

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

**Date:** 20 May 2024

**Public Authority:** London Borough of Ealing  
**Address:** Perceval House  
14-16 Uxbridge Road  
Ealing  
W5 2HL

**Decision (including any steps ordered)**

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1. The complainant has requested information contained in two planning applications for properties which share a boundary with their home.
2. London Borough of Ealing (the "Council") disclosed some information and relied on regulation 13 of the EIR (third party personal information) to withhold other parts of the requested information.
3. During the course of the Commissioner's investigation, the Council additionally sought to rely on regulation 12(5)(d) of the EIR (confidentiality of proceedings) to withhold a part of the requested information.
4. The Commissioner's decision is that regulation 13 applies to all the withheld information. However, the Council breached regulation 11(4) of the EIR as it did not provide its internal review outcome within 40 working days.
5. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

## Request and response

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6. On 9 August 2023, the complainant wrote to the public authority and requested information in the following terms:

"Request for undisclosed information, Planning References [reference number and address redacted] and [reference number and address redacted]. Please treat as FOI request.

This is a request for the disclosure of information withheld during the processing of the above referenced planning applications for properties which share a boundary with my home.

1. Re. [reference number redacted],

please make available the document listed as "[employee name redacted] EmailCorrespondence" which the Council did not publish but which appears in a list of supporting documentation provided by the applicant. Requests made via online comments were ignored and dismissed in the planning report as follows:

*"This email references the previous application and that there were issues with the design. The current application has amended the design. This email is informal and non-binding and the scheme has been considered by a new case officer and assessed against the GPDO. This therefore does not materially impact upon either the consideration or assessment of the application. Given that this correspondence is informal and non-binding, it also means that members of the public have not been prejudiced by this document."*

Since the applicant considered this email relevant to the proposal and chose to put it in the public domain, it should not be treated as informal and should have been published at the time of the public consultation. Members of the public need to see this document in order to verify that they have not been prejudiced. They cannot rely on the judgment of Planning Officers who describe [property name redacted] as "currently a three storey block of flats" when photos and elevation drawings clearly show a four storey building.

2. Re. [reference number redacted],

please disclose the name and title of the officer mentioned on the application form as having given pre-application advice on 10.10.2022. This part of the form was redacted as shown in the attached screenshot. When this information was requested, the reply was "I am unclear as to what pre-application advice you are referring to. I have reviewed my records and cannot see that Planning has provided any pre-application advice on this date. ..." However, a name and date for

- this advice were entered on the application form. There can be no justification for withholding such information. Why is the name of a council officer considered personal information and redacted by a Planning Department who decided to publish my name and comments (already available online) as part of the documents relating to application reference [reference number redacted]?"
7. The Council responded on 31 August 2023. It disclosed some of the requested information, namely it published on its website the "[employee name redacted] EmailCorrespondence" - in redacted form (the "email correspondence"). The redactions made related to name and email address of the following individuals:
    - a. Planning Officer at the Council; and
    - b. Part II Architectural Assistant at [name of Architect company redacted] (and another architect at [name of Architect company redacted] who was cc-ed into the emails).
  8. However, the Council withheld the name and title of the Council officer mentioned on the planning application form as having given pre-application advice. The Council said: "The Planning Portal redacted this information from the application form." No further explanation was provided and no EIR exemptions were cited.
  9. The complainant requested an internal review on 2 October 2023. In relation to the email correspondence disclosed, the complainant disputed the redaction of the names and email addresses. In relation to the information redacted in the pre-application section of the planning application form (the name and title) the complainant argued that this information should have been provided.
  10. On 11 December 2023, having not received a response to their request for internal review, the complainant complained to the Commissioner.
  11. The Council provided an internal review on 7 March 2024 and revised its position. In relation to the email correspondence, it further disclosed the name and email address of the Planning Officer at the Council but maintained its reliance on regulation 13 to withhold the same information about the Part II Architectural Assistant (and the architect cc-ed in). It also maintained its position and withheld the name and title of the Council officer mentioned on the planning application form as having given pre-application advice saying that "the agent had made a mistake and incorrectly stated they had pre-app advice, which they didn't."

