

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

Decision Notice

Date: 26 July 2010

Public Authority: Chichester District Council
Address: East Pallant House
1 East Pallant
Chichester
West Sussex
PO19 1TY

Summary

The complainant submitted a request to Chichester District Council ('the Council') for information from environmental records held on a property in Chichester. The complainant specified that he wished to view the records in person. The Council agreed to provide the information requested but only on the provision of a set fee. The Commissioner's decision is that the Council failed to comply with 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 Council breached regulation 6(1) by failing to comply with the complainant's request to make the requested information available in a particular format. The Council has also breached regulation 8(2)(b) by attempting to impose a charge for allowing the complainant to inspect some of 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

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

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

6. On 5 February 2010 the complainant requested access, free of charge, to the land charges register and to records containing the information necessary 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.¹

The complainant requested this information in relation to a specific named property, and specified that he wished to inspect these records in person.

7. The Council responded to this request on 8 February 2010 and stated that a charge of £22 would be levied to allow the complainant to conduct a personal search of the Local Land Charges Register. The Council also stated that whilst information relevant to some questions on the CON29R form was available at no cost, a charge would be imposed for information relevant to questions 3.7(b)-(f), 3.12(a)-(c) and 3.13. The total cost was £6.25.

¹ Annex A details the nature of the information relevant to each CON29R enquiry.

8. On 8 March 2010, the complainant submitted a written request for an internal review of this decision to the Council. The Council acknowledged this request on 10 March 2010.
9. The complainant wrote to the Council on 16 April 2010 to enquire when he might receive a response to this request.
10. On 30 April 2010, the Council wrote to the complainant and upheld its original response. The Council explained that it had calculated the charge imposed for inspection of the Local Land Charges Register in accordance with the [Local Land Charges \(Amendment\) Rules 2009](#). The fee for providing information relevant to the CON29R form was calculated in accordance with the provisions of the [Local Authorities \(England\) \(Charges for Property Searches\) Regulations 2008](#) ('the CPSR').

The Investigation

Scope of the case

11. On 20 May 2010, the complainant contacted the Commissioner to complain about the Council's decision to refuse access to the requested information. The Council has confirmed that no charge will be imposed for information relevant to some questions on the CON29R form. Consequently, the Commissioner has only considered whether the Council has complied with the EIR in relation to the remainder of the information requested – specifically, the Local Land Charges Register, and questions 3.7(b)-(f), 3.12(a)-(c) and 3.13 of the CON29R form.

Chronology

12. On 10 June 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 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.
13. On 9 July 2010, the Council provided the Commissioner with a submission in support of its position.

14. On 12 July 2010, the Commissioner wrote to the Council to enquire if it wished to apply regulation 6(1)(a) to the requested information. This regulation provides that a public authority will not have to provide information in an applicant's preferred form or format where it is reasonable to provide information in another form or format.
15. On 20 July 2010, the Council confirmed that it relied on regulation 6(1)(a).

Analysis

Substantive Procedural Matters

Regulation 2

16. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
17. 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

18. 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. The complainant's original request for information was made on 5 February 2010. The Council has not provided the complainant with the requested information. The Commissioner therefore concludes that the Council has breached regulations 5(1) by failing to make the information available on request, and regulation 5(2) by failing to make information available within 20 working days following receipt of the request.

