

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

**Decision Notice**

**Date: 9 December 2010**

**Public Authority:** Cheshire East Council  
**Address:** Westfields  
Middlewich Road  
Sandbach  
Cheshire  
CW11 1HZ

**Summary**

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The complainant submitted a request to Cheshire East Council ('the Council') to inspect the Local Land Charge Register ('the Register'). The complainant specified that he wished to view the records in person. The Council initially agreed to provide the information requested but only on the provision of a set fee. During the course of the investigation, the Council applied the exception at regulation 12(4)(b) to the requested information. The Commissioner's decision is that the Council applied this exception correctly. However, the Commissioner finds that the Council has breached regulation 14(2) by failing to provide the complainant with a refusal notice within the statutory time for compliance, regulation 14(3)(a) by failing to cite the specific exception it relied upon in refusing a request, and regulation 14(3)(b) by failing to inform the complainant of any public interest considerations it took into account in applying the exception. It has also breached regulation 9(1) because it did not offer the complainant advice and assistance in accordance with the Code of Practice. The Commissioner requires the Council to offer advice and assistance to the complainant by informing him how he might narrow his request to information so that it would no longer be manifestly unreasonable. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## The Commissioner's Role

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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 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

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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. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority.
4. The complainant represents a company which provides information about property and land issues.

## The Request

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5. On 13 April 2010 the complainant requested access, free of charge, to  
"inspect the Local Land Charges Register parts 1 to 12".
6. The Council acknowledged this request on 14 April 2010.
7. The complainant then resubmitted his request on a daily basis until 14 May 2010.
8. On 23 April 2010, when the Council wrote to him to explain that as the requests were identical, apart from the dates the complainant was available to inspect the information, it would group them together and deal with them all in its response.

9. On 24 April 2010, the complainant wrote to the Council to complain that it had failed to offer him appropriate advice and assistance, and that as appointments to view the Register were routinely provided within a week, it had failed to respond to his request "as soon as possible". The complainant confirmed that he would continue to submit a request every day until he received a response.
10. On 14 May 2010, the Council responded to the complainant. The Council stated that the Register could be accessed in line with its standard procedures. This included the payment of a fee as set out in the [Local Land Charges \(Amendment\) Rules 2009](#). The Council also stated that its position was supported by the decision in the case of [R – v- York City Council ex parte OneSearch Direct Holdings Ltd \(2010\) EWHC 590 \(Admin\)](#) ('the High Court decision').
11. On 17 May 2010, the complainant wrote to the Council and asked that it conduct an internal review of this decision.
12. The Council acknowledged this request for an internal review on 20 May 2010.
13. On 22 June 2010, the Council wrote to the complainant with the outcome of its internal review. This upheld the original response.
14. Following the intervention of the Commissioner, the Council wrote to the complainant on 20 August 2010 to explain that following the introduction of the [Local Land Charges \(Amendment\) Rules 2010](#), it accepted that the Local Land Charges Register should be made available in line with the EIR.

## The Investigation

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### Scope of the case

15. On 24 June 2010, the complainant contacted the Commissioner to complain about the Council's compliance with the EIR.

### Chronology

16. On 3 August 2010 the Commissioner telephoned and wrote to the Council and asked that it reconsider the complainant's request in light of the newly introduced [Local Land Charges \(Amendment\) Rules 2010](#) ('the Amendment'). The Amendment revoked the previous standard fee of £22 imposed to allow an inspection of the Local Land Charges

Register for one parcel of land. The Amendment came into force on 17 August 2010, but all local authorities were advised by Defra in a letter of 29 July 2010 to stop charging with immediate effect.

17. On 13 August 2010, the Council wrote to the Commissioner to explain that the requested information would be made available free of charge.
18. On 29 September 2010, the Commissioner contacted the Council to enquire if the complainant had been provided with access to the requested information.
19. The Council responded on 29 September 2010 and explained that as the complainant had not submitted a request to inspect information in relation to a particular property, it had not been able to offer him an appointment to inspect the requested information.
20. On 12 October 2010 the Commissioner emailed the Council to ask if it considered the complainant's request to be manifestly unreasonable under the exception at regulation 12(4)(b). The Commissioner also drew the Council's attention to his Decision Notice [FER0279668](#), in a complaint brought against Walsall MBC.
21. On 15 October 2010 the Council confirmed that it wished to rely on the exception at regulation 12(4)(b) and explained why this was the case.

