

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

Decision Notice

Date: 9 August 2010

Public Authority: Flintshire County Council
Address: County Hall
Mold
Clywd
Flintshire
CH7 6NW

Summary

The complainant submitted a request to Flintshire County Council ('the Council') for information from environmental records held on a property in Buckley. The complainant specified that he wished to view the records in person. The Council agreed to provide some of the information requested free of charge. However, the Council only agreed to provide the remainder of the information on the provision of a fee. The Commissioner's decision is that the Council failed to comply with regulation 5(1) as it failed to make information available on request and regulation 5(2) as it failed to make it available within the statutory time for compliance. The Commissioner also found that the Council breached regulation 8(2)(b) by attempting to impose a charge for allowing the complainant to inspect the requested information. In addition, the Council breached regulation 11(4) by failing to conduct an internal review within 40 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 (LLCA) compels all local authorities to generate, maintain and update a Local Land Charges Register. Under the LLCA applicants can obtain an 'Official Search' of the register by submitting form LLC1 to the relevant Local Authority. 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 responded to the complainant on 28 September 2009. The Council stated that it would respond pending further legal advice.
8. On 1 October 2009, the complainant wrote to the Council and asked it to review its decision not to allow access to the requested information.
9. On 13 October 2009, the Council wrote to the complainant and reiterated that it would contact him again once it had received legal advice.

10. After the intervention of the Commissioner, the Council provided its internal review outcome to the complainant on 7 May 2010. This stated that the complainant could access the information relevant to the CON29R form for free but a charge would be levied to allow inspection of the Local Land Charges Register.

The Investigation

Scope of the case

11. On 13 November 2009, the complainant contacted the Commissioner to complain about the Council's compliance with the provisions 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

12. On 9 April 2010, the Commissioner contacted the Council and explained the requirements of the EIR. He asked that the Council provide an internal review to the complainant considering the request under the EIR. The Council was advised that it should either disclose the information or explain why it was being withheld. 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.
13. On 7 May 2010, the Council wrote to the complainant and stated that he could access the information relevant to the CON29R questions free of charge. The complainant would also be permitted to view the local land charges register but a fee of £11 would be charged. The Council made clear that this charge was calculated in accordance with the [Local Land Charges Act 1975](#) (LLCA).
14. On 12 May 2010, the Commissioner wrote to the Council and explained that he would be likely to find the proposed fee of £11 for inspection of the information was not compliant with the EIR. He invited any further representations or comments that the Council wished to make. The Council acknowledged this email on 14 May 2010 and confirmed its intention to respond to the Commissioner by 10 June 2010.

15. On 10 June 2010, the Council wrote to the Commissioner and reiterated that it was of the opinion that the EIR did not disapply the charging provisions of the LLCA. The Council also referred to an email it had received from the complainant dated 10 May 2010. This email thanked the Council for its decision to allow access to the information relating to questions on form CON29R, but stated that an appointment to do this was no longer required. The Council therefore advised the Commissioner that it appeared that the complainant no longer wished to pursue his request for information.
16. The complainant wrote to the Commissioner on 11 June 2010 to confirm that he still wished to inspect the Local Land Charges Register for the property specified.
17. On 14 June 2010, the Commissioner wrote to the Council to inform it that the complainant wished to pursue his request for access to the Local Land Charges Register for the property specified. The Commissioner also advised the Council that he would proceed to issue a decision notice should the Council wish to submit no further arguments in support of its position.
18. On 22 June 2010, the Commissioner and the Council agreed a final deadline of 1 July 2010 for this submission.

Analysis

Substantive Procedural Matters

The full text of relevant sections of the EIR is provided in the Legal Annex.

Regulation 2

19. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
20. 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 by the complainant to be environmental information.

Procedural Requirements

Regulation 5

21. 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 20 working days following receipt of the request. The complainant's original request for information was made on 24 September 2009. As yet, the Council has not provided the complainant with the requested information, although it has offered to do so on provision of a fee. The Commissioner therefore concludes that the Council has breached regulation 5(1) as it failed to make information available on request and regulation 5(2) by failing to make the requested information available within 20 working days following receipt of the request.

Regulation 6

22. Regulation 6(1) provides an applicant with the right to request that information be made available in a particular form or format. The Commissioner considers 'inspection' to constitute a form. 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. 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 an applicant's preferred format as set out under regulation 6(1).

Regulation 8

23. 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 contained in regulation 8(2).
24. Regulation 8(2)(a) states that a public authority shall not make any charge for allowing an applicant to access any public registers or 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.

25. The Council has agreed that the complainant can inspect the requested information upon provision of a fee of £11. 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."
26. However, 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.
27. 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. The Commissioner also notes that regulation 5(6) of the EIR provides that "any enactment or rule of law that would prevent disclosure of information in accordance with these regulations shall not apply", and it is his position that this specifically disappplies the charging provisions of the LLCA.
28. 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

29. 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 40 working days after representations are received.
30. The complainant requested an internal review on 1 October 2009. The outcome of this review was not provided until 7 May 2010. Therefore, the Commissioner finds that the Council has breached regulation 11(4).

The Decision

31. The Commissioner's decision is that Flintshire County Council did not deal with the request for information in accordance with the EIR. The Council has breached the requirements of regulation 5(1) as it failed to make information available on request and regulation 5(2) of the EIR as it failed to make the requested information available for inspection within the statutory time for compliance. The Council has breached 8(2)(b) by attempting to impose a charge for allowing the complainant to inspect the requested information. In addition, the Council has breached regulation 11(4) by failing to provide the outcome of its internal review to the complainant within 40 working days.

Steps Required

32. The Commissioner requires that the Council make the remainder of the requested information, specifically the local land charges register entries for the specific property, available for the complainant to inspect free of charge.
33. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Right of Appeal

34. 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 9th day of August 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 –

- (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;

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.