



Department for Levelling Up, Housing & Communities

**Department for Levelling Up, Housing and
Communities**
2 Marsham Street
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Owen Boswarva
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14 March 2024

Dear Owen Boswarva,

Freedom of Information Act 2000 - IR2024/01899

1. Thank you for your request for an internal review which was received on 22 January 2024. We are sorry that you are dissatisfied with our attempts to handle your request.

2. I am the review officer appointed to undertake the internal review and I am writing to provide a response. I was not involved in the original response.

Background

3. On 15 December 2023 you requested the following information:

'DLUHC maintains a register of Energy Performance Certificates lodged in respect of properties in England and Wales. Information from the EPC register is available for public search at <https://www.gov.uk/find-energy-certificate> and for bulk download from <https://epc.opendatacommunities.org/>.

According to DLUHC guidance, holders of EPCs can opt out of having the information from their certificates disclosed publicly: <https://www.gov.uk/guidance/energy-performance-certificates-opt-out-of-public-disclosure>.

Please provide the following information:

- 1. The number of EPC certificates for which information is not currently publicly disclosed because holders (and/or owners or occupiers of the relevant properties) have opted out.*
- 2. The number of successful applications for opt-outs, broken down by year of application. (Either calendar year or financial year is fine, but please specify which method you have used and include a figure for the current part year.)*
- 3. A list of the property addresses for which EPCs are not currently publicly disclosed, with the lodgement dates for each EPC.*
- 4. If you consider that the address information requested under point 3 is exempt from disclosure, please instead provide a list of the first half of the postcode for each EPC (i.e. the*

postcode area / outward code), with the lodgement dates.

Clarification: My information request relates to all EPCs where opt outs have been requested (both domestic and non-domestic).'

4. On 19 January 2024, the Department wrote to you providing information in relation to part 1 of your request. Additionally, for part 2, we confirmed that we held no information. For parts 2 and 3, the information was withheld under regulation 12 (3) of the Environmental Information Regulations (EIR), by virtue of regulation 13, as disclosure would breach one or more of the data protection principles in the Data Protection Act (DPA).

Request for review

5. On 22 January 2024 you requested an internal review of the handling of your request, raising the following points:

'I would like to request an internal review of DLUHC's response to the access to information request that I submitted on 15 December 2023 (your reference EIR2023/06197).

In carrying out your internal review of DLUHC's response, please consider in particular the following points:

1. DLUHC may have erred by handling my request under the Environmental Information Regulations 2004. Although the EPC register itself clearly contains environmental information, my request covers only information about administration of the register and address information without any link to energy performance attributes. I am not sure this is "environmental information" within the meaning of regulation 2(1).

2. DLUHC states that it does not hold information in scope of Q2 of my request ("The number of successful applications for opt-outs, broken down by year of application.") Does this mean DLUHC holds a list of opted-out certificates but without any record of when those opt-outs were requested? This seems odd, as without that information it would be difficult for DLUHC to demonstrate that public access to those certificates has been lawfully withheld.

Alternatively, does this mean that DLUHC holds information on the dates when the optouts were requested, but not in summary form i.e. broken down by year? If so, I believe this information is held within the meaning of FOIA and/or the EIRs and should be disclosed.

3. DLUHC states that it holds information in scope of Q3 and Q4 of my request, but indicates that it considers that the information is exempt from disclosure because it is personal data and disclosure would contravene data protection legislation.

DLUHC's response does not contain any explanation or reasoning as to why it considers the requested information to be personal data.

The information I have requested as Q3 ("A list of the property addresses for which EPCs are not currently publicly disclosed, with the lodgement dates for each EPC") is arguably personal data. While property addresses by themselves are not personal data, disclosure of this list might enable me to identify individuals who have requested an opt-out from the register, and the fact that they have taken that action could be considered personal data.

However, I cannot see any reason why the information I have requested as Q4 ("a list of the first half of the postcode for each EPC (i.e. the postcode area / outward code), with the lodgement dates") should be considered personal data. Postcode areas are large and

each contains hundreds of thousands of properties. Even with the addition of lodgement dates, there is no means by which I or another member of the public could identify specific addresses from the requested information – particularly given that the relevant certificates have been removed from public access. Therefore, the information requested as Q4 cannot be used to identify any living individual and cannot be personal data. I believe this information should be disclosed.'

Appeal Officer's Response

6. I have reviewed the response previously sent to you on 19 January 2024 and have contacted the relevant policy team asking them to consider your request once again. I asked the team specifically as to whether the Department should continue to withhold the information you requested. Based on these conversations, I have decided to amend our original response.

7. On the issue of which access regime applies, I agree with the point you raise about the information requested relating to the administration of the registration only, and that this is not 'environmental information' as defined by the regulations. I therefore reassessed your request in line with the Freedom of Information Act (FOI) and consider that the information is exempt under section 44 of the FOI Act.

8. Section 44 (1)(a) exempts information if its disclosure is prohibited under any enactment. This means information is exempt if its disclosure is prohibited by other legislation such as Acts of Parliament or Statutory Instruments. Such provisions are referred to as statutory prohibitions or statutory bars and they prevent public authorities from disclosing specific types of information. This is an absolute exemption and so does not require the public interest test.

9. The Energy Performance of Buildings (England and Wales) Regulations 2012 only allows the keeper of the register (the DLUHC SoS) to disclose data collected under the regulations in certain circumstances which are set out in regulations 30-32. The post code of a property is data that was collected for the purpose of compliance with the regulations and therefore can only be disclosed in those circumstances. Disclosure outside the data sharing gateways in the regulations is prohibited.

Conclusion

11. Having reviewed this case I have overturned the Department's original decision to withhold the information under regulation 12 (3) of the EIR. In my view, the Department should have considered the request under FOI, and as such withheld the data under section 44 (1) (a).

Yours sincerely,

DLUHC FOIA Team

Complaints procedure

If you are unhappy with the outcome of this internal review, you can ask the independent Information Commissioner to investigate. The Information Commissioner can be contacted at email address casework@ico.org.uk or use their online form at ico.org.uk/concerns or call them on 0303 123 1113.