

Owen Boswarva
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18 January 2023

Dear Owen Boswarva

Your information request to Department for Levelling Up, Housing and Communities
Our ref:IC-173007-KOT5

I am writing to you concerning your complaint to the Information Commissioner regarding your request to re-use information relating to building energy performance information disclosed by the DLUHC.

If I understand the information which you have sent to us correctly, you wish to use the address level data provided within the data, but without using the address or postcode data directly itself. You wish to combine the anonymised address level data with other information and make that available as part of a different service.

Point 2 of the DLUHC notification on Copyright and Database Right Information¹ highlights that:

“Non-Address Data

All data fields other than the address and postcode data (address, address 1, address 2, address 3, postcode) available via this website are licensed under the Open Government Licence v3.0, which includes Ordnance Survey UPRNs.”

Its section on Data Protection² states that:

“Address level data concerning the energy performance of buildings constitute personal data for the purposes of the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA 2018). Anyone using personal data must comply with the data protection legislation.”

In essence, therefore, even information which it considers non-address data may still be personal data, and any processing which a receiver wishes to use the information for should comply with those individuals' rights under the DPA and GDPR.

¹<https://epc.opendatacommunities.org/docs/copyright>

²<https://epc.opendatacommunities.org/docs/protection>

I note that you have requested to reuse the data under the CC-BY license. This is a form of copyright reuse protection. The Commissioner is not the legal Regulator of this system, and therefore, he is unable to make a decision as to whether the DLUHC should provide you with such a license.

I would add, however, that even if such a licence were to be agreed by the DLUHC, you would still be under an obligation to use personal data in compliance with the rights and freedoms of individuals under the DPA.

You have said that the two notifications are contradictory. However, that is not necessarily the case. The information in the first notification (re non-address data) provides a licence to use of the non-address information under the OGL. The second notification simply reiterates that you must still process any personal data in compliance with individuals' rights under the DPA.

As the DLUHC, and we, have no clear understanding of your intentions we are not able to state whether the uses you intend would comply with your obligations under the DPA or not. Ultimately, it is the data controller (i.e., in this case, you) who is responsible for determining whether the uses you intend with the information comply with the legal obligations under the DPA.

I therefore agree with the DLUHC that you may need to seek advice from your legal advisors in order to determine whether the uses which you intend with the data comply with the requirements of the DPA. It is not for the DLUHC to provide you such advice.

You may find the Commissioner's guidance on the DPA at <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/> useful in this respect.

Turning now to your question regarding the Re-use of Public Sector information Regulations 2015³ (the RPSI). Regulation 5(7) of the RPSI states that:

"7) These Regulations do not apply to—

(a) a document where access is excluded or restricted under information access legislation including on the grounds of protection of personal data, protection of national security, defence or public security, statistical confidentiality or commercial confidentiality (including business, professional or company secrets); or

(b) any part of a document which—

³<https://www.legislation.gov.uk/ukxi/2015/1415/contents/made>

- (i) is accessible under information access legislation; and
- (ii) contains personal data the re-use of which would be incompatible with the law concerning the protection of individuals with regard to the processing of personal data."

The information requested includes the addresses of properties and the energy usage rating of those properties. The owners of those properties will be identifiable in many cases. The information therefore falls within definition of personal data for the purposes of the Data Protection Act 2018 ('the DPA')

Your question is therefore whether the DLUHC should have informed you whether the information is able to be re-used under the RPSI, told you it could not be used, or provided conditions under which it could be used.

Regulation 12 of the RPSI provides that:

Conditions

"**12.**—(1) A public sector body may impose conditions on re-use, where appropriate through a licence.

(2) Where conditions are imposed they must not unnecessarily restrict—

- (a) the way in which a document can be re-used; or
- (b) competition."

The first thing to note is that this section states that a public sector body **may** impose conditions on re-use. This does place the authority under a duty to do so; it simply provides the power for it to do so where they consider that it is appropriate, bearing in mind the requirement not to unnecessarily restrict either of the issues highlighted in subsection (2).

Having considered the response, together with the notifications above, we consider that the DLUHC has met with its obligations in this respect.

- It has confirmed that the address data is copyrighted and owned by the Royal Mail. Therefore, copyright laws will apply to this information, and the owner of that copyright is the Royal Mail.
- It has confirmed that non-address data is available for re-use under the OGL provisions.
- It has highlighted that some of this information may be personal data, and that any personal data should be processed in in

compliance with obligations under the DPA and the GDPR where these laws are applicable.

- In its correspondence with you it has also highlighted that it is your responsibility to ensure that the processing you intend complies with the requirements of the DPA and the GDPR.

The Commissioner is therefore satisfied that the DLUHC has provided you with clear guidance on the information which can, and cannot be re-used, and the conditions under which that information can be used as far as it is able to under the circumstances. It would not be reasonable to expect it to provide you with an all-encompassing set of conditions given that these would effectively amount to describing your rights and obligations under the DPA, as well as under copyright laws. As stated, the Commissioner's website provides such guidance, but it is still up to each data controller to ensure that their actions comply with those requirements.

The DLUHC has therefore complied with the requirements of the RPSI.

I note that you have requested that we issue a decision notice on this case. Given the above explanation, however, please can I check with you whether this is still your wish.

Please let me know by 26 February 2023 if you wish a decision notice following the above arguments, otherwise your case will be closed.

Kind regards

[Redacted]

Senior Case Officer

[Redacted]