

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

Decision Notice

Date: 8 February 2011

Public Authority: English Heritage
The Historic Buildings and Monuments
Commission for England

Address: Kemble Drive
Swindon
SW2 2GZ

Summary

The complainant made a request for information to English Heritage ('the public authority') that the Commissioner has divided into four parts.

The Commissioner was referred three of those parts to investigate. The complainant explained that he believed that the information was environmental and that as he believes the information to be inaccurate, it should be rectified in accord with Regulation 5(4) of the EIR.

The Commissioner has found that for one part the information was not environmental information and that all the relevant recorded information was provided. The public authority therefore complied with the Freedom of Information Act. For the remaining two parts, the public authority failed to process them before the Commissioner's intervention. The Commissioner has found that these parts were for information that was partly environmental and partly not. They therefore needed to be considered under both regimes. The Commissioner has determined that all the relevant recorded information that was held has now been provided, but the failure to process these parts of the request constituted a breach of sections 1(1)(b) and 10(1) of the Act and Regulations 5(1) and 5(2) of the EIR. In relation to the complaint about Regulation 5(4), the Commissioner has found that the EIR imposed no obligation on the public authority in this case. The Commissioner requires no remedial steps to be taken in this case.

The Information Commissioner's Role

1. The Information Commissioner (the "Commissioner")'s duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. In addition, 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 Commissioner. In effect, the enforcement provisions of Part 4 of the Act are imported into the EIR. The Commissioner has been required to consider both pieces of legislation in this case.

Background

3. English Heritage has an official name which is the Historic Buildings and Monuments Commission for England. It is defined as a public authority through Schedule 1 of the Act under this official name, which is transposed into the EIR by Regulation 2(2)(b).
4. English Heritage is a statutory consultee for all planning and listed building consent applications affecting grade I and II buildings in London. All such applications are made to the relevant local authority and are subject to English Heritage's authorisation or direction as appropriate. It is within its statutory remit to direct the local authority to place conditions upon those listed building consent applications on which it has directed approval.
5. The complainant has an ongoing grievance about the public authority imposing a condition on [address redacted] that an original chimney piece (or mantle piece) would be acceptable, rather than it recommending that a modern reproduction was more desirable. The complainant's company produces reproduction chimneypieces. He has made requests for information to understand why this decision was taken and whether it was in accord with the public authority's internal policies. He also believes that the EIR will enable the Commissioner to determine that the public authority's position was erroneous.

The Request

6. On 12 July 2008 the complainant wrote a detailed email to the public authority. He expressed his strong concern that the decision at [address redacted] was wrong particularly in light of previous decisions. Within that email the Commissioner has identified four requests for information:
 1. *all correspondence, emails, case notes or other documentation which relate to this particular decision [address redacted].*
 2. *any general material emanating from English Heritage concerning policy on the re-use of original features, or their facsimile equivalents, in restoration projects.*
 3. *what the current English Heritage position on this issue is.*
 4. *what planning guidance or statutory provision may be in place which is of relevance.*
7. On 30 July 2008 the public authority explained its position about mantle pieces and how it applied to [address redacted] (providing its answer to part 3 of the request).
8. On 7 August 2008 the public authority provided a response to the request for information. It said that it was answering request 1. It explained that it held four sets of documentation and provided them. It provided its internal review details.
9. On 6 October 2008 the complainant requested an internal review. He explained that he did not believe that his request had been answered fully. He expressed particular concern that the public authority did not take all steps within its power to provide objective justification for its failure to promote the installation of facsimile chimneypieces where original and facsimile chimneypieces were otherwise interchangeable.
10. On 18 October 2008 the public authority communicated the results of its internal review. It explained that it had provided all the relevant recorded information from the file. It then explained that it did not believe that the legislation required further opinion or comment on the matter of its handling of the casework relating to [address redacted]. It provided the Commissioner's details as a further right of appeal.

