

**202200286805 EIR – Whether data made publicly available from the Scottish Energy Performance Certificate Register is personal data**

12/04/2013 13:58

From: [redacted]@gov.scot

To: [redacted]@ico.gsi.gov.uk; [redacted]@ico.gsi.gov.uk

Subject: Data Protection Act (DPA) - Energy Performance Certificates (EPC) Building Standards Division - query to UK Information Commissioner's Office (ICO) whether EPC is personal data.

Hi [redacted], [redacted],

I hope you are well. Colleagues in Building Standards Division have approached our team in relation to an EIR request which may involve personal data. I attach the briefing document they provided: [Attachment 1]. The Energy Performance Certificates (EPC) register (<https://www.scottishepcregister.org.uk/>) provides detail of domestic and commercial buildings energy performance, however this is currently restricted and does not provide public access. The information relates to the buildings, however they do contain addresses and names (although for commercial buildings this would be the name of the company). They have requested advice on how much information can be provided for the EIR response.

Previously both the UK Department for Communities and Local Government (DCLG) and the SG took the position that information on energy performance is personal data as names and addresses are detailed in the register. However the DCLG has recently changed their position and made the register available online, however the register is only searchable using addresses/location information. The DCLG has carried out a PIA:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6059/2121715.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6059/2121715.pdf)

I have discussed this with our lawyers and due to the nature of the EPCs we would appreciate your advice as to whether this could constitute personal data. Currently our thinking is the names should not be detailed but the information relating to the building energy performance could be made available. Obviously by providing address details along with EPC information it could enable someone to use other publicly available information to identify individuals. However I do not think the EPC information itself is personal data (it relates to a building not an individual). I'd appreciate your advice on this as it is certainly not clear whether it could be argued that this could constitute personal data.

Happy to discuss further if this would be useful. I look forward to hearing from you.

Kind regards

[redacted]

[redacted] | Data Protection & Information Assets Manager | The Scottish Government | Information Services and Information Systems (ISIS) | Office of Security & Information Assurance (OSIA) | H Spur | Saughton House | Broomhouse

**04/06/2013 14:30**

From: [redacted]@gov.scot  
To: [redacted]@ico.gsi.gov.uk  
Cc: [redacted]@scotland.gsi.gov.uk; [redacted]@scotland.gsi.gov.uk

Building Standards – Energy Performance Certificates (EPC) – DPA Request – Meeting to discuss EPC data

**[Redacted]** –

Thanks for agreeing to meet at 9:30 on Friday at your offices, to discuss the status of energy performance data as 'personal data' under the DPA.

I've attached a short and hopefully informative briefing note. I will bring along supporting information should we need to discuss it. Understand you will also have previous info from [redacted].

Also now advised from our opposite number in DCLG that they still regard EPC data as personal data as confirmed by the Information Commissioner for England. Their policy contact in ICO is [redacted]. Would it be beneficial to catch up with [redacted] on his discussions with DCLG?

We understand that this status is based upon the same view we have, on the basis that:

- data relates to but does not directly identify an individual;
- the identity of a building owner can be determined by combining the energy performance data with other freely available records; and
- data on the building identifies responsibilities of the individual; and
- data may also be of commercial interest to parties with access, out with the situations where the data is required, under law, to be made available – sale or rental transactions
- 

[Attachment 2]

Regards

**[Redacted]**

**[Redacted]**  
**[Redacted]** - Energy & EPBD

Scottish Government | Building Standards Division | Directorate for the Built Environment  
Address: Denholm House | Almondvale Business Park | Livingston | EH54 6GA  
': [redacted]  
\*: [redacted]@scotland.gsi.gov.uk

:: [www.scotland.gov.uk/bsd](http://www.scotland.gov.uk/bsd)

**02/07/2013 15:13**

To: [redacted]@gov.scot  
Cc: [redacted]@scotland.gsi.gov.uk; [redacted]@scotland.gsi.gov.uk  
; [redacted]@scotland.gsi.gov.uk

From: [redacted]@ico.gsi.gov.uk

Building Standards – Energy Performance Certificates (EPC) – ICO meeting to discuss EPC data

[Attachment 3]  
WITH ATTACHMENT THIS TIME!!!

Dear [redacted]

I hope you have had a good holiday.

I apologise for not getting this meeting note to you sooner. As you know, I went on holiday immediately after our meeting and I am only just now able to put together something for your consideration. Attached is my recollection of the areas of discussion but please do get back to me if I've omitted or misrepresented anything.

Kind regards

[redacted]

[redacted] Sr Policy Officer

Information Commissioner's Office - Scotland, 45 Melville Street, Edinburgh EH3 7HL

T. [redacted] F. [redacted] [www.org.uk](http://www.org.uk)

**From:** [redacted]@scotland.gsi.gov.uk [mailto:[redacted]@scotland.gsi.gov.uk]

**Sent:** 28 June 2013 10:59

**To:** [redacted]

**Cc:** [redacted]@scotland.gsi.gov.uk; [redacted]@scotland.gsi.gov.uk;

[redacted]@scotland.gsi.gov.uk

**Subject:** RE: Re: meeting to discuss EPC data

[Redacted] –

I've included one more colleague - **[redacted]** - who would have an interest in the minute of our meeting and on the advice from ICO UK on EPCs as personal data, as part of background to review of a related EIRs case.

