

Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004

Decision Notice

Date: 24 June 2010

Public Authority: Gwynedd Council
Address: Council Offices
Shirehall Street
Caernarfon
LL55 1SH

Summary

The complainant made a request to Gwynedd Council to view information relating to a property in Gwynedd. The Council agreed to provide the information requested but only on provision of a fee based on the relevant property search regulations. The Commissioner has determined that the request was to inspect environmental information and as such, the Council should have allowed the complainant to inspect the information free of charge. Its attempt to levy a charge for the inspection of this information therefore represents a breach of regulation 8(2)(b) of the EIR.

The Commissioner's Role

1. The Environmental Information Regulations ('the EIR') 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 EIR 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 EIR.

Background

2. Section 3 of the Local Land Charges Act 1975 places a statutory obligation all local authorities within England and Wales to generate,

- maintain and update a Local Land Charges Register and to allow the general public to search for information contained in that register.
3. When a property or piece of land is purchased or leased, a request for a search of the Local Land Charges Register is sent to the relevant local authority. In order to obtain information from a local authority, an application for an official search must be submitted on form LLC1. This is usually accompanied by form Con29R. The Con29R form is comprised of two parts. Part 1 contains a list of standard enquiries about a property. Optional enquiries are contained within Part 2.
 4. The Local Authorities (Wales) (Charges for Property Searches) Regulations 2008 (CPSR) provide a framework within which local authorities can make charges for property searches services, specifically for granting access to property records held by the local authority and for answering queries about a property. In essence they permit charging to be made on a cost recovery basis. The information requested in this case was part of the property searches being conducted by the complainant.
 5. The Council's charging regime was in line with the provisions of the CPSR which included a statutory fee of £11 to inspect the Local Land Charges Register. This is applied whether the information on this register is considered to be environmental or not.

The Request

6. Between August and September 2009 correspondence was exchanged between the complainant and Gwynedd Council ('the Council') in relation to general issues and the complainant's concerns relating to charges the Council levied for the provision of information relating to property searches.
7. The complainant referred the Council to guidance which the Commissioner had issued in relation to this matter¹. The Council's response dated 24 September 2009 confirmed that it would continue to operate its current charging regime until it received further guidance on the matter from the Local Government Association (the LGA).
8. On 24 September 2009 the complainant made the following request to the Council in respect of a particular property within its boundary:

1

http://www.ico.gov.uk/upload/documents/library/environmental_info_reg/practical_application/fep116_property_searches_and_eir_v1.pdf

"I request an appointment to view the land charges register free of charge to collate information on the above property.

I would also at the same time like to view all the free records holding the information required to answer questions on the Con29R and the records required to answer questions; 1.1 (f)-(h), 3.4, 3.6, and 3.9 (a)-(n). on the Con29R also free of charge."

9. The Council responded on 5 October 2009 and advised the complainant that that until it received further guidance from the LGA it would not be altering its existing procedures with regard to providing access to property search information.
10. On 6 October 2009 the complainant wrote to the Council to complain about its refusal to allow free inspection of the information requested.
11. On 12 October 2009 the Council wrote to the complainant advising that as this is a national issue, no action would be taken on the matter until further guidance had been received from the LGA.

The Investigation

Scope of the case

12. On 9 November 2009 the Commissioner received notification of the applicant's complaint about the way his request for information had been handled. The complainant stated that he believed the information requested was environmental, and that he should be entitled to inspect it free of charge.
13. In a letter to the Commissioner dated 23 December 2009, the Council clarified that it would, free of charge, have allowed the complainant to examine information relating to questions 1.1 (f)-(h) on the Con29R form. It also stated that, at the time of the request, it did not hold information in relation to question 3.9 of the form and that information to answer questions 3.4 and 3.6 of the Con29R form was available to examine subject to a fee to cover staff costs.
14. The Council has subsequently clarified that although the address this request relates to falls within its boundary for general purposes, the Snowdonia National Park Authority is the local planning authority for

this property. It is therefore the National Park which holds the information in respect of question 3.9.

15. Although the complainant was not informed that the Council did not hold the information in respect of question 3.9 at the time of the request, the Commissioner has since discussed this with the complainant who accepts that it would be held by a different public authority. The Commissioner's investigation therefore relates to the Local Land Charges Register and questions 3.4 and 3.6 of the Con29R.

