

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

### **Decision Notice**

**Date: 15 July 2010**

**Public Authority:** Basildon District Council  
**Address:** St Martins Square  
Basildon  
Essex  
SS14 1DL

### **Summary**

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The complainant requested from the council various information concerning the supply, cost and delivery of refuse sacks. The council disclosed most of the information but withheld details of the cost price of the refuse sacks under section 43 of the Freedom of Information Act 2000 (the Act). The Commissioner finds that the information requested is environmental and the request should have been dealt with under the Environmental Information Regulations 2004 (the EIR). The Commissioner therefore requires the council to reconsider the request under the EIR and to either disclose the information to the complainant under Regulation 5 or issue a refusal notice under Regulation 14.

### **The Commissioner's Role**

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1. The Environmental Information Regulations (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.

## The Request

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2. On 5 February 2010 the complainant requested the following information under the Act:
  1. 'Cost price of the refuse sacks both black and pink
  2. The suppliers of both pink and black sacks
  3. Labour costs for the delivery of sacks (this should include HIDDEN cost of training, NI Insurance and pension costs)
  4. How many delivery personnel involved
  5. Administration related costs of sacks (this should include HIDDEN cost of training, NI insurance and pension costs)
  6. Mileage covered in delivering these sacks
  7. Vehicle costs relating to delivery (maintenance, leasing, type of fuel used)
  8. fuel costs
  9. Qty delivered per household and the frequency of delivery PA
  10. Defining Areas and their qty delivered per area
  11. Qty delivered in total black and pink sacks
  12. Distribution centre location
  13. Distribution centre location staff related costs (for loading, receiving, stock taking)
  14. How many ancillary personnel involved

It's my intention to determine if the council provided service is value for money? And if it's really essential service that should be provided by the council?'

3. On 1 March 2010 the council emailed the complainant detailed answers to all of his questions with the exception of question 1 (the cost price of the black and pink sacks) and question 11 (the total number of sacks delivered). The council explained that it was unable to disclose the information requested in question 1 due to 'reasons of commercial sensitivity'.
4. The same day the complainant asked the council to justify its decision with reference to the Act and suggested that the price of waste sacks was an important issue for determining whether value for money had been achieved.

5. The council responded on 2 March 2010 saying that it was applying the exemption under section 43 of the Act in respect of which it provided a link to the Commissioner's Guidance on 'Commercial Interests'<sup>1</sup>.
6. After the complainant alerted the council to its failure to answer question 11 on 1 March it provided him with the requested information on 4 March 2010.
7. On 4 March the complainant requested an internal review stating he could see no reason why the information requested in question 1 of his request should not be disclosed. He asked what damage would be caused to the council's interests or those of its supplier by disclosure and also enquired as to whether a tendering process was taking place.
8. On or about 1 April 2010 the council advised it had taken the public interest test into consideration and was upholding its original decision under section 43 of the Act on the grounds that disclosure would prejudice its position for future tenders.

## The Investigation

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### Scope of the case

9. On 7 April 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. During the course of the Commissioner's investigation the complainant confirmed that his only outstanding issue was the council's refusal to provide him with the information requested in question 1 of his request, namely the cost price of its black and pink refuse sacks, under section 43 of the Act.

### Chronology

11. On 10 May 2010 the Commissioner requested the withheld information from the council.
12. The council responded by email on 10, 17 and 24 May 2010 and supplied a copy of the Plastic Sacks Framework Agreement.

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[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guide\\_5\\_-\\_commercial\\_interests.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guide_5_-_commercial_interests.pdf)

## Analysis

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### Substantive Procedural Matters

#### Freedom of Information Act 2000 or the Environmental Information Regulations

13. The first matter for the Commissioner to decide is whether the information requested by the complainant is covered by the Act or the EIR. Section 39 of the Act states that information is exempt information if the public authority holding it is obliged, by regulations under section 74 of the Act, to make the information available to the public in accordance with those regulations or would be so obliged but for any exemption under those regulations. The regulations under section 74 of the Act are the EIR. Information falls to be considered under the EIR if that information is environmental information. Environmental information is defined in Regulation 2 of the EIR.
14. A full version of Regulation 2(1) of the EIR which deals with the interpretation of the Regulations and the definition of environmental information is set out in full in the attached legal annex.
15. The Commissioner's view is that the requested information (consisting of the cost price of refuse sacks) is environmental within the meaning of the EIR as it is information on (i.e. concerning or about) the measure of waste collection, which is a measure affecting or likely to effect the elements of the environment under 2(1)(a) of the EIR (in particular land and landscape) via the factor of 'waste' in 2(1)(b).
16. The Commissioner believes that the 'measure' and/or an activity affects or is likely to affect the 'elements of the environment', namely soil (in terms of landfill) land (streets) and landscape (rubbish tips) and 'factors' such as 'waste' as well as measures or activities designed to protect those elements.
17. The Commissioner also believes that the requested information is environmental by virtue of Regulation 2(1)(b) as it is information on (i.e. concerning or about) the factor of waste.
18. The Commissioner has also issued Decision Notices in the similar cases of Ealing Council (FS50255080) and (Camden Council FS50255077) where he decided that the names and addresses of the councils' commercial waste sack clients was environmental information under the EIR.

## **The Decision**

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19. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with Regulation 5(2) of the EIR by applying the EIR.

## **Steps Required**

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20. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
21. The council must deal with the matter under the EIR and either disclose the requested information to the complainant in accordance with Regulation 5 or provide him with a valid refusal notice in accordance with the requirements of Regulation 14.
22. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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23. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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24. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 15<sup>th</sup> day of July 2010**

**Signed .....**

**Steve Wood  
Head of Policy Delivery**

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

## Legal Annex

### Freedom of Information Act 2000

**Section 39(1)** provides that –

“Information is exempt information if the public authority holding it-

(a) is obliged by regulations under section 74 to make the information available to the public in accordance with the regulations, or

(b) would be so obliged but for any exemption contained in the regulations.”

**Section 39(2)** provides that –

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).”

**Section 39(3)** provides that –

“Subsection (1)(a) does not limit the generality of section 21(1).”

### Environmental Information Regulations 2004

#### Regulation 2 - Interpretation

**Regulation 2(1)** In these Regulations –

“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 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 5(3)** To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

**Regulation 5(4)** For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

**Regulation 5(5)** Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.

**Regulation 5(6)** Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

## **Regulation 12 - Exceptions to the duty to disclose environmental information**

**Regulation 12(1)** Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

**Regulation 12(2)** A public authority shall apply a presumption in favour of disclosure.

**Regulation 12(3)** To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

**Regulation 12(4)** For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;

- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

**Regulation 12(5)** For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

- (a) international relations, defence, national security or public safety;
- (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- (c) intellectual property rights;
- (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
- (f) the interests of the person who provided the information where that person –
  - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
  - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from the Regulations to disclose it; and
  - (iii) has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.

**Regulation 12 (6)** For the purpose of paragraph (1), a public authority may respond to a request by neither confirming or denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).

**Regulation 12(7)** For the purposes of a response under paragraph (6), whether information exists and is held by the public authority is itself the disclosure of information.

**Regulation 12(8)** For the purposes of paragraph (4)(e), internal communications includes communications between government departments.

**Regulation 12(9)** To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs (5)(d) to (g).

**Regulation 12(10)** For the purpose of paragraphs (5)(b), (d) and (f), references to a public authority shall include references to a Scottish public authority.

**Regulation 12(11)** Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is withheld by virtue of these Regulations unless it is not reasonably capable of being separated from the other information for the purpose of making available that information.