I'm now on annual leave until 10<sup>th</sup> July so grateful if the information could be copied to those CC'd into this email.

Regards.

**[Redacted]**

---

**From:** **[redacted]**  
**Sent:** 19 June 2013 10:58  
**To:** '**[redacted]**@ico.gsi.gov.uk'  
**Cc:** **[redacted]**; **[redacted]**  
**Subject:** RE: Re: meeting to discuss EPC data

**[Redacted]** –

Thanks again for arranging our meeting of Friday the 7<sup>th</sup> – I found it both useful and informative.

You mentioned that you would forward a note of the meeting and confirmation from the ICO UK office on the status of EPC information as personal data under the DPA, as discussed with DCLG. These would be useful as it is likely that we will be discussing this point further with legal colleagues and understanding the UK perspective will be essential.

Recognise you may still be on leave at this time but look forward to your reply after you get back.

Thanks again.

**[Redacted]**

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**From:** **[redacted]**  
**Sent:** 04 June 2013 14:30  
**To:** **[redacted]**@ico.gsi.gov.uk  
**Cc:** **[redacted]**@scotland.gsi.gov.uk; **[redacted]**@scotland.gsi.gov.uk  
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- data may also be of commercial interest to parties with access, out with the situations where the data is required, under law, to be made available – sale or rental transactions

Regards

**[Redacted]**

**[Redacted]**

Team Leader - Energy & EPBD

Scottish Government | Building Standards Division | Directorate for the Built Environment

Address: Denholm House | Almondvale Business Park | Livingston | EH54 6GA

': **[Redacted]**

\*: **[redacted]**@scotland.gsi.gov.uk

:: [www.scotland.gov.uk/bsd](http://www.scotland.gov.uk/bsd)

**08/07/2013 11:38**

From: **[redacted]**@gov.scot

To: **[redacted]**@ico.gsi.gov.scot

Cc: **[redacted]**@scotland.gsi.gov.scot; **[redacted]**@scotland.gsi.gov.scot;

**[redacted]**@scotland.gsi.gov.scot

Building Standards – Energy Performance Certificates (EPC) – FOI Request – BSD meeting to discuss EPC data

[Attachment 4]

**[Redacted]** –

Back from a week in the country and glad for the rest!

Thank you for the minute. I've added a little extra detail and made one correction (now BP 3 – no names on EPCs).

Other than that, happy that it reflects our discussions.

Would it be possible to have sight of the correspondence between ICO and DCLG on the personal data issue as this would be useful in discussions with our solicitors, given that I understand there needs to be a consistent UK line on this point. Happy to progress with DCLG colleagues if their consent is needed.

regards

**[Redacted]**

**From:** **[Redacted]** [mailto:**[redacted]**@ico.gsi.gov.uk]  
**Sent:** 02 July 2013 15:13  
**To:** **[redacted]**@scotland.gsi.gov.uk  
**Cc:** **[redacted]**@scotland.gsi.gov.uk; **[redacted]**@scotland.gsi.gov.uk;  
**[redacted]**@scotland.gsi.gov.uk  
**Subject:** RE: Re: meeting to discuss EPC data

WITH ATTACHMENT THIS TIME!!!

Dear **[Redacted]**

I hope you have had a good holiday.

I apologise for not getting this meeting note to you sooner. As you know, I went on holiday immediately after our meeting and I am only just now able to put together something for your consideration. Attached is my recollection of the areas of discussion but please do get back to me if I've omitted or misrepresented anything.

Kind regards

**[Redacted]**

**[Redacted]** Sr Policy Officer

Information Commissioner's Office - Scotland, 45 Melville Street, Edinburgh EH3 7HL

T. **[Redacted]** F. **[Redacted]** [www.org.uk](http://www.org.uk)

**From:** **[redacted]**@scotland.gsi.gov.uk[mailto:**[redacted]**@scotland.gsi.gov.uk]  
**Sent:** 28 June 2013 10:59  
**To:** **[redacted]**@ico.gsi.gov.uk  
**Cc:** **[redacted]**@scotland.gsi.gov.uk; **[redacted]**@scotland.gsi.gov.uk;  
**[redacted]**@scotland.gsi.gov.uk

**Subject:** RE: Re: meeting to discuss EPC data

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I've included one more colleague - **[Redacted]** - who would have an interest in the minute of our meeting and on the advice from ICO UK on EPCs as personal data, as part of background to review of a related EIRs case.

I'm now on annual leave until 10<sup>th</sup> July so grateful if the information could be copied to those CC'd into this email.

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**Cc:** [redacted]@scotland.gsi.gov.uk; [redacted]@scotland.gsi.gov.uk  
**Subject:** RE: Re: meeting to discuss EPC data

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Recognise you may still be on leave at this time but look forward to your reply after you get back.

Thanks again.

