

EIR Reg 12(5)(b) – Exception: Legal Professional Privilege

EIR Reg 13 – Personal data

William Young v IC & Department of the Environment for Northern Ireland

EA/2007/0048

12th December 2007

Cases:

Facts

The Appellant's application under EIR dealt with a planning application followed by a subsequent enforcement action against him in respect of the planning application. There had been prolonged litigation between the Appellant and the Additional Party. At one stage, the Appellant submitted a renewed application for approval of the construction as actually built. The application was refused, but the decision was quashed by the High Court. The Additional Party lodged an appeal against that decision and as of the date of the appeal before the Tribunal, that appeal remained pending. Meanwhile, the enforcement action was stayed.

The Appellant sought the names and addresses of persons who complained to the Additional Party about the Appellant's development. Those persons had not consented to their names and addresses being disclosed, quite apart from their views being released to the Appellant. Such information constituted personal data which must not be disclosed if it would otherwise contravene the so-called Data Protection Principles. The relevant principle was the first Data Protection Principle which provides that personal data must be processed lawfully and fairly.

The Appellant also sought what he called "in-house legal advice" consisting of exchanges with the Departmental Solicitors Office in relation to the Additional Party's position and powers with particular regard to the enforcement action. The Additional Party refused to disclose such information since the enforcement action was still pending.

The IC found that the opinion and views of third parties were provided in circumstances where there arose an obligation of confidence. Although objectors to any proposed planning application can have their details made available for public viewing, the same is not true of complainants with regard to enforcement proceedings. To disclose such information would be unfair and against the reasonable expectation of those individuals. The exception being absolute, there was no need to consider the public interest.

As for the legal advice from the DSO that was sought for the dominant purpose of the enforcement action. Regulation 12(5)(b) was therefore engaged and the IC found that the interest militating in favour of the transparency of advice particularly with regard to public authorities, coupled with public interest in calling a public authority to

account was sufficiently outweighed by the public interest in maintained the confidentiality of the information.

Findings

Apart from the question of consent, the issue was whether disclosure was necessary for the purposes of legitimate interests pursued by persons to whom the data are disclosed except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms, or legitimate interests of the data subject.

Regulation 13

As for the personal data, the Tribunal noted that the Appellant had alleged in an unparticularised way that information provided by members of the public regarding his planning application was “incorrect and malicious”. The Tribunal agreed with the IC that such allegations could not be viewed as giving the Appellant any “legitimate interests” in disclosure. In any event, at a later stage in proceedings initiated by the Additional Party, the Appellant would have a chance of defending himself. Even if the Appellant did have a legitimate interest in disclosure, it was clear that prejudice would be caused to the rights and freedoms of the legitimate interests of the members of the public concerned. This was because the Additional Party did not disclose the identity of a complaint without the complainant’s consent. There was therefore a strong legitimate interest in continued anonymity.

The fact that the Appellant may have guessed the identity of one or more complainants did not in any way justify disclosure.

Regulation 12

As for Regulation 12, the enforcement proceedings were stayed and the legal advice concerned those proceedings. Disclosure of the legal advice would clearly undermine the Additional Party’s position. In the circumstances, the public interest in non-disclosure clearly outweighed the public interest in disclosure.

Conclusion

The Tribunal upheld the decision notice and dismissed the appeal.