## Scope of the case

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12. The complainant contacted the Commissioner again on 20 March 2024 to complain about the way their request for information had been handled.
13. During the course of the Commissioner's investigation, the Commissioner wrote to the Council seeking more information about the redactions made for personal data in the documents in question.
14. On 2 April 2024, the Council responded to the Commissioner. It changed its position regarding the withholding of the name and title of the Council officer on the planning application form arguing that it could withhold the information under regulation 12(5)(d) of the EIR (confidentiality of proceedings). It maintained its position to withhold the names and email addresses in the email correspondence under regulation 13.
15. The Commissioner notes that, in addition to the complaint about the redactions in the requested information, the complainant also disputes that the planning application form incorrectly stated that no pre-application advice was sought. The complainant said:

"The Council expects me to believe that the information provided by a highly experienced agent on a planning application form was an error. I find it difficult to accept that the agent would have made up the date of 10.10.2022 and there was no communication with either the applicant or his agent on that date. Even if there is no record or reference of formal pre-application advice, it seems reasonable to assume the agent must be quoting either a correspondence or a conversation on that day, either on the phone or during a site visit."
16. In addition, the complainant also argued that it was their understanding that the Council is legally obliged to make documents in the Public Register available for inspection and cited "*section 69(5)(a) of the Town and Country Planning Act 1990, article 40(3)(a) and later (4)(a) and SI 2015/595 etc*".
17. The Commissioner's investigation can only consider the EIR in this decision notice, as his regulatory powers permit. In addition, the Commissioner's statutory remit does not extend to questioning the veracity of information provided in response to FOI or EIR requests. The Council still holds information which could contain inaccuracies and this issue will need to be addressed by the complainant with the Council under its usual complaint processes.

18. Therefore, the Commissioner considers that the scope of his investigation is to establish whether the public authority is entitled to withhold the redacted information under the EIR as follows:
- a. the name and email address of the Part II Architectural Assistant and the architect cc-ed into the emails in the email correspondence; and
  - b. the name and title of the Council officer mentioned on the application form as having given pre-application advice.

## **Reasons for decision**

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### **Regulation 13 – third party personal information**

19. Regulation 13 of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
20. In this case the relevant condition is contained in regulation 13(2A). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
21. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then regulation 13(2A) of the EIR cannot apply.
22. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

### **Is the information personal data?**

23. Section 3(2) of the DPA defines personal data as:
- “any information relating to an identified or identifiable living individual”.
24. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
25. 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, an online identifier or to one or

more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

26. 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.
27. The information in question is:
  - the name and email address of the Part II Architectural and another architect who was cc-ed into the emails contained in the Email Correspondence; and
  - the name and title of the Council officer mentioned on the application form as having given pre-application advice.
28. Having reviewed the unredacted withheld information, the Commissioner is satisfied that the information names and identifies individuals at an architectural practice and at the Council. He is also satisfied that this information both relates to and identifies these individuals. The Commissioner understands that a Part II Architectural Assistant is a trainee position where most architecture graduates start<sup>1</sup>. The architect cc-ed into the emails is more senior but is below director level. The Council employee works in the planning department and is below Head of Service level.
29. The redacted information therefore falls within the definition of 'personal data' in section 3(2) of the DPA - as it is personal data relating to third parties.
30. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
31. The most relevant DP principle in this case is principle (a).

**Would disclosure contravene principle (a)?**

32. Article 5(1)(a) of the GDPR states that:

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<sup>1</sup> <https://www.architecture.com/education-cpd-and-careers/how-to-become-an-architect>

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

33. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
34. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

### **Lawful processing: Article 6(1)(f) of the GDPR**

35. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”<sup>2</sup>.

36. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test:-

**Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

**Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;

**Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

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<sup>2</sup> Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) the EIR (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

37. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

### **The Architects - Legitimate interests**

38. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
39. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
40. The Council identified a legitimate interest in promoting greater transparency and public understanding of how the Council deals with planning applications.
41. In this case, the Commissioner notes that the complainant's information request states that they live adjacent to the properties where planning applications have been made. It is clear that the complainant has an obvious personal interest in disclosure of the withheld information.
42. The Commissioner does therefore consider that there is a legitimate interest in disclosure of information which may hold the Council to account and promotes transparency in relation to its planning procedures. The Commissioner recognises that the complainant's legitimate interest would be served by disclosure of the withheld information and has therefore gone on to consider the necessity test.

### **Is disclosure necessary?**

43. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.
44. The Commissioner notes that the information redacted in the email correspondence is the names and email addresses of the Part II Architectural Assistant and another more senior but below director level architect who was cc-ed into the emails.
45. The complainant argues that the names and email addresses of both architects should be disclosed as they are public facing roles.