The Investigation

Scope of the case

11. On 21 November 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- The request was for environmental information;
 - It was made in the context of the decision of the public authority, on the one hand, to promote the installation of salvaged marble chimneypieces at [address redacted], and on the other to prohibit the installation of facsimile equivalents;
 - He was dissatisfied with the content of the information that was communicated to him about the chimneypiece policy;
 - The information provided was not 'factually accurate, reliable and consistent';
 - The internal review failed to establish whether 'that evidence contains all the information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it'; and
 - The internal review failed to examine carefully and impartially all the relevant elements of the individual case and give an adequate statement of reasons for its decision.
12. On 25 May 2010 the complainant confirmed that he wanted the Commissioner to:
- 'examine the factual information which it contains in order to determine whether or not it contains accurate, up-to-date and comparable information about the interchangeability of timber and marble fireplaces in the principal rooms of Georgian houses.'*
13. He explained in a separate email that he understood that the scope of the Commissioner's investigation would concern the request dated 12 July 2008 and subject to the issue described in paragraph 12 above that the Commissioner's investigation would concern whether further relevant recorded information was held for elements 1, 2 and 4.

14. The complainant has pursued this case on the mistaken understanding that the Commissioner can make a judgment on the correctness or quality of the public authority's decision and decision-making process. The Commissioner is unable to adjudicate on the substance of decisions that are the subject matter of the requested information. Neither the EIR nor the Act imposes any duty on either the public authority or the Commissioner to review the substance of opinions or decisions. This is a matter to be considered under other forums.

Chronology

15. On 8 January 2009 the Commissioner wrote to the public authority and the complainant to explain that he had received an eligible complaint. He asked the public authority to justify its position in this case.
16. The Commissioner then contacted the public authority by telephone. He asked to be provided with a written assurance that all the relevant recorded information had been provided to the complainant.
17. On 23 February 2009 the public authority provided a written assurance that it had provided all the relevant recorded information in this case.
18. On 26 February 2009 the Commissioner wrote to the complainant. He explained that, in light of all the evidence, he was satisfied that all the relevant recorded information had been provided to him and that the case would be closed. He explained that he was unable to make a comment about the merits of different sorts of chimneypieces.
19. On 16 April 2010 the complainant wrote to the Commissioner again. He explained that he had located further relevant recorded information that was held at the date of this request and asked that the Commissioner took further action. He sent a reminder on 15 May 2010.
20. On 21 May 2010 the Commissioner spoke to the complainant on the telephone. The complainant explained that he believed that there was further relevant recorded information held by the public authority in this case.
21. The Commissioner wrote to the complainant later that day. He explained his role and asked for the complainant to confirm the scope of this investigation. He received a response the same day interrogating the nature of his role.
22. Further correspondence was exchanged between the Commissioner and the complainant about the issue of whether the information held

- contains accurate, up-to-date and comparable information about the interchangeability of timber and marble fireplaces.
23. On 25 May 2010 the complainant confirmed the scope of the investigation.
 24. On 27 May 2010 the public authority called the Commissioner. The Commissioner explained that this case had been reopened and that the public authority would receive detailed enquiries once he had developed his policy about the operation of Regulation 5(4).
 25. On 27 July 2010 the Commissioner made detailed enquiries of the public authority.
 26. On 4 August 2010 the Commissioner received a response from the public authority. It explained that it had only processed the first part of the request. It explained its position in this case and provided detailed submissions about why it holds no more recorded information. Its submissions will be considered in the analysis section of this Notice.
 27. On 6 August 2010 the Commissioner asked the public authority to process the other parts of the request and to issue a new response to the complainant.
 28. On 12 August 2010 the complainant explained that he had received a new response and he was unhappy with its contents. He explained why he believed the policy on chimneypieces was erroneous. He also questioned the accuracy of the information provided for part 1 of the original request and provided detailed arguments about his concerns. The Commissioner acknowledged this email on the same day. The Commissioner also received a copy of the new response from the public authority. It provided further information held that was relevant to request 2 and 4 and an explanation about the delay.