## Analysis

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### Substantive Procedural Matters

*Was the Council correct to deal with the requests together?*

22. As detailed in paragraph seven above, the complainant submitted identical requests on a daily basis between 13 April and 14 May 2010. The only difference was to the dates that he informed the Council he would be available to attend an appointment to view the information – once one proposed date had passed, the complainant omitted this from his next request and provided another prospective date. Although these were separate requests, the Commissioner agrees that in the particular circumstances of this case it was appropriate for the Council to consider them together and provide only one response. This is because the request itself was consistent and the only variable was the complainant's availability.

## **Regulation 2**

23. The Commissioner has considered whether the information requested by the complainant 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 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 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.

## **Regulation 12(4)(b)**

25. In its email to the Commissioner of 29 September 2010, the Council argued that the complainant's request could not be complied with because it was too broad. In his email of 12 October 2010, the Commissioner explained the provisions of the exception at regulation 12(4)(b) ('manifestly unreasonable') and asked if the Council wished to apply this exception to the requested information. On 15 October 2010 the Council confirmed that it considered the complainant's request to be 'manifestly unreasonable'. In its original refusal notice and internal review, the Council did not rely upon regulation 12(4)(b). In this case, the Commissioner has chosen to exercise his discretion to consider the late application of this exception.
26. Regulation 12(4)(b) provides an exception for requests that are 'manifestly unreasonable'. Whilst the EIR do not define the term, the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable. The Commissioner must decide whether complying with the request would place a burden on the Council that is manifestly unreasonable and engage the exception at regulation 12(4)(b).
27. There is no single test for what sorts of requests may be considered to be manifestly unreasonable. Instead, each individual case is judged on its own merits taking into account all of the circumstances surrounding the request. It is the Commissioner's view that regulation 12(4)(b) will apply where it is demonstrated that a request is vexatious or that compliance would incur unreasonable costs for the public authority or an unreasonable diversion of public resources.

In determining the threshold needed to engage this exception the Commissioner has taken into account the comments of the Information Tribunal in *DBERR v Information Commissioner and Platform* (EA/2008/0096), which stated that:

“It is clear to us that the expression [manifestly unreasonable] means something more than just “unreasonable”. The word “manifestly imports a quality of obviousness. What is in issue, therefore, is a request that is plainly or clearly unreasonable”.

28. The Council argues that the complainant’s request is manifestly unreasonable because it was too broad in its scope. The complainant requested an appointment to inspect the Register but did not specify a particular property which he wished to view entries for.
29. The Council has explained that entries on the Register are held in a variety of formats. These include paper records as well as information held electronically. None of the Council’s electronic systems are ‘locked down’ and so to allow inspection of these original records would present potential problems around the security of personal data held on the system under the Data Protection Act, and concerns about ensuring the integrity of the information held. The Council therefore provides the relevant extracts for a particular property for inspection where a request is received. The Commissioner considers, as set out in Decision Notice [FER0308439](#) (see paras 39 and 40) that this satisfies a request to inspect information under regulation 6(1).
30. The Commissioner accepts that it would take the Council an excessive amount of time to collate all of the information on the Register, especially given that it is held in both manual and electronic formats. The Commissioner also accepts that providing this information for the complainant to inspect will create disruption across many business areas within the Council as staff will be diverted from their other duties in order to prepare this information.
31. The Commissioner has previously considered the issue of an applicant requesting all CON29R information without specifying a property in Decision Notice [FER0279668](#) (Walsall MBC). This decision notice noted that

“The Commissioner considers that it would take the complainant an obviously excessive amount of time to inspect all of the information held by the Council...in respect of all properties within its boundaries”.
32. The Commissioner’s view is that these comments also apply in this case, although the complainant has requested access to the Register

rather than CON29R information. He also notes The Council operates an appointment system for applicants who wish to view entries on the Register. These appointments are provided for applicants who wish to view entries relating to specific properties. The Commissioner accepts that the complainant would require a considerable amount of time to inspect all of the requested information and that this would have an adverse effect on the Council's appointment system and ability to provide information to other applicants.

33. The Commissioner considers that a request for all the held information can correctly be classed as manifestly unreasonable, as compliance would require a disproportionate amount of work on the public authority's part in relation to its resources and an unreasonable diversion of the Council's resources away from its core functions. He therefore accepts that the exception at regulation 12(4)(b) is engaged.

### **Public interest test**

34. However, regulation 12(4)(b) is a qualified exception and therefore subject to the public interest test at regulation 12(1)(b) which states that information can only be withheld if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

### ***Public interest arguments in favour of disclosing the information***

35. There is an inherent public interest in disclosure of information to ensure that the Council is transparent about the nature and extent of the information that it gathers and is recorded on the Register. Increased transparency and accountability could lead to the Council being more aware that its processes could be open to public scrutiny. In order to facilitate increased scrutiny, the Council might improve its record management, processes for collating information, and facilities for accessing such information.

