

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

**Decision Notice**

**Date: 9 August 2010**

**Public Authority:** Wrexham County Borough Council  
**Address:** The Guildhall  
Wrexham  
LL11 1AY

**Summary**

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The complainant submitted a request to Wrexham County Borough Council ('the Council') for information from environmental records held on a property in Gwynedd. The complainant specified that he wished to view the records in person. The Council stated that the requested information could only be accessed on the provision of a fee based on the property search regulations. The Commissioner's decision is that the Council breached regulation 5(1) as it failed to make information available on request and regulation 5(2) as it failed to make it available within the statutory time for compliance. The Commissioner also found that the Council breached regulation 8(2)(b) by attempting to impose a charge for allowing the complainant to inspect the requested information. The Commissioner requires the Council to make the requested information available for the complainant to inspect within 35 days of this notice.

**The Commissioner's Role**

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1. The Environmental Information Regulations (The Regulations) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that The Regulations shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into The Regulations.

## Background

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2. Section 3 of the Local Land Charges Act 1975 (LLCA) compels all local authorities to generate, maintain and update a Local Land Charges Register. Under the LLCA applicants can obtain an 'Official Search' of the register by submitting form LLC1 to the relevant Local Authority. This is usually accompanied by form CON29R.
3. The CON29R form is comprised of two parts. Part 1 contains a list of standard enquiries about a property. Optional enquiries are contained in Part 2.
4. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority.
5. The complainant represents a company which provides information about property and land issues.

## The Request

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6. On 24 September 2009 the complainant requested:

"an appointment to view the land charges register free of charge to collate information on the above property. I would also at the same time like to view all the free records holding the information required to answer questions on the CON29R and the records required to answer questions 1.1(f)-(h), 3.4, 3.6 and 3.9 (a)-(n)".<sup>1</sup>

The complainant requested this information in relation to a specific named property.
7. The Council responded to the complainant on 5 October 2009. The Council stated that pending further advice from the Local Government Association (LGA), it would not change its procedures regarding access to property search information. The Commissioner assumes that the Council intends to levy a charge for accessing this information as set out on its website. It also stated this would be the case in a previous letter to the complaint on the same issue, although concerning a different property, on 23 September 2009.

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<sup>1</sup> Annex A details the nature of the information relevant to each CON29R enquiry.

8. The complainant requested an internal review of the Council's decision on 6 October 2009.
9. On 12 October 2009, the Council communicated the outcome of its internal review to the complainant. The Council confirmed that it maintained the position it had set out in its initial response.

## The Investigation

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### Scope of the case

10. On 13 November 2009, the complainant contacted the Commissioner to complain about the Council's compliance with the provisions of the EIR. During the investigation, the Council decided to allow the complainant access to information relevant to the CON29R enquiries free of charge. This decision therefore applies only on the remaining portion of the information, specifically the Local Land Charges Register.

### Chronology

11. On 8 April 2010, the Commissioner contacted the Council and explained the requirements of the EIR. He asked that the Council provide a further response to the complainant considering the request under the EIR. The Council was advised that it should either disclose the information or explain why it was being withheld. The Commissioner also drew the Council's attention to the decision notice [FER0236058](#), and the subsequent Information Tribunal decision, [East Riding of Yorkshire Council v Information Commissioner \(EA/2009/0069\)](#), which had dealt with a similar request for access to building control information.
12. On 6 May 2010, the Council wrote to the complainant and stated that he could access the information relevant to the CON29R questions free of charge. He could also view the local land charges register but a fee of £11 would be charged. The Council made clear that this charge was calculated in accordance with the [Local Land Charges Act 1975](#) (LLCA).
13. On 12 May 2010, the Commissioner wrote to the Council and explained that he would be likely to find the proposed fee of £11 for inspection of the information was not compliant with the EIR. He invited any further representations or comments that the Council wished to make. The Council acknowledged this email on 18 May 2010 and confirmed its intention to respond.

14. On 11 June 2010, the Council wrote to the Commissioner and stated that it was of the opinion that the EIR did not disapply the charging provisions set out in the LLCA.
15. The Commissioner wrote to the Council on 14 June 2010 and reasserted the position set out in his letter of 12 May 2010. He invited any further comments from the Council before he concluded the investigation. The Council acknowledged this email on 18 June 2010 and confirmed its intention to respond.
16. On 6 July 2010, the Council provided the Commissioner with arguments to support its decision to impose a charge for the requested information.
17. On 7 July 2010, the Commissioner contacted the Council to enquire if all the requested information was environmental in nature. In particular, he asked if there were any entries on part one ('General Financial Charges') or part two ('Specific Financial Charges') of the Local Land Charges Register, which routinely include information of a financial nature.
18. On 28 July 2010, the Council emailed the Commissioner to state that there was no financial information held on the property in question.