Analysis

Substantive Procedural Matters

Is the information requested environmental information under the EIR?

29. This question matters as information that is environmental information must be considered under the EIR and not the Act.

30. Regulation 2(1) of the EIR defines 'environmental information' as any information in any 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 the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).'

31. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor etc in question. In other words, information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.

32. The Commissioner considers requests on a case-by-case basis to consider whether the request concerns information on a measure which is or is not likely to affect the environment.
33. The Commissioner has carefully considered whether the information held is environmental information in this case. He has come to the decision that the information requires dividing into two categories:
- 'Category one' – which concerned the relevant recorded information held for part 1 of the request and any information that relates to internal features that may be covered by parts 2 and 4. This information is not 'environmental information', because it does not concern a measure that is likely to affect the environment.
 - 'Category two' – which concerns the relevant recorded information that relates to external features that may be covered by parts 2 and 4. This information is 'environmental information' because it does concern a measure that is likely to affect the environment.
34. The Commissioner will provide a rationale for his view below:
- *'Category one'*
35. The complainant has argued that the public authority's policies on chimneypieces and the position they had in a specific case would be likely to have an impact on the environment. This meant that in his view the information was environmental information and the obligations from the EIR were imposed on the public authority in respect to this information. He said that he believed that a statement of views given by a protection authority, such as the public authority, in a development consent procedure for a Grade I Listed Building is environmental information, should it be capable of influencing the outcome of that procedure as regards interests pertaining to the protection of the environment.
36. The Commissioner has carefully considered the complainant's arguments alongside the recorded information that has been identified to satisfy the descriptions of these parts of the request. He has also carefully considered the process that led to the public authority's involvement. As noted in paragraph 4 above, the public authority has a statutory role in considering listed building planning consents. It is useful to explain this process in further detail.

37. Once a building is listed, then listed building planning consent is required before any alteration, extension or demolition can be carried out. This planning process is dealt with under Chapter II of the Planning (Listed Buildings and Conservation Areas) Act 1990 (entitled "Authorisation of works affecting Listed Buildings"). Listed building planning consent is required for both external works (i.e. demolition, changing the paint colours of exterior features, putting up a satellite dish, installing a fire escape) and but also internal works (i.e. covering over decorative plasterwork or primitive joinery, removing an internal staircase or destroying evidence of an old doorway). Planning applications take into account the extent to which any proposed alteration or extension would affect the special interest for which the building was listed.
38. In the Commissioner's view, it is correct to differentiate between the external and internal works. The decision to refuse approval of the use of a reproduction 'chimneypiece' or 'mantle piece' in favour of a reclaimed one is not environmental information. This is because it is an internal feature that is not likely to affect any of the elements of the environment. Therefore, no link can be made between Regulation 2(1)(c) back to 2(1)(a). As such this element of the request should have been considered under the Act.
- *'Category two'*
39. However, any information about external works is different.
40. In this case, the public authority holds Conservation Guidelines which explains its ethos and how it develops and takes decisions in order to reflect its overall concerns.
41. In the Commissioner's view, the policy on external features and related information amount to a measure [2(1)(c)] that may impact the land and landscape [2(1)(a)] and therefore should be considered under the EIR.

Is further recorded relevant information held?

42. In the Commissioner's view, it is important to determine whether relevant recorded information was held at the date of the request 12 July 2008.
43. For the information covered by the Act, section 1 provides that any person making a request for information to a public authority is entitled (a) to be informed in writing by the public authority whether it holds information of the description specified in the request and (b) if that is the

case to have that information communicated to him. It follows that it is necessary for information to be held in recorded form at the date of the request for it to be subject to the Act.