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<< File: EPCs and data protection.docx >>

Regards

**[Redacted]**

**[Redacted]**

Team Leader - Energy & EPBD

Scottish Government | Building Standards Division | Directorate for the Built Environment

Address: Denholm House | Almondvale Business Park | Livingston | EH54 6GA

': **[Redacted]**

\*: **[redacted]**@scotland.gsi.gov.uk

:: [www.scotland.gov.uk/bsd](http://www.scotland.gov.uk/bsd)

**09/07/2013 09:59**

From: **[redacted]**@ico.gsi.gov.uk

To: **[redacted]**@gov.scot

Cc: **[redacted]**@scotland.gsi.gov.uk; **[redacted]**@scotland.gsi.gov.uk;

**[redacted]**@scotland.gsi.gov.uk

Building Standards – Energy Performance Certificates (EPC) - ICO Meeting to discuss EPC data

Good morning **[Redacted]**

Thank you for your amendments to my meeting note. I've update my record accordingly.

Kind regards

**[Redacted]**

**[Redacted]** Sr Policy Officer

Information Commissioner's Office - Scotland, 45 Melville Street, Edinburgh EH3 7HL

T. **[Redacted]** F. **[Redacted]** [www.org.uk](http://www.org.uk)

**From:** **[redacted]**@scotland.gsi.gov.uk [mailto: **[redacted]**@scotland.gsi.gov.uk ]

**Sent:** 08 July 2013 11:38

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**Sent:** 28 June 2013 10:59

**To:** **[redacted]**@ico.gsi.gov.uk

**Cc:** **[redacted]**@scotland.gsi.gov.uk; **[redacted]**@scotland.gsi.gov.uk;

**[redacted]**@scotland.gsi.gov.uk

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**Sent:** 19 June 2013 10:58

**To:** '**[redacted]**@ico.gsi.gov.uk'

**Cc:** **[redacted]**@scotland.gsi.gov.uk; **[redacted]**@scotland.gsi.gov.uk

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<< File: EPCs and data protection.docx >>  
Regards

**[Redacted]**

**[Redacted]**

Team Leader - Energy & EPBD

Scottish Government | Building Standards Division | Directorate for the Built Environment

Address: Denholm House | Almondvale Business Park | Livingston | EH54 6GA

': **[Redacted]**

\*: **[redacted]**@scotland.gsi.gov.uk

:: [www.scotland.gov.uk/bsd](http://www.scotland.gov.uk/bsd)

**31/07/2013 12:49**

From: **[redacted]**@ico.gsi.gov.uk

To: **[redacted]**@scotland.gsi.gov.uk

Cc: **[redacted]**@gov.scot

Building Standards – EPC Register – ICO Liaison – Status of EPCsas personal Data – Revised ICO view – 31 July 2013

Good afternoon **[Redacted]** and **[Redacted]**

Further to our discussions on whether EPCs in and of themselves constitute personal data, I was uncomfortable with the differing opinion you have had from the ICO on the matter and I asked our Policy Delivery team to look at the issue and to form an updated view in light of current developments to provide some clarity for the future. I have now had a formal response and this can now be taken to be the ICO's definitive view as you move forward:

The issue of the extent to which information about a person's property is the personal data of the person associated with it can be a difficult judgement. We can understand the logic behind the advice given previously about a property's EPC certificate being the personal data of the property's owner. However, our view in this case is that the EPC does not – in itself – constitute personal data. In short, our view is that information about things – for example houses - is only personal data about individuals where it is processed to learn, record or decide something about an identifiable living individual. We explain this for example at points 3.2 and 5 in our 'Determining what is personal data' guidance.

For the EPC certificate information to constitute personal data it would have to identify an individual in itself – it does not – or mean that it is *reasonably likely* that an individual could be identified from it. In our view, it is not reasonably likely that identification will take place. We concede that it would be *possible* for someone to take the EPC information and to use the Electoral Roll to deduce that '**[Redacted]**' of

1 Blair St, Edinburgh lives in a property with an EPC certificate'. However, using our well-established tests of focus and context, we still would not say that the resultant information is the personal data of **[Redacted]**. It tell us nothing about **[Redacted]** himself, as the focus of the information is the energy performance of the house, not of **[Redacted]**.

There could be cases where EPC information about **[Redacted]**' house does constitute the personal data of **[Redacted]**. This could be the case where, for example, the Local Authority decides to use its Council Tax or other records to collate a database of houses that do / do not have EPC's, with a view to contacting the owners of non-EPC properties to promote the scheme, or where a double-glazing company establishes a link between a property and its owner in order to market its products to him or her. However, this is not happening in the case under consideration here.

Drawing the definition of personal data too wide, and replacing the test in the law for one of the possibility of identification would mean, for example, that a newspaper publishing advertisements for houses for sale would be processing the personal data of the houses' owners because, ultimately, it would be possible for the publisher or a reader to deduce – again using the Electoral Roll – that **[Redacted]** has a house worth X amount. This is an approach ICO would reject.

