

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

Decision Notice

Date: 26 October 2010

Public Authority: Borough of Poole Council
Address: Civic Centre
Poole
BH15 2RU

Summary

The complainant submitted a request to the Borough of Poole Council ('the Council') for information from environmental records held on a property in Poole. The complainant specified he wished to inspect these records. The Council did not make the information available to the complainant within the statutory time for compliance and so 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

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 compels all local authorities to generate, maintain and update a Local Land Charges

Register and to provide local searches. In order to obtain information from a local search, an application for an Official Search must be submitted to the relevant Local Authority on form LLC1. 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 17 June 2010 the complainant requested access, free of charge, to records containing the information necessary to complete a LLC1 and CON29R form.

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

7. On 29 June 2010, the Council wrote to the complainant and requested that he clarify his request as it "assumes a knowledge of the property search process and terminology associated with it, this requires a degree of interpretation which may cause ambiguity". The Council also confirmed that the complainant would need to visit individual departments to examine the information that was held.
8. On 5 July 2010, the complainant wrote to the Council and explained that he would like to view information that would allow him to answer the questions on the CON29R form for the property in question. The complainant provided a list of the questions contained on this form. He also stated that he would like to inspect entries on the Local Land Charges Register in relation to the specific property. The complainant concluded that "I do not think I can be any more specific in my request".
9. On 9 July 2010, the Council wrote to the complainant to inform him that whilst it held some of the requested information, it needed more

time to consider whether it should be disclosed. The Council informed the complainant that it would respond to him by 18 August 2010.

10. Following the intervention of the Commissioner, the Council wrote to the complainant on 13 September 2010 to explain that it would make the requested information available for inspection free of charge. It provided the contact details for the various departments the complainant could contact to access the requested information.

The Investigation

Scope of the case

11. On 30 August 2010, the complainant contacted the Commissioner to complain about the Council's compliance with the provisions of the EIR.

Chronology

12. On 7 September 2010, the Commissioner wrote to the Council to ask that it confirmed whether it would permit the complainant to inspect the requested information free of charge. The Commissioner also asked that if the Council refused to comply with the request, it provided a submission to the Commissioner explaining why this was the case.
13. On 13 September 2010, the Council wrote to the Commissioner enclosing a copy of its letter to the complainant explaining that the requested information could be accessed free of charge.

Analysis

Substantive Procedural Matters

Regulation 2

14. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
15. 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

16. 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. 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.
17. The complainant's original request for information was made on 17 June 2010. His clarified request, which was simply a reiteration of the original, was provided to the Council on 5 July 2010. The Council wrote to the complainant to state that the requested information would be made available for inspection on 13 September 2010. The Commissioner therefore concludes that the Council has breached regulation 5(2) by failing to make the requested information available within the statutory time for compliance.

The Decision

18. The Commissioner's decision is that Borough of Poole Council has breached regulation 5(2) of the EIR as it failed to make the requested information available within the statutory time for compliance.

Steps Required

19. The Commissioner does not require the Council to take any further action.

Right of Appeal

20. 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 26th day of October 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

**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 –

- (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.