44. For the information covered by the EIR, Regulation 5(1) explains that the obligation to provide information applies where information is held. It follows that it is also necessary for information to be held in recorded form at the date of the request for it to be subject to the EIR. It should be noted that there is a limited obligation to ensure that information held is up to date, accurate and comparable, so far as a public authority reasonably believes in Regulation 5(4) and this will be considered in a later part of the analysis section.
45. The Commissioner will consider the public authority's position under each piece of legislation in turn. He will subdivide his analysis to assess each part of the request that falls under the appropriate legislation in turn:

Category one – the information that falls under the Act

46. When investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency* (EA/2006/0072). In this case, the Tribunal indicated that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities.
47. He has also been assisted by the Tribunal's explanation of the application of the 'balance of probabilities' test in the same case. It explained that to determine whether information is held requires a consideration of a number of factors including the quality of the public authority's final analysis of the request, the scope of the search it made on the basis of that analysis and the rigour and efficiency with which the search was then conducted. It also requires considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.
48. The Commissioner will apply this standard of proof to this case.

Part 1 of the request

49. Part 1 of the request has a clear scope. It is for all the information that the public authority holds about the decision that was taken in respect of the property at [address redacted]. The word 'decision' is crucial in

setting the parameters of this request. This is because it pins the request to the decision that was taken by the local authority in respect to [address redacted].

50. The public authority explained that this was the only item of the request that it originally considered under the legislation because it dealt with the other requests through normal course of business correspondence.
51. The public authority explained that it would expect to find this information in the hard copy case file of [address redacted], which serves as its core record. It confirmed that it had checked this file.
52. The other relevant location was the email accounts of the relevant staff members who worked on this decision. It confirmed that it had also checked these areas as well.
53. The public authority explained that the searches that it undertook were proportionate using its knowledge of its own records. It explained that it did not believe that there was further relevant recorded information.
54. The Commissioner also asked to be informed of the public authority's records management policy. The public authority explained that for listed building consent files its current policy is to keep all of them. This is because the information can assist to understand the history of the buildings. It therefore confirmed that no records had been destroyed.
55. The Commissioner has also considered the statutory framework and whether in his view there was any business need for any further information to be kept by the public authority other than that provided. He has come to the view that there was not.
56. The Commissioner has come to the conclusion that on the balance of probabilities all the relevant recorded information has been found by the public authority and that it was correct that no further relevant recorded information was held for this element. He therefore upholds the public authority's position.
57. Finally, the Commissioner wishes to acknowledge the complainant's argument that the information contained within the decision making process proves the decision making process was misinformed (or based on incomplete evidence) and the outcome was unjustifiable. The Commissioner cannot make any comment about the nature of recorded information held, this is not part of his role, however, he considers that all the information held that is relevant to the request has been located.

Parts 2 and 4 of the request (internal features)

58. The public authority explained to the Commissioner that it did not originally consider this request under the legislation because it believed that it was more appropriate to answer the questions under normal course of business. It explained that this was felt appropriate because the email was addressed to its Chief Executive and that it could provide more complete guidance generating information to answer this enquiry rather than processing the request under the legislation. It acknowledged that it did not directly refer to the relevant policy in its response.
59. The response it issued through normal course of business explained:
1. The public authority undertook extensive research using its photographic archive to confirm that marble chimneypieces were used in the principal rooms of [area redacted];
 2. The owners of the property then sourced reclaimed chimneypieces that they considered appropriate;
 3. The public authority does not condone unauthorised removal of the chimneypieces, but recognises there is an existing stock of them;
 4. The public authority recognizes that quality reproductions can be appropriate; and
 5. The public authority's recommendation was that historically appropriate fireplaces were acceptable and it wasn't important to it whether they were quality reproductions or originals.
60. The Commissioner notes that this request specifies 'any general material'. The Commissioner's view is that in its context, it could have two objective readings – one would be any general material held about the possible application of a policy to [address redacted] (taking into account the local area's particular history) and the second would be 'any general information' about all restoration projects where it contributes to the planning process. The Commissioner believes that the opacity of the correspondence meant that there were these two reasonable objective readings of the request and has decided to look in this case at both.
61. The complainant pointed to the 1914 Survey of London data, a resource that is owned by English Heritage. He explained that in his view the information contained within it about [area redacted]

properties and chimney pieces was relevant to his request and was not provided. The Commissioner agrees that this information is relevant to the first objective reading of the request as outlined above. It should therefore have been provided.

