

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

### **Decision Notice**

**Date: 8 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') for information from environmental records held on a property in Cheshire. The complainant specified that he wished to view the records in person. The Council initially stated that the information would only be provided if the complainant paid a fee. However, following investigation by the Commissioner, the Council agreed the complainant could inspect hard copies of the requested information free of charge. However, because the Council did not make the information available to the complainant within the statutory time for compliance the Commissioner finds a breach of regulation 5(2). The Commissioner does not require the Council to take any further action.

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

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

## 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.
6. In April 2009, just prior to the time of the request, three former local authorities were merged to create Cheshire East Council. Recorded information was therefore potentially held in three different locations and/or formats.

## The Request

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7. On 25 June 2009 the complainant requested the following information:  
*"I would like to make an appointment for our employee [name redacted] to view the land charges register, Highways, Planning and building regulations records free of charge. Initially, we would like to view the records pertaining to [address of property redacted] but would like access to view the information on various properties as we are instructed."*
8. The request was made with a view to obtaining information in order to answer questions 1.1(f) – (h), 1.2, 2(a)-(d), 3.1, 3.2, 3.3(a)-(b), 3.4 (a)-(f), 3.5, 3.6(a)-(i), 3.7(a)-(f), 3.8, 3.9 (a) – (n), 3.10(a)-(b), 3.11, 3.12(a)-(c) and 3.13 of the CON29R form.<sup>1</sup> The complainant requested this information in relation to a specific named property, and specified that he wanted his employee to inspect these records in person.

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

9. The Council responded to the complainant with what appeared to be a standard land charges information response advising that the data was currently held in three different formats. As such, the Council would produce an output report of 'refined data' for requesters making enquiries within the Con29R and would deal with such requests on a 'first come first served basis'. The Council provided details of how to make such a request including procedural instructions and a reference to the appropriate fee. The Council has not been able to confirm the exact date on which its Land Charges department issued the standard response as it does not have a record of the date.
10. On 31 July 2009 the complainant submitted a written request for an internal review of this decision to the Council, with a further request for review being submitted on 1 October 2009.
11. The Council wrote to the complainant on 22 October 2009 advising that it had not received his correspondence of 31 July 2009 requesting an internal review. In this letter, the Council restated that the requested information would be made available on payment of the appropriate fee calculated under the Local Authorities (England) (Charges for Property Searches) Regulations 2008.

## **The Investigation**

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### **Scope of the case**

12. On 3 November 2009, the complainant contacted the Commissioner to complain about the Council's non-compliance with the provisions of the EIR. The Council has now written to the complainant to advise that the requested information, referred to in paragraph 8 above, is available for him to inspect.

### **Chronology**

13. On 18 January 2010, the Commissioner wrote to the Council and asked that it reconsider its response to the complainant's request under the Environmental Information Regulations. The Commissioner also drew the Council's attention to his recently published guidance on property searches and recently issued Decision Notices which had dealt with a similar request for access to building control information, and asked the Council to reconsider whether it would be prepared to allow the complainant to access the requested information free of charge.

