

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 7 March 2023

Public Authority: The London Borough of Waltham Forest

Address: Waltham Forest
Town Hall
Forest Road
Walthamstow
E17 4JF

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Waltham Forest ("the Council") relating to a report on a specific property owned by the complainant.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 5(3) (personal information) of the EIR to refuse to provide the requested information.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. The complainant made the following information request to the Council on 10 October 2022:

"I would like to submit a Freedom of Information request for the report by Quest Gates on my property at [address redacted]. The report was subsequent to a tree root liability specialist's visit on 7 June 2022. Access was given on the implicit understanding the

report will be shared, as is normal in such circumstances. No caveat to the contrary was ever made. I am the owner occupier of the said property.”

5. The Council refused to provide the requested information citing section 40(1) (personal information) of the FOIA as its basis for doing so.

Reasons for decision

6. Whilst the Council has handled the request under the FOIA, as the complainant has requested a report relating to tree roots, the Commissioner considers that the requested information is likely to be environmental and therefore, the Council should have handled the request under the EIR.
7. The Commissioner has therefore considered whether the Council is entitled to rely on regulation 5(3) (personal information) to refuse to provide the requested information.
8. Regulation 5(1) of the EIR states that
“a public authority that holds environmental information shall make it available on request.”
9. However, regulation 5(3) of the EIR states that:
“To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.”
10. 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.”
11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
12. In this case, the complainant has requested a report relating to a property they own. The Commissioner considers any information which relates to the complainant’s property to be the complainant’s personal data as the information would relate to and identify the complainant. He therefore considers the requested report to be the complainant’s personal data and to fall within the within the definition of personal data in section 3(2) of the DPA.

13. Therefore, the Commissioner's decision is that the Council is entitled to rely on regulation 5(3) of the EIR to refuse to provide the requested information.

Other matters

14. In this case, the Council recognised that the complainant had made a request for their own personal data but chose to handle the request under the FOIA rather than under the Data Protection Act 2018 (DPA) as it considered that the requested information would be exempt from disclosure under the 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, even if the Council determines that the requested information is exempt under the DPA.

Right of appeal

15. 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

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

16. 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.
17. 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

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