62. He also explained that the public authority published a Georgian Group Guide 'Fireplaces – A brief guide to Georgian Fireplaces' that also may have been relevant but was not directly provided to him. He provided the Commissioner with a copy of it. The Commissioner is also satisfied that this information is relevant to the first objective reading of the request as outlined above. The complainant also commented that he views this pamphlet as being misleading, but the Commissioner cannot comment on the content of relevant information. The Commissioner accepts that this information does fall within the scope because it is likely to directly inform the public authority's policy on fireplaces. It should also therefore have been provided.
63. In relation to item 4, the public authority explained that the principles it used at the time of the request were set out in 'PPG 15 – Planning Guidance 15: Planning and the Historic Environment'¹ and 'Conservations Principles: Policy and Guidance for the sustainable management of the historic environment' (2008)².
64. The Commissioner asked the public authority to ensure that it notified the complainant of its position and explain to him what relevant recorded information was held. The public authority reprocessed the request as requested and provided the complainant with the two items outlined in paragraph 63. It committed a number of procedural breaches of the Act which will be considered at the end of this Notice.
65. The Commissioner must consider whether further relevant recorded information was held in this case.
66. The Commissioner has considered the content of the Planning Guidance and the Conservation Principles. He believes that together they consider both the appropriate planning law and the rationale for intervention of the public authority.
67. The public authority has confirmed that it holds no further information about its policy on either chimneypieces or other internal features. It has explained that it has checked its casework department and carefully looked for the existence of any such policy. It explained that it believed that it held no further information that could be said to be

¹ <http://www.cheltenham.gov.uk/downloads/PPG15.pdf>

² <http://www.english-heritage.org.uk/publications/conservation-principles-sustainable-management-historic-environment/conservationprinciplespoliciesguidanceapr08web.pdf/>

relevant general material either for its decision at [address redacted] or about all restoration projects where it contributes to the planning process.

68. The complainant has not provided any further arguments about why more relevant recorded information is held in this case. Instead, he argues that the information that is held is defective.
69. The Commissioner has come to the conclusion that on the balance of probabilities all the relevant recorded information has been found by the public authority and that it was correct that no further relevant recorded information was held for this element. He therefore supports the public authority's position now it has processed the request.

Category two – the information that falls under the EIR

70. The Commissioner applies the same standard of proof when determining whether relevant recorded information is held under the EIR as he does under the Act. He also applies the same test. He will consider each in turn:

Parts 2 and 4 of the request (external features)

71. The Commissioner is satisfied that the information identified in paragraph 63 above is all the recorded information in relation to external features that is relevant to the request. He believes this for all the reasons stated in his analysis under FOIA. He therefore supports the public authority's position now it has processed the request.
72. However, the failure to process these parts of the request in 20 working days have led to a number of procedural breaches under the EIR which will be considered at the end of this Notice.

Is there any obligation in this case to amend the environmental information?

73. The complainant has made a specific complaint about the possible inaccuracy of information provided.
74. Regulation 5(4) provides that information that is compiled by or on behalf a public authority is kept 'up to date, accurate and comparable, so far as the public authority reasonably believes'.
75. There is no comparable provision under the Act. This means that the Commissioner's analysis is restricted to the information that he has found to be environmental information in this Notice.

