be unfair to disclose his/her name and contact details. The public authority did not also consider that the legitimate interests of the public in disclosing the disputed information outweighed the requirement to avoid causing undue distress to the individual.
28. The first data protection principle states:  
  
*'Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless-*  
  
*At least one of the conditions in schedule 2 [DPA] is met..'*
29. In considering whether a disclosure is fair, it is useful to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency.
30. The Commissioner believes that the individual who made the complaint would, quite reasonably, not expect his/her identity and contact details to be revealed to the public in the context of that complaint. The Commissioner believes that disclosure is likely to cause undue distress to the individual. The Commissioner also believes that in the circumstances of this case, the general legitimate interests of the public in accountability and transparency do not override the legitimate interest in protecting the individual's privacy. Disclosure would be an unwarranted infringement of his/her privacy.
31. The complainant is of the view that the disputed information should be disclosed because the individual [who he did not name] has allegedly caused immense distress to his wife. In the circumstances of this case, the Commissioner does not consider that to be a legitimate public interest in disclosing the disputed information. The EIR is not a private information access regime; disclosure is effectively to the public. The public authority has already provided the complainant with all the information in the Enforcement File to assist him in scrutinising the public authority's investigation. Knowing the name and contact details of the individual who made the complaint is not necessary to meet the legitimate interests of the public in that regard.

32. The Commissioner therefore finds that disclosing the disputed information would have been unfair and in contravention of the first data protection principle.
33. The Commissioner consequently finds that the exception at regulation 12(3) was correctly engaged.

## Right of appeal

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34. 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: 0116 249 4253

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)

35. 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.
36. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**