46. The Commissioner considers that the redacted information provided to the complainant in the email correspondence was sufficient for the purpose of promoting greater transparency and public understanding of the planning matter. He accepts that in this case disclosure of the names and email address to the world at large is not necessary to meet the legitimate interest in disclosure. The legitimate public interest in disclosure has been met by the disclosure of most of the content of the emails.
47. As the Commissioner has decided in this case that disclosure to the world at large is not necessary to meet the legitimate interest in disclosure, he has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).
48. The Commissioner has therefore decided that the Council was entitled to withhold the names and email addresses of the two architects under regulation 13(1) of the EIR (personal information).
49. The Commissioner notes for completeness that, even if he had gone on to conduct the balancing test (ie if he accepted that disclosure was necessary), he would have found that the balance of legitimate reasons favoured withholding the information. The Council argues that to disclose the names and email addresses to the public as a whole would not fall within the expectations of these individuals.
50. The Commissioner agrees with the Council. He considers that to disclose the names and email address information to the public as a whole would not fall within the expectations of these individuals as it would mean that they could be contacted directly by any member of the public not related to their current or past dealings with the Council.

### **The Council employee in the planning application form**

51. In this case the withheld information only consists of the first name, surname and honorific title (e.g.: Mr, Mrs, Miss, Ms etc) of the Council officer contained on the planning application form in the pre-application advice section. All the other information in that part of the form has been disclosed – the reference number, date, and details of the application advice received.
52. The Council explained in its submissions to the Commissioner that, although the requested information is personal data on the planning application form, the Council was not relying on regulation 13 to withhold this information. Instead, it wished to rely on regulation 12(5)(d) to withhold the name and title of the Council officer. The Council explained that “the information withheld relates to a pre-application advice process offered by the Council.”

53. In their internal review request, the complainant argued that they were not asking whether pre-application advice has been given or not, but rather they were asking for disclosure of the information entered on the application form in the pre-application advice section. They said: "I fail to see how the name and title of a planning officer (whose name almost certainly appears in the delegated report and whom we had been emailing) can be considered personal information requiring redaction since they were acting in a professional capacity."

### **Regulation 12(5)(d) EIR**

54. For the benefit of the Council, the Commissioner notes that in this particular case, the requested information that has been redacted on the planning form in the pre-application advice section does not concern information about the actual pre-application exchanges between the Council and the applicant who made the planning application. This is the more appropriate circumstance when regulation 12(5)(d) is cited to withhold this type of information.
55. Regulation 12(5)(d) of the EIR says that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law. Determining whether this exception is engaged requires consideration of the following:
- Are the 'proceedings' in question ones that the exception is intended to protect?
  - Is the confidentiality of those proceedings provided by law?
  - Would disclosing the information adversely affect that confidentiality?
56. The Council explained in its submissions to the Commissioner that "although the requested information is personal data on the planning application form the Council was not relying on Regulation 13 to withhold this information. Instead, it wished to rely on Regulation 12(5)(d) to withhold the name and title".
57. The Council explained that "the information withheld under this exception relates to a pre-application advice process offered by the Council." The Council argued that the Commissioner has previously acknowledged in a range of decisions that such a process represents a 'proceeding' for the purposes of the exception.
58. In this case it is noted that the withheld information only consists of the name and title of the Council officer mentioned on the application form as having given pre-application advice. Therefore, in the Commissioner's opinion, the redacted information does not relate to pre-application

advice, such as email exchanges or reports, but rather is only the first name, surname and honorific title of the Council officer. All the other information in that part of the form has been disclosed – the reference number, date, and details of the application advice received (“submit minor material variation application”). The Commissioner notes that the withheld information does not concern information about the actual pre-application exchanges between it and the applicant who made the planning application.

59. Therefore, the Commissioner is of the view that regulation 12(5)(d) has been incorrectly cited by the Council in the specific circumstances of this case and none of the conditions set out above are satisfied. In the Commissioner’s view disclosing the name and title of the Council officer mentioned on the application form would not have an adverse effect on the confidentiality of the pre-application process as it would not damage the general principle of confidentiality itself and result in harm to the interest the exception is designed to protect. The effectiveness of the pre-planning application process is not undermined by disclosing the name of the council employee. Disclosure would have no impact on the wider planning process and impact on the Council’s ability to run such a process effectively.
60. The Commissioner has therefore gone on to proactively consider if regulation 13 is applicable to the name and title of the Council officer on the application form (which was in fact the Council’s original position).

### **Legitimate interests**

61. As explained above, the Commissioner considers that the first name, surname and title of the Council officer contained on the application form in the pre-application advice section falls within the definition of ‘personal data’ in section 3(2) of the DPA - as it is personal data relating to third parties.
62. Similarly to the situation with the architects set out above, the Commissioner considers that there is a legitimate interest in disclosure of information which may hold the Council to account and promotes transparency in relation to its planning procedures. In addition, the Commissioner recognises that the complainant’s legitimate interest would be served by disclosure of the withheld information and has therefore gone on to consider the necessity test.

