

**FREEDOM OF INFORMATION ACT 2000 (SECTION 50)
ENVIRONMENTAL INFORMATION REGULATIONS 2004**

DECISION NOTICE

Dated 12 July 2005

Name of Public Authority: Bridgnorth District Council

Address of Public Authority: Westgate
Bridgnorth
WV16 5AA

Nature of Complaint

The complainant requested the right to inspect information contained in an enforcement file relating to a piece of land he owned.

Bridgnorth District Council (the "Council") refused to communicate the information to the complainant because the Council believed that it was held for the purpose of ascertaining whether circumstances justified regulatory action under the Town and Planning Act 1990, and was therefore exempt information under the provisions of paragraph 31(2)(c) of the Freedom of Information Act 2000 (the "Act").

Upon receiving the complaint the Commissioner advised the Council that in his view the information requested fell within the definition of environmental information provided by the Environmental Information Regulations 2004 (the "Regulations") and therefore should be dealt with in accordance with those Regulations.

The Council subsequently claimed the request could be refused under the exception provided by subparagraph 12(5)(f) of the Regulations on the basis the person who had supplied the information was not under any legal obligation to do so and that disclosure would have an adverse affect on the interests of that person. The Council explained that their investigation into the state of complainant's land was initiated following the receipt of a complaint.

The Council later argued the request could be refused under the exception provided by subparagraph 12(5)(b) of the Regulations on the basis that disclosing the information would adversely affect an inquiry of a criminal nature.

It is alleged that:

The council failed to provide access to the information in accordance with regulation 5 of the Environmental Information Regulations 2004.

The issue under consideration is whether the exceptions cited by the Council as grounds for withholding information under the Regulations can be relied on. That is, whether subparagraphs 12(5)(f) or 12(5)(b) provide grounds for refusing the request.

The Commissioner's Decision

Under section 50(1) of the Freedom of Information Act 2000 (as amended by the Environmental Information Regulations 2004), except where a complainant has failed to exhaust the local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Information Commissioner has a duty to consider whether the request for information has been dealt with in accordance with Parts 2 and 3 of the Environmental Information Regulations 2004 and to issue a Decision Notice to both the complainant and the public authority.

The information requested is environmental information and the request should be dealt with in accordance with the Environmental Information Regulations 2004.

In the Commissioner's view, the investigation into the state of the complainant's land cannot be construed as being an inquiry of a criminal nature. Therefore the exception provided by subparagraph 12(5)(b) does not apply.

The Commissioner is satisfied that the interests of the third party that informed the Council about the state of the complainant's land, would be adversely affected should they be identified. Therefore subparagraph 12(5)(f) does apply to information which identifies the third party either explicitly or by inference. Furthermore the Commissioner is satisfied that the public interest in maintaining the exception outweighs the public interest in disclosing the identity of the third party.

The exception does not however apply to the remainder of the information in the enforcement file.

Action Required.

In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that :

Bridgnorth District Council shall, on or before 11th August 2005, allow the complainant to examine the information contained in the enforcement file relating to land in question except for that which identifies the third party either explicitly or by inference.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the information Tribunal. Information about the appeals process can be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 6000 877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 12th day of July 2005

Signed:

Graham Smith
Deputy Information Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Statement of Reasons

Environmental Information.

The information requested is considered to be environmental information for the following reason. Subparagraph 2(1)(a) defines environmental information as material on the state of the elements including land and landscape. Subparagraph 2(1)(c) extends the definition of environmental information to include material on measures such as policies, legislation and activities affecting or likely to affect the elements described in subparagraph 2(1)(a) as well as measures or activities designed to protect those elements.

The information in the enforcement file is a record of an investigation to determine whether an enforcement notice should be served under section 215 of the Town and Country Planning Act 1990 (T&CP Act 1990). This section applies to situations where the condition of a piece of land is having an adverse affect on the amenity of an area. It provides local planning authorities with the power to require an occupier to properly maintain their land.

In light of this the Commissioner is satisfied that the information relates to measures or activities designed to protect land.

Application of the exception provided by subparagraph 12(5)(b).

Subparagraph 12(5)(b) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect 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.

Failure to comply with an enforcement notice under the T&CP Act 1990 is a criminal offence but the issuing of such a notice is a civil sanction. No enforcement notice was issued in respect of the land in question and the initial inquiry to determine whether the issuing of an enforcement notice was appropriate could not be construed as an inquiry into of a criminal nature.

Therefore the circumstances do not exist that would engage subparagraph 12(5)(b) and therefore there is no need to consider the public interest test.

Application of the exception provided by subparagraph 12(5)(f).

Subparagraph 12(5)(f) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the interests of a 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.

Although all three of these conditions have been met there still has to be an adverse affect to the interests of the third party for the exception to be engaged.

In these circumstances, any potential adverse affect is only likely to arise where the third party is identified explicitly or by inference. Therefore the exception could only apply to those pieces of information within the enforcement file which reveal the identity of the third party.

The third party has advised the Council that they are concerned that to release their identity would create ill feeling between the complainant and themselves. The Commissioner is satisfied that the disclosure of the third party's identity would have an undesirable impact on their relationship with the complainant and that this is sufficient to amount to an adverse affect. The exception is engaged.

Public interest test.

Under subparagraph 12(1)(b) all the exceptions provided by the Regulations are subject to a public interest test and so it is necessary to consider whether in all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosing the information.

There is a public interest in the individuals having access to information that helps them understand the reasons why actions were taken by public authorities that affect them and in individuals having the ability to challenge those decisions. There is also a public interest in understanding the nature of the relationship between the local planning authority and the third party, however there is no suggestion here that the third party exerted undue influence.

In this particular case the complainant is concerned that the council responded inappropriately to what he believes may have been a malicious complaint. There is a public interest in protecting an individual from malicious complaints and in avoiding the waste of public resources investigating such complaints. However the motives of the informant do not affect the ability of the Council to conduct an objective investigation and the manner of that investigation can be scrutinised without revealing the identity of the third party.

The Commissioner recognises that there is a very real public interest in safeguarding the free flow of information to the local planning authority which it relies on in order to carry out its regulatory functions under planning legislation. The Commissioner is satisfied that people would be deterred from volunteering such information if they were concerned that their identity could

be revealed and that this would hinder the ability of the local planning authority to deal with such planning issues.

In light of this the Commissioner is satisfied that the public interest in maintaining the exception in relation to the identity of the third party outweighs the public interest in disclosing that information.