

MEETING REPORT (SCOTLAND OFFICE)

Purpose:	To determine whether the data contained on an Energy Performance Certificate (EPC) constitutes personal data for the purposes of the Data Protection Act (the Act)
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Date:	07/06/13	Location:	Melville St
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ICO Attendees:	[Redacted]	External Attendees:	[Redacted] , Scottish Government
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Issues discussed/ questions raised:	<ul style="list-style-type: none"> • Scottish Government (SG) has received an Information Request for EPC data; • <u>SG contacted ICO to clarify the assertion that EPC data should be considered personal data under the DPA. This assertion is based upon the premise that information contained in an EPC relates to an individual;</u> • EPCs do not<u>would normally</u> contain the name of the owner but do include the<u>and</u> address of a building <u>and information on the carbon and energy performance of the building</u>. The owner can be an organisation an individual; • The enabling legislation for EPCs <u>requires disclosure of an EPC under specific circumstances (building owner must make EPC available to prospective sellers of tenants when marketing; must display in buildings over 500m² which are 'frequently visited by the public'). Out with these situations, access to data is limited to those possessing the relevant 'report reference number' or to 'authorised recipients' (types of organisations delivering Govt. carbon or energy reduction policies)</u>stricts disclosure on a very limited need-to-know basis; • Where the owner is an organisation, it is unlikely that any identifying data would constitute personal data for the purposes of the Act but, <u>due to the owner not being identified on the EPC</u>, the current
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system is unable to separate those entries from individuals - whose data are likely to constitute personal data;

- Having been contacted by the Data Protection Officer at SG, **[Redacted]** had previously agreed with her that with the name removed it was unlikely that EPCs would constitute personal data;
- However, in discussion with the relevant UK Government department some time ago, the ICO's **[Redacted]** has previously agreed that EPC data relating to individuals are personal data. It was also agreed that even with the name of the individual removed, the address would allow a third party to make the connection between the building and the individual via other public registers, such as the property register. As a result, the data would still be considered personal data;
- In spite of this, it does not mean the data cannot be used but requires that they are used having met specific conditions, such as fair processing/consent ([provisions in this respect are in place to enable access to data by 'authorised recipients'](#));
- An on-line, searchable public register for EPC data has recently been introduced in England and while this is not envisaged for Scotland at this time, it is not ruled out for the future;
- **[Redacted]** felt that if it was determined that EPCs with names removed were not personal data, this could lead to EPCs being made available to the general public and, as a result, used to target energy related marketing and that this would be counter to the provisions of the enabling legislation;
- **[Redacted]** suggested that, in the event that EPCs did constitute personal data, they may be exempt from disclosure under the Environmental Information (Scotland) Regulations (EIR(S)s). For EPCs relating to individuals, exemption from disclosure may apply under R11(2), satisfying condition (3)(a)(i), in that it would likely be unfair (DPP1) to the individual to disclose if they had no expectation of release into the wider public domain. In addition, R10(7) may pertain in respect of EPCs relating to organisations as they are not reasonably capable of being separated from EPCs relating to individuals.

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Actions:	<ul style="list-style-type: none">• [Redacted] will relate the discussion to SG colleagues for consideration.• [Redacted] to forward a note of the meeting to [Redacted] for accuracy.
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