



Owen Boswarva <owen.boswarva@gmail.com>

Your email to the ICO - Case Reference IC-172276-H0B3

1 message

ICO Casework <icocasework@ico.org.uk>
To: Owen Boswarva <owen.boswarva@gmail.com>

27 May 2022 at 16:15

27 May 2022

Case Reference: IC-172276-H0B3

Dear O Boswarva

Thank you for your email of 24 May 2022 and please accept my apologies for the confusion here. A new complaint case has now been set up under case reference **IC-173007-K0T5** and a Case Officer will be in contact in due time.

Yours sincerely,

[REDACTED]
Lead Case Officer
Information Commissioner's Office

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
T. 0303 123 1113 ico.org.uk twitter.com/iconews
Please consider the environment before printing this email

For information about what we do with personal data see our privacy notice at www.ico.org.uk/privacy-notice.

----- Original Message -----

External: This email originated outside the ICO.

Dear [REDACTED],

Thank you for your email. However, I don't understand how this response relates to the concern I have raised with the ICO.

I am not seeking advice from the ICO on the definition of personal data, and am not maintaining that the Energy Performance of Buildings Data is personal data – that is a position taken by DLUHC.

I am not concerned with the way in which DLUHC is obtaining and making information on the Energy Performance of Buildings register.

My complaint is that DLUHC has failed to comply with the Re-use of Public Sector Information Regulations 2015, because in response to my re-use request it has neither made the Energy Performance of Buildings Data available to me for re-use, refused my request for re-use, nor offered conditions on which re-use will be permitted.

Please confirm that the ICO will handle my complaint, in its capacity as the UK regulator for re-use of public sector information: <https://ico.org.uk/for-organisations/guide-to-rpsi/complaints/>.

If ICO considers that my complaint is unfounded, and that DLUHC's existing application of the Open Government Licence is sufficient to meet RPSI requirements because the Energy Performance of Buildings Data is not personal data, please provide a decision notice to that effect.

Thank you.

Kind regards,

Owen Boswarva

Contact details

e-mail: owen.boswarva@gmail.com

telephone: [REDACTED] 2

address: [REDACTED]

On Tue, 24 May 2022 at 16:39, ICO Casework <icocasework@ico.org.uk> wrote:

24 May 2022

Case Reference: IC-172276-H0B3

Dear O Boswarva

Thank you for your email of 17 May 2022 regarding the Levelling Up, Housing and Communities' (DLUHC) publishing of Energy Performance of Buildings register.

It is important to note that personal data only includes information relating to natural persons who:

- can be identified or who are identifiable, directly from the information in question; or
- who can be indirectly identified from that information in combination with other information.

We have further information about this here: [What is personal data? | ICO](#).

It is also important to note that organisation must have a valid lawful basis in order to process personal data. The lawful bases for processing are set out in Article 6 of the UK GDPR. At least one of these must apply whenever you process personal data:

- (a) Consent: the individual has given clear consent for you to process their personal data for a specific purpose.
- (b) Contract: the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.
- (c) Legal obligation: the processing is necessary for you to comply with the law (not including contractual obligations).
- (d) Vital interests: the processing is necessary to protect someone's life.
- (e) Public task: the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.
- (f) Legitimate interests: the processing is necessary for your legitimate interests or the legitimate interests of a third party, unless there is a good reason to protect the individual's personal data which overrides those legitimate interests. (This cannot apply if you are a public authority processing data to perform your official tasks.)

You can find further information about this here: [Lawful basis for processing | ICO](#)

If you're concerned with the way in which DLUHC are obtaining and making information on the Energy Performance of Buildings register, we recommend you raise a concern with them in the first instance. You can also ask them to confirm their lawful basis for processing. We have further information about this here: [Raising a complaint with an organisation | ICO](#).

I hope this information is helpful to you. If you need advice on a new issue you can contact us via our Helpline on 0303 123 1113 or through our [live chat service](#). In addition, more information about the Information Commissioner's Office and the legislation we oversee is available on our website at www.ico.org.uk.

Yours sincerely,

[REDACTED]

Lead Case Officer
Information Commissioner's Office

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
T. 0303 123 1113 ico.org.uk twitter.com/iconews
Please consider the environment before printing this email

For information about what we do with personal data see our privacy notice at
www.ico.org.uk/privacy-notice.

----- Original Message -----

External: This email originated outside the ICO.

Good afternoon,

I would like to report a concern about re-using information from a public body.

The Department for Levelling Up, Housing and Communities (DLUHC) publishes Energy Performance of Buildings Data at <https://epc.opendatacommunities.org/>. The data is accessible to me.

According to the [copyright page](#), the data is re-usable under the terms of the [Open Government Licence](#) (OGL), other than some address and postcode information that is subject to more restrictive Royal Mail terms.

However, according to the [data protection page](#), address-level data concerning the energy performance of buildings constitutes personal data. All of the Energy Performance of Buildings Data records are at address level.

As you will be aware, the Open Government Licence excludes personal data. As DLUHC has stated that the Energy Performance of Buildings Data is personal data, it follows that I cannot re-use the data under the OGL.

Therefore, I have requested DLUHC's permission to re-use the Energy Performance of Buildings Data (other than the information covered by Royal Mail terms) under another well-known open licence, the [Creative Commons Attribution License](#) (CC-BY). That licence does not contain any exclusion for personal data.

DLUHC has refused to engage with my re-use request. My complaint is that DLUHC has failed to comply with the Re-use of Public Sector Information Regulations 2015, because it has neither made the Energy Performance of Buildings Data available to me for re-use, refused my request for re-use, nor offered conditions on which re-use will be permitted.