I realise that for you **[Redacted]**, the penultimate paragraph relates to the concerns that you had in the first place but our view has always been that even if it constitutes personal data in some contexts, it does not mean you cannot use the data it simply means it has to be used in a particular way – meeting Schedule conditions, etc. Moreover, in the event an individual receives unwanted direct marketing, they have the right under the Data Protection Act 1998 to request it stops. In addition to this, there is also the consideration that such contact actually chimes with Government policy towards greater energy efficiency programmes already being resourced in areas of poor housing standards and deprivation.

I trust you find this helpful.

Kind regards

**[Redacted]**

**[Redacted]** Sr Policy Officer

Information Commissioner's Office - Scotland, 45 Melville Street, Edinburgh EH3 7HL

T. **[Redacted]** F. **[Redacted]** [www.org.uk](http://www.org.uk)

**01/08/2013 10:04**

From: **[redacted]**@ico.gsi.gov.uk

To: **[redacted]**@gov.scot

Cc: [redacted]@scotland.gsi.gov.uk; [redacted]@scotland.gsi.gov.uk;  
[redacted]@scotland.gsi.gov.uk

Building Standards – Energy Performance Certificates (EPC) – EPCs and personal data – ICO Correspondence

Good morning [Redacted]

I'm sorry, I thought I'd already responded about correspondence between the ICO and the department south of the border. [Redacted], who was the contact at that time, could not find any documentation on the matter and his memory on the subject is that it was highly likely to have been advice provided verbally, either over the telephone or in a meeting. Fortunately, I managed to catch [Redacted] before he left the ICO last Friday but it does mean that he can no longer have an input into this discussion. In any event, it is not the first time, nor will it be the last, that the ICO has changed its view on a matter over time. The wonder of applying data protection legislation is that it is entirely contingent upon context and the concept of reasonableness. There is no doubt that with the change of Commissioners comes a change in how they interpret the legislation and we have come from the very strict interpretive regime under [Redacted] towards the more pragmatic, risk-based approach of [Redacted]. This can be seen across the organisation, both in terms of structure and culture, but it is particularly evident in the way the ICO's view has evolved on what constitutes personal data and what is reasonable to expect in relation to processing. When you think about it pragmatically, it would be unrealistic to expect our view to remain static given the shifting nature of the legislative/policy environment and public acceptability but especially given the seemingly exponential growth and use of technology.

I think the really important point provided by Policy Development is the differentiation between what is *reasonably likely* and what is *possible*. Although it may be *possible* to identify an individual if one had a mind and the inclination so to do, we balance this with the pragmatic condition of whether it is *reasonably likely*. Even where it may be reasonably likely by one or more determined parties, we balance this further by comparing the situation with similar processes and extrapolating how a decision either way might sit alongside current practice/public acceptability.

I certainly feel more comfortable with this stance because, and you will recall my reservations during our meeting, I was never convinced that the Scottish Information Commissioner would uphold the view that the EPCs constitute personal data.

As always, I'm happy to discuss this further if you think it might be helpful.

Kind regards

[Redacted]

[Redacted] Sr Policy Officer

Information Commissioner's Office - Scotland, 45 Melville Street, Edinburgh EH3 7HL

T. [Redacted] F. [Redacted] [www.org.uk](http://www.org.uk)

**From:** [redacted]@scotland.gsi.gov.uk [mailto:[redacted]@scotland.gsi.gov.uk ]

**Sent:** 31 July 2013 13:13

**To:** [redacted]@ico.gsi.gov.uk; [redacted]@scotland.gsi.gov.uk

**Cc:** [redacted]@scotland.gsi.gov.uk; [redacted]@scotland.gsi.gov.uk

**Subject:** RE: EPCs and personal data

[Redacted] –

Appreciate the detail provided in this updated statement.

We will review this information internally and determine what action we have to take in response to this as ICO's definitive view.

We will also need to coordinate with colleagues in other administrations on how EPCs are treated in this respect given that the current position was based upon the previous ICO advice.

To that end, it would be important that we have sight of the document you referred to at our meeting last month, which set out the previous ICO position on this issue (that an EPC is personal data where it relates to an individual) in discussions between ICO and DCLG.

Thanks in anticipation

[Redacted]

**From:** [Redacted] [mailto:[redacted]@ico.gsi.gov.uk]

**Sent:** 31 July 2013 12:49

**To:** [redacted]@scotland.gsi.gov.uk

**Cc:**[redacted]@gov.scot

**Subject:** EPCs and personal data

Good afternoon [Redacted] and [Redacted]

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The issue of the extent to which information about a person's property is the personal data of the person associated with it can be a difficult judgement. We can understand the logic behind the advice given previously about a property's EPC certificate being the personal data of the property's owner. However, our view in this case is that the EPC does not – in itself – constitute personal data. In short, our view is that information about things – for example houses - is only personal data about

individuals where it is processed to learn, record or decide something about an identifiable living individual. We explain this for example at points 3.2 and 5 in our 'Determining what is personal data' guidance.