### ***Public interest arguments in favour of maintaining the exception***

36. There is a strong public interest in the Council being able to carry out its core functions without the disruption that would be caused by complying with requests that would impose a significant burden in terms of time and resources. The Commissioner considers that the Council's ability to comply with other more focused requests for information would be undermined if it had to routinely deal with requests for inspection of all the information held on the Register in respect of all the properties within its boundaries. Furthermore, by complying with more focused requests the Council would have the



opportunity to demonstrate the extent of its transparency and accountability.

### ***Balance of public interest arguments***

37. The Commissioner has weighed the arguments of increased transparency and access to environmental information against the arguments of compliance with the request placing a clearly disproportionate burden on the Council's resources. The Commissioner accepts that the Council would have to spend an obviously excessive amount of time on providing all the requested information for inspection. He believes that the obvious burden that this would place on the public authority and the consequent distraction from its other core functions that this would cause outweighs the benefits to the public interest that would be served by complying with the request. The Commissioner therefore concludes that the Council were correct to withhold information under this exception.

### **Regulation 9**

38. The Commissioner has considered whether the Council should provide the complainant with advice and assistance as to how his request may be narrowed and therefore deemed a reasonable request.
39. Regulation 9(1) provides that –
- “A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.”
40. Regulation 9(3) stipulates that where a public authority complies with the Code of Practice issued under regulation 16 in respect of the provision of advice and assistance, it will have complied with regulation 9(1). The Commissioner has therefore considered the Council's obligation to assist and advise with reference to the Code of Practice.
41. The Code of Practice states that public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant. As the complainant is seeking recorded information about properties listed in the Register, it seems likely that the request could be narrowed so that it is no longer manifestly unreasonable, for example if information was requested for a single property.
42. The Commissioner considers that it would be reasonable for the Council to indicate information it is able to disclose to him in relation to a number of properties without requiring a manifestly unreasonable



amount of work and diversion of resources away from its core functions. Therefore, he finds that the Council has breached regulation 9(1).

## **Regulation 14**

43. Regulation 14(2) provides that a public authority should issue any refusal notice within 20 working days of receiving a request. Regulation 14(3)(a) provides that a public authority should detail the specific exception it relies upon in any refusal notice issued. Regulation 14(3)(b) provides that a refusal notice should specify the matters the public authority considered in reaching its decision with respect to the public interest test in relation to the exception.
44. The complainant's request was submitted on 13 April 2010. The Council informed the complainant that the Register could be accessed under its paid procedures on 14 May 2010. The Council did not cite the exception at regulation 12(4)(b) in relation to the requests, which it has subsequently informed the Commissioner that it relies upon.
45. Consequently, the Commissioner finds that the Council has breached regulation 14(2) by failing to provide a refusal notice within 20 working days and regulation 14(3)(a) by failing to cite the specific exception it relied upon in refusing a request. The Council also failed to inform the complainant of any public interest considerations it took into account and so the Commissioner finds that it has breached regulation 14(3)(b).

## **The Decision**

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46. The Commissioner's decision is that Cheshire East Council has correctly applied the exception at regulation 12(4)(b). However, it has breached regulation 14(2) by failing to provide the complainant with a refusal notice within the statutory time for compliance, regulation 14(3)(a) by failing to cite the specific exception it relied upon in refusing a request, and regulation 14(3)(b) by failing to inform the complainant of any public interest considerations it took into account in applying the exception. It has also breached regulation 9(1) because it did not offer the complainant advice and assistance in accordance with the Code of Practice.

## **Steps Required**

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47. In accordance with regulation 9 of the EIR, the Commissioner requires the Council to contact the complainant and offer advice and assistance by informing him how he might narrow his request to information in relation to a number of properties so that it would no longer be manifestly unreasonable. This should include advising how he can inspect the environmental information free of charge.
48. 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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49. 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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50. 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 9<sup>th</sup> of December 2010**

**Signed .....**

**Gerrard Tracey  
Principal Policy Adviser  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### **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 9 - Advice and assistance**

#### **Regulation 9(1)**

A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

#### **Regulation 9(2)**

Where a public authority decides that an applicant has formulated a request in too general a manner, it shall –

- (a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and
- (b) assist the applicant in providing those particulars.

## **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 the 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 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).