

## **Environmental Information Regulations, 2004. (EIRs) Regulation 13 – Personal data**

Regulation 13(1) together with the conditions in Regulation 13(2)(a)(i) and 13(2)(a)(ii) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 2018 (‘the DPA 2018’) and means any information relating to an identified or identifiable living individual. 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.

We have concluded that, in this instance, the information requested contains third party personal data.

Under Regulation 13(1) of the EIRs, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

*“processed lawfully, fairly and in a transparent manner in relation to the data subject”*

The lawful basis that is most relevant in relation to a request for information under the EIRs is Article 6(1)(f). This 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”.*

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

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

### **1. Legitimate interests**

I recognise that there is a legitimate interest in knowing the identities of those attending meetings discussing the financing of remedial work to mid and high rise residential properties in order to show that this work is being taken seriously and that senior representatives are involved in those discussions.

### **2. Is disclosure necessary?**

Whilst there is a legitimate interest in knowing the identities of the lead representatives attending meetings, to show that the matter is being considered at the highest level, I do not believe it is necessary to release the names of more junior representatives. The names of the more junior representatives, I believe, add nothing to the understanding of the discussions nor that the issue is being treated with the seriousness that it deserves.

I am also withholding the names of some of the attendees, where their identities are not already a matter of public record. I believe that disclosure of this information would breach individual fundamental rights and freedoms provided by the GDPR.

### **3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms**

On balance, I believe that disclosure of the identities of more junior representatives and identities not already in the public domain would breach their fundamental rights and freedoms provided by the GDPR. As such I believe these individuals names can and should be properly withheld.