For the EPC certificate information to constitute personal data it would have to identify an individual in itself – it does not – or mean that it is *reasonably likely* that an individual could be identified from it. In our view, it is not reasonably likely that identification will take place. We concede that it would be *possible* for someone to take the EPC information and to use the Electoral Roll to deduce that '[Redacted] of 1 Blair St, Edinburgh lives in a property with an EPC certificate'. However, using our well-established tests of focus and context, we still would not say that the resultant information is the personal data of [Redacted]. It tells us nothing about [Redacted] himself, as the focus of the information is the energy performance of the house, not of [Redacted].

There could be cases where EPC information about [Redacted]' house does constitute the personal data of [Redacted]. This could be the case where, for example, the Local Authority decides to use its Council Tax or other records to collate a database of houses that do / do not have EPC's, with a view to contacting the owners of non-EPC properties to promote the scheme, or where a double-glazing company establishes a link between a property and its owner in order to market its products to him or her. However, this is not happening in the case under consideration here.

Drawing the definition of personal data too wide, and replacing the test in the law for one of the possibility of identification would mean, for example, that a newspaper publishing advertisements for houses for sale would be processing the personal data of the houses' owners because, ultimately, it would be possible for the publisher or a reader to deduce – again using the Electoral Roll – that [Redacted] has a house worth X amount. This is an approach ICO would reject.

I realise that for you [Redacted], the penultimate paragraph relates to the concerns that you had in the first place but our view has always been that even if it constitutes personal data in some contexts, it does not mean you cannot use the data it simply means it has to be used in a particular way – meeting Schedule conditions, etc. Moreover, in the event an individual receives unwanted direct marketing, they have the right under the Data Protection Act 1998 to request it stops. In addition to this, there is also the consideration that such contact actually chimes with Government policy towards greater energy efficiency programmes already being resourced in areas of poor housing standards and deprivation.

I trust you find this helpful.

Kind regards

[Redacted]

[Redacted]

Sr Policy Officer

Information Commissioner's Office - Scotland, 45 Melville Street, Edinburgh EH3  
7HL  
T. [Redacted] F. [Redacted] [www.org.uk](http://www.org.uk)

**01/08/2013 13:05**

From: [redacted]@gov.scot  
To: [redacted]@ico.gsi.gov.scot  
Cc: [redacted]@scotland.gsi.gov.uk; [redacted]@scotland.gsi.gov.uk;  
[redacted]@scotland.gsi.gov.uk

Building Standards – Energy Performance Certificates (EPC) – EPCs and personal data – ICO Correspondence

**[Redacted]** –

Thanks again for your help in taking these discussions forward and providing clarity on this particular issue. It is much appreciated.

Two more points of clarification would be very useful.

- There was an email from **[Redacted]** (to you) that you gave me sight of at our meeting. If this reproduced previous correspondence with DCLG on the topic, it would be useful to have a copy forwarded to us. However if this was simply **[Redacted]**'s recollection of such discussions, I understand that it would not be relevant as a document of record. Can you just let me know either way.
- Can you pass on the contact details of the policy officer who has now offered the definitive ICO view as, following discussion within SG and with DCLG, we will likely need to continue a conversation with him or her to clarify any points arising.

Regards

**[Redacted]**

**From:** [Redacted] [mailto:[redacted]@ico.gsi.gov.uk]  
**Sent:** 01 August 2013 10:04  
**To:** [redacted]@gov.scot  
**Cc:** [redacted]@scotland.gsi.gov.uk; [redacted]@scotland.gsi.gov.uk;  
[redacted]@scotland.gsi.gov.uk

**Subject:** RE: EPCs and personal data

Good morning **[Redacted]**,

I'm sorry, I thought I'd already responded about correspondence between the ICO and the department south of the border. **[Redacted]**, who was the contact at that time, could not find any documentation on the matter and his memory on the subject

is that it was highly likely to have been advice provided verbally, either over the telephone or in a meeting. Fortunately, I managed to catch [Redacted] before he left the ICO last Friday but it does mean that he can no longer have an input into this discussion. In any event, it is not the first time, nor will it be the last, that the ICO has changed its view on a matter over time. The wonder of applying data protection legislation is that it is entirely contingent upon context and the concept of reasonableness. There is no doubt that with the change of Commissioners comes a change in how they interpret the legislation and we have come from the very strict interpretive regime under [Redacted] towards the more pragmatic, risk-based approach of [Redacted]. This can be seen across the organisation, both in terms of structure and culture, but it is particularly evident in the way the ICO's view has evolved on what constitutes personal data and what is reasonable to expect in relation to processing. When you think about it pragmatically, it would be unrealistic to expect our view to remain static given the shifting nature of the legislative/policy environment and public acceptability but especially given the seemingly exponential growth and use of technology.

I think the really important point provided by Policy Development is the differentiation between what is *reasonably likely* and what is *possible*. Although it may be *possible* to identify an individual if one had a mind and the inclination so to do, we balance this with the pragmatic condition of whether it is *reasonably likely*. Even where it may be reasonably likely by one or more determined parties, we balance this further by comparing the situation with similar processes and extrapolating how a decision either way might sit alongside current practice/public acceptability.

I certainly feel more comfortable with this stance because, and you will recall my reservations during our meeting, I was never convinced that the Scottish Information Commissioner would uphold the view that the EPCs constitute personal data.