16. The relevant questions on the Con29R form are detailed below:

3.4 Nearby Road Schemes

Is the property (or will it be) within 200 metres of any of the following:

- (a) the centre line of a new trunk road or special road specified in order, draft order or scheme
- (b) the centre line of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway.
- (c) the outer limits of construction work for a proposed alteration or improvement to an existing road, involving (i) construction of a roundabout (other than a mini roundabout); (ii) widening by construction of one or more additional traffic lanes
- (d) the outer limits of (i) construction of a new road to be built by a local authority; (ii) an approved alteration or improvement to an existing road involving construction of a subway, underpass, flyover, elevated road or dual carriageway; or (iii) construction of a roundabout (other than a mini roundabout) or widening by construction of one or more additional traffic lanes.
- (e) the centre line of the proposed route of a new road under proposals for public consultation
- (f) the outer limits of (i) construction of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway; (ii) construction of a roundabout (other than a mini roundabout); or (iii) widening by construction of one or more additional traffic lanes, under proposals published for public consultation.

3.6 Traffic Schemes

Has a local authority approved but not yet implemented any of the following for the roads and footpaths which abut the boundaries of the property:

- (a) permanent stopping up or diversion
 - (b) waiting or loading restrictions
 - (c) one way driving
 - (d) prohibition of driving
 - (e) pedestrianisation
 - (f) vehicle width or weight restriction
 - (g) traffic calming works including road humps
 - (i) minor road widening or improvement
 - (j) pedestrian crossings
 - (k) cycle tracks
 - (l) bridge building
17. The Commissioner's investigation has focused on determining if the information requested, as outlined in paragraph 15 is environmental information falling within the scope of the EIR and if so whether that information should be made available for examination free of charge.

Chronology

18. The Commissioner wrote to the complainant and the Council on 17 November 2009 confirming that the complaint had been deemed eligible for formal consideration.
19. On 23 December 2009 the Council clarified with the Commissioner that its policy is to provide information relating to questions 1.1(f)-(h) of the Con29R form free of charge, that it does not hold information in respect of question 3.9 and that it charges a fee for either providing information to answer questions 3.4 and 3.6 of the Con29R or allowing examination of that information.
20. On 30 March 2010 the Commissioner contacted the complainant who confirmed that since the Council had refused to allow him to inspect the information free of charge under the EIR, he had obtained it via the Con29R route. He further confirmed that the Council charged a fee of £42 for the provision of the complete set of property search information relating to the specific property in question. This included £24 for information in respect of questions 3.4 and 3.6 of the Con29R.
21. The Commissioner also contacted the Council on the same date to clarify whether it accepted that the information in respect of questions 3.4 and 3.6 of the Con29R is environmental information and, if so, for its reasoning for charging the applicant a fee to cover staffing costs to examine the information. The Commissioner made particular reference to regulation 8(2) of the EIR. The Council provided a substantive response on 15 April 2010.

22. The Commissioner has subsequently contacted the Council for its views regarding the information relevant to the Local Land Charges Register ('the LLCR') and the Council provided a substantive response on 26 May 2010 confirming that it does not consider all of the information to be environmental.

Analysis

Substantive Procedural Matters

23. The Commissioner has considered whether the information requested under 3.4 and 3.6 of the Con29R and the LLCR is environmental information as defined by the EIR.
24. 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".
25. The questions on the Con29R form, as detailed in paragraph 16 above relate to information on planning and building regulations, road and traffic schemes, and notices, orders, directions and proceedings under planning acts. The Commissioner considers that in order to obtain the answers to these questions it is necessary to inspect environmental information. The information which is inspected would comprise of a measure or plan on an activity (i.e. road scheme, planning application or building plan) affecting or likely to affect one or some of the elements referred to in regulation 2(1)(a).
26. The Commissioner has also considered whether the information contained in the LLCR is wholly environmental. However, the Council has argued that it is entitled to charge for the information on the LLCR regardless of whether it is all environmental information. It stated that:
27. *"...Section 8 of the Local Land Charges Act 1975 applies to personal searches of the LLCR. This clearly stipulates that personal searches may only be undertaken on payment of the prescribed fee...The Council is therefore entitled to charge accordingly."*

28. The Commissioner's stance is that unless either of the conditions in regulation 8(2) are met, a public authority is not entitled to charge for environmental information.
29. The Council has however argued that not all of the information contained within the LLCR is environmental information. It has argued that in particular, Part 2 of the Register relates to specific financial charges against a property and relates to sums which are recoverable from owners and successive owners or occupiers. The Council maintains that the information is essentially of a financial and administrative nature.
30. However, whilst the Commissioner accepts that there may be information relating to some properties on the LLCR which is non environmental, the crucial point is whether the information in relation to the specific property subject to this complaint is all environmental. The Commissioner has viewed the information on the LLCR specific to the relevant property and the only information contained within the LLCR is located in section 3b which relates to planning charges. Section 3b states:

"This property is contained in the Bala Conservation Area, designated on 30 June 1978 and is registered in compliance with Section 277 of the Town and Country Planning Act 1971 (as amended)."
31. The Commissioner is satisfied that this information constitutes environmental information and has therefore concluded the whole of the LLCR in this particular case is environmental information.

