

## **Environmental Information Regulations 2010 (EIR)**

### **Decision notice**

**Date:** 5 October 2022

**Public Authority:** Craven District Council  
**Address:** 1 Belle Vue Square  
Brighton Road  
Skipton  
North Yorkshire  
BD23 1FJ

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

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1. The complainant has requested information with regards to complaints they had made. Craven District Council (the council) responded under the FOIA that the information was 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 the council to take any steps.

## **Request and response**

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4. On 23 November 2021 the complainant made the following information request to the council:

“Over the last 2 years I have made a large number of complaints regarding the construction of [a] house by Termrim construction accessing [street name redacted] to their site. During this time the same issues keep happening. There should be records of my complaints and what actions planning enforcement have done about. I request to see this log please, as I don't think anything as been done apart from emailing me back and making excuses on behalf of the contractor.”

5. The council responded to the complainant on 2 February 2022 stating the request has been dealt with under the FOIA and that no information is held.
6. The complainant requested an internal review on 7 February 2022, disputing that no information was held. The council carried out an internal review on 4 March 2022 upholding its original position.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 9 March 2022 as they considered that the council held information falling within the scope of their request.
8. The Commissioner will firstly determine whether the information requested is information falling under the EIR or the FOIA.
9. Given that the request is for information relating to the complainant's own complaints, the Commissioner has exercised his discretion to consider whether the request is a request for the complainant's own personal data.

## **Reasons for decision**

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### **Is the requested information 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. In this case, the request is in relation to the construction of a house and complaints with regards to it. It appears that this information would relate to the development of land.
12. The Commissioner is therefore satisfied that the request does fall under the EIR. Regulation 2(1)(c) with (b) is relevant to the request. The information requested would relate to measures affecting, or likely to effect the elements of the environment, namely the landscape.
13. The Commissioner will therefore go on to consider regulation 5(3) of the EIR.

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

14. 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.
15. 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".
16. 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.
17. 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
18. 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.
19. In this case, the request is for information created following complaints made by the complainant to the council. The request is clear that it is specific to the complainant's own complaints.

20. The Commissioner's view is that any such information will relate to the complainant and they will be identifiable in relation to that information. Therefore, any information falling within the scope of the request would be the personal data of the complainant.
21. As the Commissioner is satisfied that any information within the scope of the request would be the complainant's own personal data, he finds that the exception at regulation 5(3) of the EIR is engaged in relation to the request.
22. As the exception provided by regulation 5(3) is engaged the council was not obliged by the FOIA to disclose the requested information.

### **Other matters**

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23. 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 GDPR. Whilst the Commissioner cannot require a public authority to take action under the GDPR via a EIR decision notice, in view of his decision above the council should reconsider the request as a subject access request for the complainant's own personal data.

## Right of appeal

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24. 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)

25. 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.
26. 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** .....

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**