## **Analysis**

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### **Substantive Procedural Matters**

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

### **Regulation 2**

19. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
20. The Commissioner considers that the information requested falls within regulation 2(1)(c): "measures (including administrative measure), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect these elements". Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore

considers the information requested by the complainant to be environmental information.

### **Regulation 5**

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

### **Regulation 6**

23. Regulation 6(1) provides an applicant with the right to request that information be made available in a particular form or format. The Commissioner considers 'inspection' to constitute a form. A public authority should comply with this preference unless it is reasonable to make the information available in another format, or the information is already publicly available in another format.
24. In its detailed submission of 6 July 2010, the Council argues that regulation 6(1)(b) applies. This is because the requested information is available upon provision of a fee under the Local Land Charges Act. However, the Commissioner notes that the Council is willing to allow the complainant access to inspect the information on provision of a fee. Therefore, the Commissioner considers that it has complied with the duty to make information available in an applicant's preferred format as set out under regulation 6(1).

### **Regulation 8**

25. Regulation 8 provides a general right for public authorities to charge for making information available. However, that right is subject to a number of conditions. The relevant conditions in this case are contained in regulation 8(2).
26. Regulation 8(2)(a) states that a public authority shall not make any charge for allowing an applicant to access any public registers or lists

of environmental information, and regulation 8(2)(b) states that a public authority shall not make any charge for allowing an applicant to examine the information requested at a place which the authority makes available.

27. The Council has emphasised that the charge of £11 is levied in accordance with the Local Land Charges Act 1975 ('the LLCA'). Regulation 5(6) of the Environmental Information Regulations 2004 (EIR), which provides that "any enactment or rule of law that would prevent disclosure of information in accordance with these regulations shall not apply". The Commissioner's position is therefore that regulation 5(6) specifically disapplies the charging provisions under the LLCA.
28. Consequently, the Commissioner considers that if the property records comprise environmental information as defined by regulation 2 of the EIR the LLCA cannot be used as the basis for charging and the Council must adopt the charging provisions of the EIR. The Council has not disputed that this property information is environmental. Therefore, despite the provisions of the LLCA, the information should be considered for disclosure under the EIR. For the reasons set out above, the Commissioner considers that the EIR entitle the complainant to request to inspect the requested information free of charge, and the Local Land Charges Act cannot apply. This position also acknowledges the primacy of EU legislation whereby European law, such as the EIR, takes precedence over domestic law.
29. The Council has agreed that the complainant can inspect the requested information upon provision of a fee of £11. However, regulation 8(2)(b) provides that a public authority is not entitled to charge a fee for allowing inspection of information. Therefore, the Commissioner finds that by attempting to charge a fee in order for access to the information, the Council has breached regulation 8(2)(b).
30. The Commissioner is therefore of the opinion that the complainant is entitled to inspect the requested information free of charge.

## **The Decision**

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31. The Commissioner's decision is that Wrexham County Borough Council did not deal with the request for information in accordance with the EIR. The Council has breached the requirements of regulation 5(1) as it failed to make information available on request and regulation 5(2) of the EIR as it failed to make the requested information available for

inspection within the statutory time for compliance. In addition, the Council has breached 8(2)(b) by attempting to impose a charge for allowing the complainant to inspect the requested information.

### **Steps Required**

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

## Right of Appeal

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34. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](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> day of August 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 –

- (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;

## **Regulation 5 - Duty to make available environmental information on request**

**Regulation 5(1)** Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

**Regulation 5(2)** Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

## **Regulation 6 - Form and format of information**

**Regulation 6(1)** Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

- (a) it is reasonable for it to make the information available in another form or format; or
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.

## **Regulation 8 - Charging**

**Regulation 8(1)** Subject to paragraphs (2) to (8), where the public authority makes environmental information available in accordance with regulation 5(1) the authority may charge the applicant for making the information available.

**Regulation 8(2)** A public authority shall not make any charge for allowing an applicant –

- (a) to access any public registers or lists of environmental information held by the public authority; or
- (b) to examine the information requested at the place which the public authority makes available for the examination.