### **Is disclosure necessary?**

63. The complainant argues that the name and title of the Council employee should be disclosed as it is public facing role and the employee was acting in their professional capacity and is known to them.

64. The Commissioner agrees that, by virtue of their role, it is accepted that the Council employee in question is a public facing representative of the Council and must be comfortable with a certain level of transparency and accountability.
65. However, the Commissioner is conscious that it is standard practice for the names and contact details of certain employees in organisations to be redacted from FOI disclosures. The position relating to the non-disclosure of junior staff names, as opposed to the disclosure of more senior staff names at Head of Service/Director level and above is well established and supported in a recent ICO decision notices.<sup>3</sup> The position is also supported in the Upper Tribunal case of *Cox v Information Commissioner and Home Office*: [2018] UKUT 119 (AAC).<sup>4</sup>
66. The Commissioner considers that the redacted information provided to the complainant in the planning application form was sufficient for the purpose of promoting greater transparency and public understanding of the planning issue. He accepts that in this case disclosure of the name and title to the world at large is not necessary to meet the legitimate interest in disclosure. The legitimate public interest in disclosure has been met by the disclosure of most of the content of the planning application form.
67. As above, the Commissioner notes for completeness that, even if he had gone on to conduct the balancing test (ie if he accepted that disclosure was necessary), he would have found that the balance of legitimate reasons favoured withholding the information.
68. The Commissioner considers that to disclose the name and title of the Council employee - to the public as a whole - would not fall within the expectations of this individual as it would mean that they could be contacted directly by any member of the public not related to their current or past dealings with the Council. Given the contentious nature of some planning decisions made by the Council, it is arguable that the

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<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4023656/ic-164636-c6t0.pdf>; [https://ico.org.uk/media/action-weve-taken/decision-notices/2012/754504/fs\\_50446511.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2012/754504/fs_50446511.pdf); <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022405/ic-163983-t2m0.pdf>;

<sup>4</sup>[https://assets.publishing.service.gov.uk/media/5aded4de5274a0d820946cd/GIA\\_2906\\_2017-00.pdf](https://assets.publishing.service.gov.uk/media/5aded4de5274a0d820946cd/GIA_2906_2017-00.pdf)

employee could be subjected to unwarranted distress by some of these interactions.

69. The Commissioner also wants to put on record that, in his opinion, the Council should not have disclosed the name of the Council employee in the "[employee name redacted] EmailCorrespondence" as part of its internal review response. The Commissioner understands that the Council employee also works in the planning department and is below Director level. The Council provided no explanation of its decision to disclose this Council employee's name in its internal review or in its submissions to the Commissioner. The Commissioner considers that the redacted email information provided to the complainant in the initial response was sufficient for the purpose of promoting greater transparency and public understanding of the planning issue. In this case, for the reasons set out above in relation to the other Council employee, disclosure of the name of the Council employee in the emails - to the world at large - is not necessary to meet the legitimate interest in disclosure. The legitimate public interest in disclosure has been met by the disclosure of most of the content of the emails.
70. Both the Council and complainant have referred the Commissioner in support of their cases to a recent Decision Notice IC-260057-L9S0<sup>5</sup> (which is currently the subject of appeal by the complainant in that case). It is noted that IC-260057-L9S0 has different facts to this case as the planning application form in that case did not have a pre-application advice section. In the circumstances therefore, it cannot be relied upon by either party in the specific circumstances of this case.
71. The Commissioner has therefore decided that the Council was entitled to withhold the name and title of the Council employee under regulation 13(1) of the EIR (personal information). The Commissioner made a similar finding in relation to the architects.

## **Procedural matters**

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72. Under the requirements of regulation 11(4), a public authority is obliged to respond for a request for internal review within 40 working days. In this case the internal review was requested on 2 October 2023 and not
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<sup>5</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4028734/ic-260057-l9s0.pdf>

provided until 7 March 2024. This amounts to 111 working days and is plainly unacceptable.

73. In failing to carry out an internal review within 40 working days the Council has breached regulation 11(4) of the EIR.

### **Other matters**

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74. Given his comments at paragraph 69 above, the Commissioner would like to draw the Council's attention to his guidance on requests for personal data about public authority employees<sup>6</sup>.

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<sup>6</sup>[https://ico.org.uk/media/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/1187/section_40_requests_for_personal_data_about_employees.pdf)

## **Right of appeal**

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75. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

76. 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.

77. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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