As always, I'm happy to discuss this further if you think it might be helpful.

Kind regards

[Redacted]

[Redacted] Sr Policy Officer

Information Commissioner's Office - Scotland, 45 Melville Street, Edinburgh EH3 7HL

T. [redacted] F. [redacted] [www.org.uk](http://www.org.uk)

**From:** [redacted]@scotland.gsi.gov.uk [mailto:[redacted]@scotland.gsi.gov.uk]

**Sent:** 31 July 2013 13:13

**To:** [redacted]@ico.gsi.gov.uk; [redacted]@scotland.gsi.gov.uk

**Cc:** [redacted]@scotland.gsi.gov.uk; [redacted]@scotland.gsi.gov.uk

**Subject:** RE: EPCs and personal data

[Redacted] –

Appreciate the detail provided in this updated statement.

We will review this information internally and determine what action we have to take in response to this as ICO's definitive view.

We will also need to coordinate with colleagues in other administrations on how EPCs are treated in this respect given that the current position was based upon the previous ICO advice.

To that end, it would be important that we have sight of the document you referred to at our meeting last month, which set out the previous ICO position on this issue (that an EPC is personal data where it relates to an individual) in discussions between ICO and DCLG.

Thanks in anticipation

**[Redacted]**

**From:** [redacted][mailto:[redacted]@ico.gsi.gov.uk  
**Sent:** 31 July 2013 12:49  
**To:** [redacted]@scotland.gsi.gov.uk  
**Cc:** [redacted]@gov.scot  
**Subject:** EPCs and personal data

Good afternoon **[Redacted]** and **[Redacted]**

Further to our discussions on whether EPCs in and of themselves constitute personal data, I was uncomfortable with the differing opinion you have had from the ICO on the matter and I asked our Policy Delivery team to look at the issue and to form an updated view in light of current developments to provide some clarity for the future. I have now had a formal response and this can now be taken to be the ICO's definitive view as you move forward:

The issue of the extent to which information about a person's property is the personal data of the person associated with it can be a difficult judgement. We can understand the logic behind the advice given previously about a property's EPC certificate being the personal data of the property's owner. However, our view in this case is that the EPC does not – in itself – constitute personal data. In short, our view is that information about things – for example houses - is only personal data about individuals where it is processed to learn, record or decide something about an identifiable living individual. We explain this for example at points 3.2 and 5 in our 'Determining what is personal data' guidance.

For the EPC certificate information to constitute personal data it would have to identify an individual in itself – it does not – or mean that it is *reasonably likely* that an individual could be identified from it. In our view, it is not reasonably likely that identification will take place. We concede that it would be *possible* for someone to take the EPC information and to use the Electoral Roll to deduce that '**[Redacted]** of 1 Blair St, Edinburgh lives in a property with an EPC certificate'. However, using our well-established tests of focus and context, we still would not say that the resultant

information is the personal data of **[Redacted]**. It tell us nothing about **[Redacted]** himself, as the focus of the information is the energy performance of the house, not of **[Redacted]**.

There could be cases where EPC information about **[Redacted]**'s house does constitute the personal data of **[Redacted]**. This could be the case where, for example, the Local Authority decides to use its Council Tax or other records to collate a database of houses that do / do not have EPC's, with a view to contacting the owners of non-EPC properties to promote the scheme, or where a double-glazing company establishes a link between a property and its owner in order to market its products to him or her. However, this is not happening in the case under consideration here.

Drawing the definition of personal data too wide, and replacing the test in the law for one of the possibility of identification would mean, for example, that a newspaper publishing advertisements for houses for sale would be processing the personal data of the houses' owners because, ultimately, it would be possible for the publisher or a reader to deduce – again using the Electoral Roll – that **[Redacted]** has a house worth X amount. This is an approach ICO would reject.

I realise that for you **[Redacted]**, the penultimate paragraph relates to the concerns that you had in the first place but our view has always been that even if it constitutes personal data in some contexts, it does not mean you cannot use the data it simply means it has to be used in a particular way – meeting Schedule conditions, etc. Moreover, in the event an individual receives unwanted direct marketing, they have the right under the Data Protection Act 1998 to request it stops. In addition to this, there is also the consideration that such contact actually chimes with Government policy towards greater energy efficiency programmes already being resourced in areas of poor housing standards and deprivation.

I trust you find this helpful.

Kind regards

**[Redacted]**

**[Redacted]** Sr Policy Officer

Information Commissioner's Office - Scotland, 45 Melville Street, Edinburgh EH3 7HL

T. **[redacted]** F. **[redacted]** [www.org.uk](http://www.org.uk)

**02/08/2013 11:50**

From: **[redacted]**@gov.scot

To: **[redacted]**@ico.gsi.gov.scot

Cc: **[redacted]**@scotland.gsi.gov.uk; **[redacted]**@scotland.gsi.gov.uk;

**[redacted]**@scotland.gsi.gov.uk

Building Standards – Energy Performance Certificates (EPC) – EPCs and personal data – ICO Response

**[Redacted]** –

Thanks. That clarifies both points.

