

**Freedom of Information Act 2000 (Section 50)
and
The Environmental Information Regulations 2004.**

Decision Notice

Date: 28 June 2010

Public Authority: Denbighshire County Council
Address: County Hall
Wynnstay Road
Ruthin
LL15 1YN

Summary

The complainant submitted a request to Denbighshire County Council ('the Council') for information from environmental records held on a property in Denbigh. The complainant specified that he wished to view the records in person. The Council agreed to provide the information requested but only on the provision of a set fee. The Commissioner's decision is that the Council failed to comply with regulation 5(1) as it failed to make the information available on request and regulation 5(2) as it failed to make it available within the statutory time for compliance. The Commissioner found that the Council breached regulation 8(2)(b) by attempting to impose a charge to allow the complainant to inspect the requested information. In addition, the Council breached regulation 11(4) by failing to conduct an internal review within forty working days. The Commissioner requires the Council to make the requested information available for the complainant to inspect within 35 days of this notice.

The Commissioner's Role

1. The Environmental Information Regulations ('The Regulations') were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that The Regulations shall be enforced by the Information Commissioner (the 'Commissioner'). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the 'Act') are imported into The Regulations.

Background

2. Section 3 of the Local Land Charges Act 1975 compels all local authorities to generate, maintain and update a Local Land Charges Register and to provide local searches. In order to obtain information from a local search, an application for an Official Search must be submitted to the relevant Local Authority on form LLC1. This is usually accompanied by form CON29R.
3. The CON29R form is comprised of two parts. Part 1 contains a list of standard enquiries about a property. Optional enquiries are contained in Part 2.
4. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority.
5. The complainant represents a company which provides information about property and land issues.

The Request

6. On 31 July 2009 the complainant requested access, free of charge, to the land charges register and to records containing the information necessary to answer question 1.1(a) – (f), 3.4, 3.6 and 3.9 (a) – (n) of the CON29R form.

The complainant requested this information in relation to a specific named property and specified that he wished to inspect these records in person.

7. The Council acknowledged this request on 10 August 2009. On 22 September 2009, the complainant wrote to the Council to complain that he had received no substantive response. He asked that the Council conduct an internal review of the way that his request had been handled.
8. The Council responded to the complainant on 9 October 2009. The Council stated that information relating to the CON29R form would not be considered for disclosure under the provisions of the EIR, but under the Local Authorities (Wales) (Charges for Property Searches) Regulations 2008. The Council also stated that a fee of £11 would be

- charged to allow the complainant to inspect the Local Land Charges Register. The complainant was informed that the Council awaited further legal advice on this issue.
9. On 16 October 2009, the Council wrote to the complainant and reiterated that it was awaiting a legal opinion on the issues raised.
 10. After the intervention of the Commissioner, the Council provided its internal review outcome to the complainant on 27 May 2010. This explained that the Council was willing to provide the complainant with access free of charge to the information relevant to the CON29R form. However, the Council emphasised that it did not accept that the EIR gave the complainant an unlimited right to this information. The Council also stated that a charge of £11 would be levied for the complainant to inspect the Local Land Charges Register. The Council made clear that this charge was imposed in accordance with the [Local Land Charges Act 1975](#).

The Investigation

Scope of the case

11. On 16 November 2009, the complainant contacted the Commissioner to complain about the Council's failure to respond to his request for an internal review of the decision.
12. On 27 May 2010, after he had received the outcome of the Council's internal review, the complainant submitted a complaint to the Commissioner about the Council's compliance with the requirements of the EIR. As a result of its internal review, the Council decided to allow the complainant access to information relevant to the CON29R enquiries free of charge. This decision therefore applies only on the remaining portion of the information, specifically the local land charges register.

Chronology

13. On 9 April 2010, the Commissioner wrote to the Council and asked that it provide the complainant with an internal review of its response to his request as required under the EIR. The Commissioner also drew the Council's attention to the decision notice [FER0236058](#), and the subsequent Information Tribunal decision, [East Riding of Yorkshire Council v Information Commissioner \(EA/2009/0069\)](#), which had dealt with a similar request for access to building control information.

14. On 10 May and 18 May 2010, the Commissioner wrote to the Council to enquire when it might issue its internal review decision to the complainant.
15. On 27 May 2010, the Commissioner telephoned the Council. It was agreed that the Commissioner would issue a Decision Notice setting out his decision on the complaint.

Analysis

Substantive Procedural Matters

Regulation 2

16. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
17. The Commissioner considers that the information requested falls within regulation 2(1)(c): "measures (including administrative measure), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect these elements". Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore considers the information requested in paragraph 6 to be environmental information.

Regulation 5

18. Regulation 5(1) provides that environmental information shall be made available upon request. Regulation 5(2) provides that this information should be made available within twenty working days following receipt of the request. The complainant's original request for information was made on 31 July 2009. As yet, the Council has not provided the complainant with the requested information, although it has stated that it will do so if the complainant pays a set fee. The Commissioner therefore concludes that the Council has breached regulation 5(1) and furthermore regulation 5(2) by failing to make the requested information available within twenty working days following receipt of the request.