Regulations 5, 6 and 8

32. The complainant made a request to inspect the LLCR and certain information from which he can obtain answers to questions on the Con29R form. Although the answers to these questions will often be a simple 'yes' or 'no' the Commissioner's view is that in most cases environmental information is being examined so that the answers can be obtained, as indicated in paragraph 16 above.
33. Regulation 5(1) provides that environmental information shall be made available upon request. In broad terms regulation 6(1) provides that where an applicant requests the information in a particular form or format the public authority is, subject to certain qualifications, obliged to comply with that preference. Regulation 8 provides that a public authority can make a reasonable charge for complying with a request however regulation 8 also specifies two situations where the

information must be made available free of charge. The relevant qualifications are contained in regulation 8(2).

- 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.
34. The Council has accepted that the information is environmental. The Council was also prepared to allow the complainant to inspect the information. Since it is not refusing to allow the complainant access to the information in the form and format of his specified choice a detailed discussion of whether regulation 6 does provide a right to request to inspect information is not therefore necessary in this case.
35. However, in terms of its charge to cover staffing costs it has argued that examination of the recorded information itself may not provide the level of information required to answer the questions contained in the Con29R form. It has further argued that the officer overseeing the request would need to liaise with the relevant technical officers within the Council to seek clarification of information or explanations of any issues or fill in gaps in the recorded information.
36. The Council provided an example in relation to adopted highways which are shown as red lines along the centre line of plans. This does not necessarily indicate whether a pavement or path along the road forms part of the adopted highway and it is often the technical officer's local knowledge of the area which will provide the information.
37. In relation to the information contained in the LLCR, the Council has stated that it was entitled to make this charge under Section 8 of the Local Land Charges Act 1975.
38. The Commissioner notes that the complainant asked to view all the free records required to answer questions 3.4 and 3.6. His request was not for the Council to provide him with comprehensive answers to those questions or an analysis of the information it held. The focus of the Commissioner's investigation has therefore been concerned with whether the Council complied with the provisions of the EIR by attempting to charge a fee for inspection of the information.
39. The Commissioner is of the opinion that the EIR provides the right to request to inspect, free of charge, environmental information held by a

public authority and that the complainant is entitled to inspect the information requested free of charge.

Procedural Requirements

Regulation 14: Refusal to disclose information

40. Regulation 14 of the EIR concerns the refusal of the request. Regulation 14(3)(a) states:

“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”

41. The Commissioner notes that the Council did not inform the complainant that it was refusing to provide the information in respect of question 3.9 on the basis of regulation 12(4)(a) (it does not hold the information when an applicant’s request is received). In failing to notify the complainant of this matter, the Council has breached section 14(3)(a) of the EIR.
42. In its attempt to levy a charge for allowing the applicant to inspect the requested information, the public authority has breached regulation 8(2)(b) of the EIR.

The Decision

43. The Commissioner’s decision is that the Council did not deal with the request for information in accordance with the EIR. The Council breached the requirements of regulations 8(2)(b) of the EIR by failing, on request, to make the requested information available for examination free of charge.
44. The Council also breached regulation 14(3)(a) in failing to provide an adequate refusal notice as discussed in paragraph 41 above.

Steps Required

45. The Commissioner notes that the complainant has received the information he requested, for which he paid a fee. The Commissioner

does not therefore need to order the same information be made available again.

46. The Commissioner does not have the power to order a refund in this case and it is up to the complainant to take any further steps to recover any fees which he paid. However, in view of his decision in this case the Commissioner recommends the Council considers refunding the fees paid or at least the difference between the amount actually paid and what would be considered reasonable in accordance with the Markinson decision. (David Markinson v Information Commissioner (EA/2005/0014; 28 March 2006).

Right of Appeal

47. 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 24th 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);

“historical record” has the same meaning as in section 62(1) of the Act;
“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

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

“Scottish public authority” means –

- (a) a body referred to in section 80(2) of the Act; and
- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

“transferred public record” has the same meaning as in section 15(4) of the Act; and

“working day” has the same meaning as in section 10(6) of the Act.

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 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 6(2) If the information is not made available in the form or format requested, the public authority shall –

- (a) explain the reason for its decision as soon as possible and not later than 20 working days after the date of receipt of the request for the information;
- (b) provide the explanation in writing if the applicant requests; and
- (c) inform the applicant of the provisions of regulation 11 and the enforcement and appeal provisions of the Act applied by regulation 18.

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 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.