We'll now progress on the basis of applying the ICO view and assess whether any action taken by SG/EST in processing the data we hold might subsequently cause it to be categorised as personal data and, based upon that assessment, make any appropriate adjustments to processes.

Regards

**[Redacted]**

**From:** **[Redacted]** [mailto:**[redacted]**@ico.gsi.gov.uk]  
**Sent:** 01 August 2013 17:41  
**To:** **[redacted]**@gov.scot  
**Cc:** **[redacted]**@scotland.gsi.gov.uk; **[redacted]**@scotland.gsi.gov.uk;  
**[redacted]**@scotland.gsi.gov.uk  
**Subject:** EPCs and personal data

Dear **[Redacted]**

As I've indicated previously, **[Redacted]** could not locate any correspondence with DCLG or its predecessor on the matter of EPCs. The e-mail I had at our meeting was from his colleague on his behalf and was simply her conveying his recollection of the matter. As I said, **[Redacted]** seemed to think any advice given at the time was verbal.

The person dealing with this in Wilmslow is **[Redacted]**, Group Manager – Policy Delivery, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, T. **[redacted]** E. **[Redacted]**@ico.org.uk.

Kind regards

**[Redacted]**

**[Redacted]** Sr Policy Officer

Information Commissioner's Office - Scotland, 45 Melville Street, Edinburgh EH3 7HL  
T. **[redacted]** F. **[redacted]** [www.org.uk](http://www.org.uk)

**19/08/2015 10:42**

From: **[redacted]**@scotland.gsi.gov.scot

To: [redacted]@gov.scot

Cc: [redacted]@scotland.gsi.gov.uk; [redacted]@scotland.gsi.gov.uk

Building Standards – Energy Performance Certificates (EPC) – EPC and personal data – Note from [redacted]

Hi [Redacted],

Following on from our meeting on Monday, I spoke with [Redacted] (ICO) yesterday. The EPC data on its own is not personal data. However, as [Redacted] mentioned if the data controller has other information (like Green Deal information which as I understand it does – please correct me if I'm wrong) it means that individuals can be identified etc and due to this then the data in SG's control is personal data. The Act states that

*“personal data” means data which relate to a living individual who can be identified—*  
*(a) from those data, or*

*(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

*and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;*

However, this does not stop the SG from publishing the EPC data as you described at the meeting (e.g. searching for EPCs by post code) as there is a condition for processing in the Act which would allow the SG to do this ([Schedule 2\(5\)\(d\)](#)).

I hope this clarifies. Please call me if it would be useful to discuss further.

Kind regards

[Redacted]

[Redacted] | Data Protection & Information Assets Manager | Information Management and Assurance (IMA) | Office of Information, Security & Cyber Defence (OISCD) | Information Services & Information Systems (ISIS) | V Spur | Saughton House | Broomhouse Drive | Edinburgh | EH11 3XD | Ext [redacted] | [redacted] | [Data Protection & Information Assets Mailbox](#)

**From:** [redacted]@gov.scot

**Sent:** 28 July 2015 09:46

**To:** [redacted]@scotland.gsi.gov.uk

**Cc:** [redacted]@scotland.gsi.gov.uk; [redacted]@scotland.gsi.gov.uk

**Subject:** FW: Energy Performance Certificates and personal data[Ref. ENQ0589836]

[Redacted] –

Below is further clarification from ICO following a query I had over a decision notice from 2014 which seemed initially to contradict the definitive view ICO gave SG in July 2013.

It does appear to reconfirm that view though you will note that **[Redacted]** recommends that we consult you to clarify whether the linkage of energy performance data to other data held by Scottish Ministers would alter the view that the energy performance data (as a dataset) is not personal data.

There are data sharing agreements in place within SG and with DECC to provide access to energy performance data held on the EPC register but to the best of our knowledge this does not involve linking or combining our dataset with the names of individuals (e.g. building owners).

Our questions would therefore be as follows – please let us know if a meeting to discuss would assist in framing a response:

- Does other data for which Scottish Ministers are data controller have any impact on the status of energy performance data as ‘not personal data’? To what extent can this reasonably be established? See comments above
- If energy performance data was to be processed by combining it with a data source containing the names of individuals, would this new larger dataset be considered a separate data asset by the SG and be subject to separate assessment under the DPA whilst the original energy performance data (the subject of this discussion) would remain unaffected? To illustrate the point, if you added my name to the energy performance data record for my house, the combined dataset would no longer simply be ‘energy performance data’ as my name is not ‘energy performance data’ – it would be a different dataset. The energy performance dataset, without the name would remain as a separate asset. The linked dataset could be viewed and assessed as a separate asset, however as I have mentioned above because SG holds this data then EPC data is personal in the SG. If an organisation only collected data for the EPC and held no other information which could identify individuals, then EPC would not be personal data. As SG does hold other data which can be linked to identify individuals then it is personal data.
- In DPA terms, what constitutes ‘linking’ of data with another data source? Is this different from combining data sources to create a larger single dataset? Just trying to understand how potential future activity by SG might affect current work or change the status of ‘energy performance data as a dataset. See comments above

In support of the above queries and as a reminder:

- ‘energy performance data’ means information needed to produce an energy performance certificate or a recommendations report and for the purposes of regulations 11 to 14 (release of data by the keeper of the register) includes the report reference number relating to that energy performance certificate
- Data entered onto the Scottish EPC register cannot be changed once lodged and, under the EPB regs must not contain the name of the building owner
- SG intent to maintain the EPC dataset as a distinct data asset without augmentation and to publish the EPC dataset in full (with address redacted to

postcode sector) and enable search for single EPC records by postcode or address as part of our duty under EIRs

Your advice appreciated.