14. A letter from the Council to the Commissioner dated 6 January 2010 was not received by the Commissioner until after he had sent his letter of 18 January 2010 referred to above. However, the Council's letter of 6 January 2010 advised that it had no record of any previous correspondence from the complainant before his letter of 1 October 2009, and as such had not conducted a formal internal review. The Council therefore asked the Commissioner to consider granting it the opportunity to carry out the internal review.
15. After consideration, the Commissioner advised both the complainant and the Council on 20 January 2010 that an internal review should now be carried out within 40 working days and the case was closed pending the outcome of the review.
16. The Council wrote to the Commissioner on 18 February 2010 with the outcome of its internal review, providing a copy of the result to the complainant. The Council refuted that all the requested information was environmental, detailing the conflicting views of the Commissioner and the Local Government Association in relation to whether such property search requests should be treated as requests for environmental information under the EIR, and thereby whether or not it was appropriate to levy a charge. The Council also engaged the exception contained within regulation 12(4)(d), submitting arguments in support of why it believed the request related to material which was still in the course of completion, to unfinished documents or to incomplete data.
17. On 22 February 2010 the complainant wrote to the Commissioner to complain following the internal review result.
18. The Council submitted copies of some documentation as evidence which it advised were inadvertently excluded from its previous response of 18 February 2010 to the Commissioner.
19. The Commissioner wrote to the Council on 10 May 2010 to advise he was not convinced by the arguments submitted by the Council in support of its application of regulation 12(4)(d) and invited the Council to make any further submissions. He referred it to the Information Tribunal decision in *East Riding of Yorkshire Council v Information Commissioner (EA/2009/0069)*, which established that applicants are entitled to request to inspect information and public authorities must comply with that wish unless they have a right under regulation 6 to override that preference, that is, it is reasonable for the information to be provided in an alternative format. The Tribunal also determined that public authorities cannot impose a charge for allowing applicants to inspect environmental information.

20. On 21 June 2010 the Council provided further arguments and copies of documentation in support of its application of regulation 12(4)(d).
21. The Commissioner wrote again to the Council on 6 July 2010 advising he was still not convinced by its application of regulation 12(4)(d) and seeking additional information about its approach to property search requests.
22. The Council responded to the Commissioner on 19 July 2010.
23. On 2 August 2010 the Commissioner wrote to the Council following the amendment of the Local Land Charges Rules 1977 (which revoked the fee for inspection of the land charges register) to ascertain whether this altered its decision in relation to this request.
24. On 13 August 2010 the Council wrote to the Commissioner with its proposed approach to allow for free access to requests for environmental information in the future.
25. The Commissioner confirmed his agreement to the revised procedure to the Council on 17 August 2010.
26. On 20 August 2010 the Council wrote to the complainant to inform him how it would be handling such requests for property search information.
27. On 23 August 2010 the Commissioner asked the complainant whether he would be prepared to withdraw his complaint.
28. On 25 August 2010 the complainant confirmed to the Commissioner that he wished to proceed to a Decision Notice.

## Analysis

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### Substantive Procedural Matters

#### Regulation 2

29. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
30. 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.

## Exceptions

### **Regulation 12(4)(d) – request relates to material which is still in the course of completion, to unfinished documents or to incomplete data**

31. Although the Council cited exception 12(4)(d) at the internal review stage it subsequently provided the complainant with the opportunity to view the requested information, therefore, the Commissioner has not considered the Council's application of regulation 12(4)(d) any further.

## Procedural Requirements

### **Regulation 5**

32. Regulation 5(1) provides that environmental information shall be made available by a public authority upon request. Regulation 5(2) states that this information should be made available within 20 working days following receipt of the request. Under regulation 7, a public authority is permitted to extend this period to 40 working days if it considers that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.
33. The complainant submitted his request for information on 25 June 2009. The Council did not agree to make the requested information available to the complainant free of charge in accordance with the EIR until 20 August 2010. As the requested information was not made available within the statutory time for compliance the Commissioner finds that the Council breached regulation 5(2).

## The Decision

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34. The Commissioner's decision is that Cheshire East Council did not deal with the request for information in accordance with the EIR. The

Council has breached regulation 5(2) by failing to make information available within the statutory time for compliance.

### **Steps Required**

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35. The Commissioner requires no steps to be taken.

## Right of Appeal

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36. 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 8<sup>th</sup> day 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 –

- (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 6(2)** If the information is not made available in the form or format requested, the public authority shall –

- (a) explain the reason for its decision as soon as possible and not later than 20 working days after the date of receipt of the request for the information;
- (b) provide the explanation in writing if the applicant requests; and
- (c) inform the applicant of the provisions of regulation 11 and the enforcement and appeal provisions of the Act applied by regulation 18.

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

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

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

paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).

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

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

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

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

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

## **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?