Regulation 6

19. Regulation 6(1) provides an applicant with the right to request that information be made available in a particular form or format. It is the Commissioner's view that although regulation 6(1) may appear primarily to be concerned with the form or format information is provided in, it should be interpreted broadly and does provide a right to request the inspection of environmental information. 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.
20. The Council currently allows applicants to conduct a personal search of the Local Land Charges Register on provision of a fee. Therefore, in relation to this part of the request, the Council has complied with regulation 6(1).
21. However, the Council has refused to make information relevant to the CON29R form available for inspection, although an answer to these questions will be provided upon payment of a set fee. Regulation 6(1)(a) provides an exception from a public authority's duty to comply with an applicant's preferred form or format when "it is reasonable for it to make the information available in another form or format". The Council has confirmed that it relies on regulation 6(1)(a) as it maintains in its email to the Commissioner of 9 July 2010 that the "particular circumstances of this council would mean that providing unsupervised access is capable of raising ... difficulties".
22. The Council argues that if the complainant were allowed to inspect the requested information unsupervised, some personal data might be disclosed in contravention of the Data Protection Act. The Council states that it does not know if there is a technical solution to this problem, or how much this might cost.
23. The Council also indicates that if unrestricted access to the requested information was provided, the records that hold the information could be altered. The Commissioner assumes that this is because information is held in a 'live' system. Again, the Council does not know if there is a solution to this difficulty, or what the projected cost might be. In addition, the Council argues that it is unsure if complying with the request would breach the terms of its software licence.
24. The Commissioner does not accept that the Council has provided sufficient arguments to demonstrate that it would be reasonable to provide the information in a format other than inspection. The Commissioner does not accept that it would be unreasonable to expect

the Council to redact this information before providing it to the complainant. The Council has provided no evidence to demonstrate why other methods of providing inspection would not be possible, or why it is reasonable to provide information in a format other than inspection. Consequently, the Commissioner considers that the Council cannot rely upon regulation 6(1)(a).

25. The Council has not complied with its duty to provide information in the form or format requested by the complainant. The Commissioner does not accept that regulation 6(1)(a) applies to the requested information. Therefore, by failing to comply with the complainant's preferred form or format for receiving the information, the Council has breached regulation 6(1).

Regulation 8

26. 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 set out in regulation 8(2).
27. 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.
28. The Commissioner notes that in relation to the Local Land Charges Register, the Council has imposed a fee calculated in accordance with the [Local Land Charges \(Amendment\) Rules 2009](#) (LLCR). This amended the Local Land Charges Rules 1977 to allow a fee of £22 to be charged for a personal search of the Land Charges Register in relation to one parcel of land. The Council makes clear that charges for information relevant to the CON29R form are calculated in line with the [Local Authorities \(England\) \(Charges for Property Searches\) Regulations 2008](#) ('CPSR') set out fees that can be charged for the provision of answers to the CON29R form.
29. The Commissioner's position is that regulation 5(6) of the EIR specifically disapplies the charging provisions under the LLCR and the CPSR. This regulation provides that "any enactment or rule of law that would prevent the disclosure of information in accordance with these regulations shall not apply".

30. Consequently, the Commissioner considers that if the property records comprise environmental information as defined by regulation 2 of the EIR, neither the LLCR nor the CPSR can 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, regardless of the charging provisions of the LLCR and CPSR, 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 LLCR and CPSR cannot apply. This position also acknowledges the primacy of EU legislation whereby European law, such as the EIR, takes precedence over domestic law.
31. Regulation 8(2)(b) provides that a public authority is not entitled to charge a fee for allowing inspection of information. Therefore, the Commissioner is of the opinion that the complainant is entitled to inspect the information free of charge.
32. In relation to the Local Land Charges Register, the Council is prepared to comply with the complainant's request to inspect the information, but stated that a fee of £22 must be paid. In attempting to impose a charge for allowing the complainant to inspect information, the Council has breached regulation 8(2)(b).

The Decision

33. The Commissioner's decision is that Chichester Council did not deal with the request for information in accordance with the EIR. The Council has breached regulation 5(1) by failing to make information available upon request and regulation 5(2) by failing to make it available within the statutory time for compliance. The Council has breached regulation 6(1) as it failed to comply with the complainant's request to make some of the information in a particular format. The Council has also breached regulation 8(2)(b) by attempting to impose a charge for allowing the complainant to inspect some of the requested information.

Steps Required

34. The Commissioner requires that the Council make the requested information available for the complainant to inspect free of charge.

35. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Right of Appeal

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

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

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 26th day of July 2010

Signed

**Gerrard Tracey
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

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.

Regulation 11 - Representation and reconsideration

Regulation 11(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

Regulation 11(2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

Regulation 11(3) The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

Regulation 11(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations.

Regulation 11(5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of –

- (a) the failure to comply;
- (b) the action the authority has decided to take to comply with the requirement; and
- (c) the period within which that action is to be taken.

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?