76. The complainant has argued that Regulation 5(4) should be read to provide a heavier obligation on public authorities than has previously been thought. He explained that he believed that the architecture of the Aarhus convention was designed to ensure that the public understood that the information provided was accurate and up-to-date about the subject matter of the request.
77. The Commissioner's view is that there is no further obligation imposed on a public authority beyond that that is contained within the EIR itself.
78. The Commissioner has interpreted Regulation 5(4) looking carefully at its context and wording.
79. In the Commissioner's view the obligation can only be said to apply to factual data collected or measured by the public authority in order to inform its activities (for examples statistics and scientific data). The Commissioner does not believe that it applies to information that records deliberations, opinions, policies and decisions.
80. Furthermore, the obligations in 5(4) only apply where the public authority is collecting information to use on an ongoing basis. The Commissioner believes it imposes no obligation to rectify information the public authority no longer needs to compile for its own business purposes.
81. In this case, the information that is environmental information relates to the public authority's working manuals which are used to assist the decisions that it makes in respect to its planning obligations. The Commissioner believes that this is not the kind of information that any obligation under Regulation 5(4) would take effect.
82. He can also confirm that there is no factual data within the policy that would fall within the nature of information outlined in paragraphs 79 and 80 above.

Time for compliance

FOIA

83. The Commissioner has noted that the public authority failed to provide some of the relevant recorded information that it held prior to the Commissioner's investigation. Section 1(1)(b) requires that a public authority communicates the recorded information that it holds (where it is not exempt). The failure to provide this information was a breach of section 1(1)(b).

84. Section 10(1) requires that section 1(1)(b) is complied with in 20 working days (subject to a number of exemptions that are not relevant in this case). The failure to comply with section 1(1)(b) in this case within 20 working days was a breach of section 10(1).

EIR

85. The public authority breached Regulation 5(1) for failing to make environmental information that was held available on request (prior to the Commissioner's intervention).
86. It also breached Regulation 5(2) for failing to make this information available in 20 working days.

The Decision

87. For clarity, the Decision section will be divided into the different legislative regimes.

The Freedom of Information Act

88. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- *It correctly provided all the relevant recorded information it held for part one of the request. It therefore complied with its obligations under section 1 of the Act.*

89. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- *It failed to process parts two and four of the request under the Act before the Commissioner intervention. It therefore breached section 1(1)(b) in failing to provide the relevant recorded information; and*
- *Section 10(1) in failing to provide the relevant recorded information in 20 working days.*

The Environmental Information Regulations

90. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the EIR:

- *It had no obligations under Regulation 5(4) in respect to the information subject to parts 2 and 4 of the request.*

91. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the EIR:

- *It failed to process parts two and four of the request under the EIR before the Commissioner's intervention. It therefore breached section Regulation 5(1) in failing to provide the relevant information; and*
- *Regulation 5(2) in failing to provide the relevant recorded information on request in 20 working days.*

Steps Required

92. The Commissioner requires no steps to be taken.

Right of Appeal

93. 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 8th day of February 2011

Signed

**Andrew White
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Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

* Environmental Information Regulations 2004

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 3 – Application

Regulation 3(1) Subject to paragraphs (3) and (4), these Regulations apply to public authorities.

Regulation 3(2) For the purposes of these Regulations, environmental information is held by a public authority if the information –

- (a) is in the authority’s possession and has been produced or received by the public authority; or
- (b) is held by another person on behalf of the public authority.

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.

* **Freedom of Information Act 2000**

Section 1 - General right of access to information held by public authorities

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

...

Section 10 - Time for compliance with request

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.

(5) Regulations under subsection (4) may—

(a) prescribe different days in relation to different cases, and

(b) confer a discretion on the Commissioner.

(6) In this section—

• “the date of receipt” means—

(a)

the day on which the public authority receives the request for information, or

(b)

if later, the day on which it receives the information referred to in section 1(3);

- “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the [1971 c. 80.] Banking and Financial Dealings Act 1971 in any part of the United Kingdom