Regards

**[Redacted]**

**From:** casework@ico.gsi.gov.uk [mailto:casework@ico.gsi.gov.uk]  
**Sent:** 27 July 2015 16:59  
**To:** [redacted]@gov.scot  
**Subject:** Energy Performance Certificates and personal data[Ref. ENQ0589836]

27 July 2015

**Case Reference Number ENQ0589836**

Hi **[Redacted]**

Thanks for your enquiry. As **[Redacted]** said, I've taken on the planning and built environment portfolio for the ICO in Scotland since I joined around the time of the last substantive correspondence on this topic hence me replying to you. I've been discussing with another arm of the Scottish Government recently about when data is and is not personal data so it is currently at the forefront of my mind.

I'll say at the outset that I had hoped to chat with you today just about exactly what it is you have at that initial point of analysis but I understand you are on annual leave this week. If my response below doesn't answer that particular point, feel free to get in touch again and we can go into the specifics.

### **FOIA Decision Notice FER0500873**

Fundamentally, FOIA decision notice FER0500873 (the DN) does **not** change our position on when information will or will not be personal data. The DN applies to a very specific set of circumstances as described and in the context of the particular characteristics of the data controller, the Department for Finance and Personnel for Northern Ireland (DFP NI).

DFP NI as the data controller did hold building data and also the details of the individuals who currently occupied or owned properties. The Land Registry for Northern Ireland is a core team of DFP NI and not an NDPB so the DFP NI is the data controller for information in the Land Registry. The Freedom of Information request asked for building data and the names of the organisations responsible for the properties on the NI Non-Domestic Energy Performance Certificate Register. The data released, where it listed a sole trader, would be personal data in respect of those sole traders as a living individual could be identified from that data. Had the organisation name not been requested, DFP NI would still have had to process personal data to comply with the request but what they released would not obviously have been about an individual and the processing would not have related to them or

been used to learn, record or decide something about them. In and of itself, the response would not have been personal data. It would however be personal data if any data controller in receipt of the request also held sufficient information to identify the individuals owning or occupying the properties.

So that was the specific context in which the DN was served. The nub of the DFP NI's argument was not really about personal data but about the costs associated with obtaining the data from the company processing it on their behalf. It is also the only case I'm aware of to date where a data controller thought they could be in breach of all eight data protection principles at once.

As **[Redacted]** said, don't lose sight of the fact that the DN ordered disclosure of all the data and did not require redactions. We were content that there were sufficient legal grounds under the DPA for the personal data to be disclosed. Our view was upheld at the subsequent [Information Rights Tribunal](#) hearing.

### **Scottish Government and EPC data**

As I understand it, the Scottish Government are approaching the use of EPC data in a different context. You publish the EPC data without reference to any individual owner or occupier on it. Therefore, from the certificate alone, it is not possible to identify any individual, it does not relate to any individual (the data relates to the building), the act of publication is not being done to learn, decide or record anything about individuals but about buildings, and if I'm correct that certificates are only to be updated every 10 years, then the data will be the same regardless of whether the occupier changes during that time so the certificate itself can't be about an individual. There would need to be some linking of the EPCs by an organisation with other data held by that same organisation for it to become personal data, and only in their hands.

On that basis, the Scottish Ministers (as the legal entity which is the data controller for core Scottish Government and its executive agencies) need to consider whether the EPC data is personal data in its hands. That's a question I suggest you direct to the Data Protection and Information Assurance Team at Saughton House as we do not know all the data Scottish Government holds, nor should we. Again, as **[Redacted]** said previously, even if it is personal data in the hands of Scottish Ministers, that does not mean it cannot be used or disclosed where there is good reason to do so where the conditions for processing and the data protection principles in the DPA can be complied with. She has outlined those we consider would be most relevant in your context.

We have published guidance on '[Determining what is personal data](#)' and this has been endorsed by the [Court of Appeal of England & Wales](#). We expect data controllers to use this guidance to assess whether the data is personal in their hands and it should aid them in coming to a considered position on exactly these kind of nuanced situations.

I trust that allays the concerns you had. If there's anything else, feel free to get back in touch.

Regards

**[Redacted]**

Senior Policy Officer

Information Commissioner's Office, 45 Melville Street, Edinburgh, EH3 7HL

T. **[redacted]** F. **[redacted]** [ico.org.uk](http://ico.org.uk) [twitter.com/iconews](https://twitter.com/iconews)

For **secure emails** over GSI please use **[redacted]**@ico.gsi.gov.uk

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