Regulation 6

19. Regulation 6(1) provides an applicant with the right to request that information be made available in a particular form or format. It is the Commissioner's view that although regulation 6(1) may appear primarily to be concerned with the form or format information is provided in, it should be interpreted broadly and does provide a right to request the inspection of environmental information. A public authority should comply with this preference unless it is reasonable to make the information available in another format, or the information is already publicly available in another format.
20. The Council has indicated that it is willing to allow the complainant access to inspect the information on provision of a fee. Therefore, the Commissioner considers that it has complied with the duty to make information available in the applicant's preferred format as set out under regulation 6(1).

Regulation 8

21. Regulation 8 provides a general right for public authorities to charge for making information available. However, that right is subject to a number of conditions. The relevant conditions in this case are set out in regulation 8(2).
22. Regulation 8(2)(a) states that a public authority shall not make any charge for allowing an applicant to access any public registers of lists of environmental information, and regulation 8(2)(b) states that a public authority shall not make any charge for allowing an applicant to examine the information requested at a place which the authority makes available.
23. The Commissioner notes that the Council continue to impose a charge of £11 for inspection of property records in the Local Land Charges Register. The Council has emphasised that this charge is levied in accordance with section 8 of the [Local Land Charges Act 1975](#) (LLCA). Section 8(1) of this Act provides that "Any person may search in any local land charges register on paying the prescribed fee."
24. Consequently, the Commissioner considers that if the property records comprise environmental information as defined by regulation 2 of the EIR the LLCA cannot be used as the basis for charging and the Council must adopt the charging provisions of the EIR. The Council has not disputed that this property information is environmental. Therefore, despite the provisions of the LLCA, the information should be considered for disclosure under the EIR. For the reasons set out above,

the Commissioner considers that the EIR entitle the complainant to request to inspect the requested information free of charge, and the Local Land Charges Act cannot apply. This position also acknowledges the primacy of EU legislation whereby European law, such as the EIR, takes precedence over domestic law.

25. The Council has specifically drawn the Commissioner's attention to regulation 5(6) of the Environmental Information Regulations 2004 (EIR), which provides that "any enactment or rule of law that would prevent disclosure of information in accordance with these regulations shall not apply". It is the Council's position that the LLCA still applies to the requested information as it is "obliged under the legislation to maintain this register, and as such this does not prevent disclosure". The Council is therefore of the opinion that the EIR do not apply in this case and the Council is in fact under an obligation to impose the statutory fee set out in the LLCA to allow inspection of the Register. However, the Commissioner's position on this is that regulation 5(6) specifically disapplies the charging provisions under the LLCA.
26. The Council has agreed that the complainant can inspect the requested information upon provision of a fee of £11. However, regulation 8(2)(b) provides that a public authority is not entitled to charge a fee for allowing inspection of information. Therefore, the Commissioner finds that by attempting to charge a fee in order for access to the information, the Council has breached regulation 8(2)(b).

Regulation 11

27. Regulation 11(3) provides that a public authority must reconsider its response to a request for information upon receiving representations from an applicant. Regulation 11(4) provides that the outcome of a decision under regulation 11(3) must be communicated to the applicant as soon as possible and within forty working days after representations were received.
28. The complainant requested an internal review on 22 September 2009. The outcome of this review was not provided until 27 May 2010. Therefore, the Commissioner finds that the Council has breached regulation 11(4).

The Decision

29. The Commissioner's decision is that Denbighshire County Council did not deal with the request for information in accordance with the EIR.

The Council has breached regulations 5(1) of the EIR as it failed to make the information available on request and regulation 5(2) as it failed to make it available within the statutory time for compliance. The Council has breached Regulation 8(2)(b) in imposing a charge to allow the complainant to inspect the requested information. The Council has also breached regulation 11(4) by failing to provide the outcome of its internal review to the complainant within 40 working days.

Steps Required

30. The Commissioner requires that the Council make the requested information available for the complainant to inspect free of charge.
31. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Right of Appeal

32. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 28th day of June 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and

- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 6 - Form and format of information

Regulation 6(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

- (a) it is reasonable for it to make the information available in another form or format; or
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.

Regulation 8 - Charging

Regulation 8(1) Subject to paragraphs (2) to (8), where the public authority makes environmental information available in accordance with regulation 5(1) the authority may charge the applicant for making the information available.

Regulation 8(2) A public authority shall not make any charge for allowing an applicant –

- (a) to access any public registers or lists of environmental information held by the public authority; or
- (b) to examine the information requested at the place which the public authority makes available for the examination.

Regulation 11 - Representation and reconsideration

Regulation 11(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

Regulation 11(2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

Regulation 11(3) The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

Regulation 11(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations.

Regulation 11(5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of –

- (a) the failure to comply;
- (b) the action the authority has decided to take to comply with the requirement; and
- (c) the period within which that action is to be taken.

Regulation 14 - Refusal to disclose information

Regulation 14(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

Regulation 14(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 14(3) The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13;
- and

- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

Regulation 14(4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

Regulation 14(5) The refusal shall inform the applicant –

- (a) that he may make representations to the public authority under regulation 11; and
- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.