My correspondence with DLUHC, including my re-use request, are in the email thread below. I have also attached copies of the individual emails in a zip file.

Thank you for your attention to this complaint.

Kind regards,

Owen Boswarva

Contact details

e-mail: owen.boswarva@gmail.com

telephone: [REDACTED]

address: [REDACTED]

----- Forwarded message -----

From: **EPC Enquiry** <EPC.Enquiry@levellingup.gov.uk>

Date: Tue, 17 May 2022 at 08:16

Subject: RE: EPC-E243 Re: Ref: EPC-E221Re-use request for Energy Performance of Buildings Data

To: Owen Boswarva <owen.boswarva@gmail.com>

Dear Mr Boswarva,

Thank you for your enquiry.

Please note the department is unable to provide legal advice, nor can we provide a definitive interpretation of the law as only the Courts are able to do this. Therefore, it will be for individuals or organisations to take a view on how they are able to use data, be it under the Creative Commons Attribution License or via other routes, and in cases of doubt should seek their own legal advice.

Yours sincerely,

EPC Enquiry Team

Energy Performance of Buildings Division

From: Owen Boswarva <owen.boswarva@gmail.com>

Sent: 06 May 2022 17:13

To: EPC Enquiry <EPC.Enquiry@levellingup.gov.uk>

Subject: Ref: EPC-E243 Re: Ref: EPC-E221Re-use request for Energy Performance of Buildings Data

Dear EPC Enquiry Team,

Thank you for your reply. However, my request was not about the Open Government Licence or the use of address data.

My email of 18 April below is a request for permission to re-use address-level Energy Performance of Buildings data under the terms of a different licence, the Creative Commons Attribution License 4.0 (CC-BY).

My request does not apply to the address and postcode fields in the data, which I fully understand are subject to additional and more restrictive Royal Mail terms.

Please carry out an internal review of your response to my re-use request, or confirm that you will not do so.

Under the Re-use of Public Sector Information Regulations 2015, DLUHC is not obliged to carry out an internal review. However, in the absence of a different response to my re-use request, my next step is a complaint to the Information Commissioner's Office.

Kind regards,

Owen Boswarva

Contact details

e-mail: owen.boswarva@gmail.com

telephone: [REDACTED]

address: [REDACTED]

On Fri, 6 May 2022 at 16:14, EPC Enquiry <EPC.Enquiry@levellingup.gov.uk> wrote:

Dear Mr Boswarva,

Thank you for your enquiry about the Open Government License (OGL) and the use of address data.

The OGL does not cover the use of personal data or third-party rights the Information Provider is not authorised to license. Therefore, address data is not issued under an OGL.

However, address data is published with the consent of Ordnance Survey and Royal Mail Group Limited who reserve all their respective copyright, database rights, trademarks and other intellectual property rights. Ordnance Survey and Royal Mail Group Limited permit the use of 'address data' solely for purposes related to the energy performance of buildings, set out in the Ordnance Survey and Royal Mail Copyright and Database Right Notice (<https://epc.opendatacommunities.org/docs/copyright>).

It would not be appropriate for the department to provide advice or to grant permission for individuals or organisations to use the address data in a specific way. Therefore, it is important for any data user to read the licensing, copyright and the data protection requirements that accompany the data release. It will be for individuals themselves to take a view on how they are able to use the data and in cases of doubt should seek their own legal advice.

Yours sincerely,

EPC Enquiry Team

Energy Performance of Buildings Division

From: Owen Boswarva <owen.boswarva@gmail.com>
Sent: 18 April 2022 16:30
To: EPC Enquiry <EPC.Enquiry@levellingup.gov.uk>
Subject: Ref: EPC-E221Re-use request for Energy Performance of Buildings Data

Good afternoon,

As you know, DLUHC publishes Energy Performance of Buildings Data at <https://epc.opendatacommunities.org/>

The website currently makes available bulk downloads of data for domestic and non-domestic Energy Performance Certificates (EPCs) and Display Energy Certificates (DECs) issued up to and including 31 December 2021. I have registered on the site and have access to the data.

According to the copyright page, the data is re-usable under the terms of the Open Government Licence (OGL), with the exception of address and postcode information that is subject to more restrictive Royal Mail terms: <https://epc.opendatacommunities.org/docs/copyright>

However, the data protection page says: "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)." <https://epc.opendatacommunities.org/docs/protection>

The Open Government Licence exempts personal data: <https://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>

This means that the licensing and data protection information provided by DLUHC is in conflict. As DLUHC considers that the Energy Performance of Buildings Data is personal data, I am unable to re-use any of that data under the Open Government Licence.

I am requesting permission from DLUHC to re-use the Energy Performance of Buildings Data under the terms of a different open licence, the Creative Commons Attribution License 4.0 (CC-BY) <https://creativecommons.org/licenses/by/4.0/>

The CC-BY licence is similar to the OGL, but does not have an exemption for personal data.

I am requesting DLUHC's permission to re-use the Energy Performance of Buildings Data for the purpose of combining it with data from other open public datasets and making the outputs available to others in a re-usable electronic form under an open licence. Given my intended use, any more restrictive licensing terms would be likely to "unnecessarily restrict" the way in which the information can be re-used, contrary to regulation 12 of the Re-use of Public Sector Information Regulations 2015.

I understand that this permission will not apply to the address and postcode fields in the data, and that permission to re-use the data under the CC-BY licence will not affect any obligations to comply with data protection law when processing the data.

Thank you for your attention to this request.

Kind regards,

Owen Boswarva

Contact details

e-mail: owen.boswarva@gmail.com

telephone: [REDACTED]

address: [REDACTED]