## **Annex A - CON29R Enquiries**

- 1.1** Which of the following relating to the property have been granted, issued or refused or (where applicable) are the subject of pending applications:
- a) a planning permission
  - b) a listed building consent
  - c) a conservation area consent
  - d) a certificate of lawfulness for existing use or development
  - e) a certificate of lawfulness for proposed use or development
  - f) building regulations approval
  - g) a building regulations completion certificate
  - h) any building regulations certificate or notice issued in respect of work carried out under a competent person self-certification scheme
- 1.2** What designations of land use for the property or the area, and what specific proposals for the property are contained in any existing or proposed development plan?
- 2.** Which of the roads, footways and footpaths named in the application for this search are:
- a) highways maintainable at public expense
  - b) subject to adoption and supported by a bond or bond waiver
  - c) to be made up by a local authority who will reclaim the cost from the frontagers
  - d) to be adopted by a local authority without reclaiming the cost from the frontagers
- 3.1** Is the property included in land required for public purposes?
- 3.2** Is the property to be acquired for road works?
- 3.3** Do either of the following exist in relation to the property:
- a) An agreement to drain buildings in combination into an existing sewer by means of a private sewer, or
  - b) An agreement or consent for (i) a building or (ii) extension to a building on the property to be built over or in the vicinity of a drain, sewer or disposal main?
- 3.4** Is the property (or will it be) within 200 metres of any of the following:

- a) the centre line of a new trunk road or special road specified in any order draft order or scheme
- b) the centre line of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway
- c) the outer limits of construction works for a proposed alteration or improvement to an existing road involving (i) construction of a roundabout (other than a mini roundabout) or (ii) widening by construction of one or more additional traffic lanes
- d) the outer limits of (i) construction of a new road to be built by a local authority, (ii) an approved alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway or (iii) construction of a roundabout (other than a mini roundabout) or widening by construction of one or more additional traffic lanes
- e) the centre line of the proposed route of a new road under proposals published for public consultation
- f) the outer limits of (i) construction of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway or (ii) construction of a roundabout (other than a mini roundabout) or (iii) widening by construction of one or more additional traffic lanes under proposals published for public consultation.

**3.5** Is the property (or will it be) within 200 metres of the centre line of a proposed railway, tramway, light railway or monorail?

**3.6** Has a local authority approved but not yet implemented any of the following for the roads, footways and footpaths which abut the boundaries of the property:

- a) permanent stopping up or diversion
- b) waiting or loading restrictions
- c) one way driving
- d) prohibition of driving
- e) pedestrianisation
- f) vehicle width or weight restrictions
- g) traffic calming works including road humps
- h) residents parking contracts
- i) minor road widening or improvement
- j) pedestrian crossings
- k) cycle tracks
- l) bridge building

**3.7** Do any statutory notices which relate to the following matters subsist in relation to the property other than those revealed in a response to any other enquiry in this Schedule:

- a) building works
- b) environment
- c) health and safety
- d) housing
- e) highways
- f) public health

**3.8** Has a local authority authorised in relation to the property any proceedings for the contravention of any provision contained in Building Regulations?

**3.9** Do any of the following subsist in relation to the property or has a local authority decided to issue, serve, make or commence any of the following:

- a) an enforcement notice
- b) a stop notice
- c) a listed building enforcement notice
- d) a breach of condition notice
- e) a planning contravention notice
- f) another notice relating to breach of planning control
- g) a listed buildings repairs notice
- h) in the case of listed building deliberately allowed to fall into disrepair, a compulsory purchase order with a direction for minimum compensation
- i) a building preservation notice
- j) a direction restricting permitted development
- k) an order revoking or modifying planning permission
- l) an order requiring discontinuance of use or alteration or removal of building or works
- m) a tree preservation order
- n) proceeding to enforce a planning agreement or planning contribution

**3.10** Do the following apply in relation to the property:

- a) the making of the area Conservation Area before 31 August 2974
- b) an unimplemented resolution to designate the area a Conservation Area

**3.11** Has any enforceable order or decision been made to compulsorily purchase or acquire the property

**3.12** Do any of the following apply (including any relating to land adjacent to or adjoining the property which has been identified as contaminated land because it is such a condition that harm or pollution of controlled waters might be caused on the property):

- a) a contaminated land notice
- b) in relation to a register maintained under section 78R of the Environmental Protection Act 1990:
  - (i) a decision to make an entry
  - (ii) an entry
- c) consultation with the owner or occupier of the property conducted under section 78G of the Environmental Protection Act 1990 before the service of a remediation notice?

**3.13** Do records indicate that the property is a 'Radon Affected Area' as identified by the Health Protection Agency?