

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 July 2024

Public Authority: Brecon Beacons National Park Authority
Address: Plas y Ffynnon
Cambrian Way
Brecon
LD3 7HP

Decision (including any steps ordered)

1. The complainant requested, on behalf of their clients, information about an Application for Certificate of Lawfulness for a specific property. Brecon Beacons National Park Authority (the Authority) withheld the information requested under regulations 12(5)(b) (legal professional privilege) and 13 (personal data).
2. The Commissioner's decision is that regulation 5(3) of the EIR applies as the information is the personal data of the complainant's clients. 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

4. The complainant in this case is the appointed Planning Agent to individuals who submitted an Application for Certificate of Lawfulness (the Application) for activity at their own property. On 13 November 2023, the complainant wrote to the Authority regarding the Application and requested information in the following terms:

- “The brief supplied by the Authority to Geldards solicitors requesting a review of the application;
 - The response from Geldards; and
 - Any other written exchanges (including emails) between authority officials and Geldards”.
5. The Authority responded on 18 December 2023 and stated that the information requested was exempt under regulations 12(5)(b) and 13 of the EIR.
 6. On 19 December 2023 the complainant requested an internal review of the refusal to disclose the information requested.
 7. The Authority provided the outcome of its internal review on 12 February 2024 and upheld its decision that regulations 12(5)(b) and 13 of the EIR applied to the request.

Scope of the case

8. The complainant contacted the Commissioner on 13 February 2024 to complain about the way their request for information had been handled.
9. During the course of the Commissioner’s investigation, in light of the fact that the complainant is acting on behalf of the applicants who submitted the Application, he asked the Authority to consider whether the information constituted the personal data of the complainant’s clients, on behalf of whom the request had been made.
10. Having viewed the withheld information, the Commissioner has exercised his discretion to consider whether it constitutes the personal data of the complainant’s clients.

Reasons for decision

Regulation 5(3) – the exemption for personal data - the complainant’s own personal data

11. The duty to make environmental information available on request is imposed by regulation 5(1) of the EIR. Regulation 5(3) provides that regulation 5(1) does not apply to information that is the personal data of the requester. The Commissioner has first considered whether any of the requested information is the personal data of the complainant. If it is, the EIR did not require the Council to disclose this information.
12. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable. 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. 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.
14. In this case, the Commissioner has considered the request and the matter to which it relates – an Application which the complainant's clients submitted in respect of a property that they own. It is clear to the Commissioner that the complainant's clients are identifiable from the information and the information is significant and biographical to them.
15. 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.
16. 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's clients. It is a request for information that is connected to, and reveals something about them; it concerns matters that directly affect the complainant's clients, and would be processed for purposes that will have an impact on them.
17. Therefore, the Commissioner concludes that as the request for this type of information identifies and relates to the complainant's clients, it is a request for their own personal data.
18. 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.
19. As the exception provided at regulation 5(3) is engaged the Authority was not obliged by the EIR to disclose the requested information.

Other matters

20. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern:

Correct access regime

21. In this case, the Authority failed to recognise that the complainant had requested their client's own personal data and did not consider the request under the Data Protection Act 2018 (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's clients, the Authority should consider providing a response to the complainant under the DPA in respect of the information they requested.
22. The Commissioner would point out that this does not necessarily mean that the complainant is entitled to receive this information. There are a number of reasons why a data controller may be entitled to withhold information from disclosure under a Subject Access Request (SAR) – this includes where the information is subject to legal professional privilege. There will therefore inevitably be some information that the complainant is not entitled to receive either via the EIR or via a SAR.

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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.

Joanne Edwards
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Wycliffe House
Water Lane
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