

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

### **Decision Notice**

**Date: 26 January 2011**

**Public Authority:** Warwick District Council  
**Address:** Riverside House  
Milverton Hill  
Leamington Spa  
Warwickshire  
CV32 5HZ

### **Summary**

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The complainant requested information relating to various statutory or safety inspections, over a specified period, conducted by the public authority for the council-owned property he lives in. The public authority disclosed information on current inspections but explains that records of previous inspections are not retained by it. The complainant maintains that more information should be held as there are various statutory requirements to hold historical copies of such records. The Commissioner is satisfied that no further information is held by the public authority and that this has highlighted possible shortcomings in the public authority's record-keeping policies and procedures. He finds that the public authority has breached regulation 11 and regulation 14 of the Environmental Information Regulations. The Commissioner requires no action to be taken.

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

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. 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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3. The complainant has been in regular correspondence with the public authority and has previously requested and obtained information relating to the maintenance of the building in which he lives.

## The Request

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4. On 8 July 2009 the complainant wrote to Warwick District Council (WDC) requesting the following:

*"All the Periodic Electrical Inspection Reports and all the Previous Fire Alarm checks prior to the two mentioned in 2008 and also all the previous two-yearly Fire Risk Assessments, along with all Previous Asbestos Surveys and reports since 1995 and also the missing Gas Inspection possibly carried out in 2007."*

5. The public authority acknowledged this request on 21 July 2009 and gave the following response on 19 October 2009:

*"Your request was for the following information:*

*1. The electrical Installation Report for 1999*

*This report was completed prior to the "Periodic Inspection Report System" and as such a copy of the same is no longer held by the Authority.*

*2. Fire Alarm Checks prior to 2008.*

*The 2008 checks, already supplied to you, supersede previous checks; documented copies of previous checks are not held by the Authority.*

*3. Fire Risk Assessment (Two yearly).*

*Again the current Assessment already supplied to you, supersede the previous checks; documented copies of previous checks are not held by the Authority.*

*4. Asbestos Surveys and Reports from 1995.*

*The current Report supersedes the previous checks; documented copies of previous checks are not held by the Authority. However as I believe you have not previously been supplied with a copy of the current Asbestos Survey I attach the same for your information.*

*5. Gas Inspection for 2007.*

*Again the current Inspection Report already supplied to you supersedes the previous checks; documented copies of previous checks are not held by the Authority."*

[The Commissioner notes that this response misquotes item 1) in this list as "The electrical Installation Report for 1999" rather than as it was written, "All the Periodic Electrical Inspection Reports"]

6. The complainant continued to contact and correspond with the public authority during the period following its response and his complaint to the Commissioner. He has provided the Commissioner with copies of his letters to the public authority dated 26 October, 2, 13, 20 and 26 November, and 22 December 2009, and the public authority's replies. His letter of 22 December requested an internal review of the public authority's response.
7. On 30 December 2009, the public authority replied, stating:  
  
*"Your request was made under the Freedom of Information Act 2000 and not under the Environmental Information Regulations. Regulation 11 does not therefore apply in this case, and the Council will accordingly not be considering your representations or your request for an internal review."*
8. The Commissioner has consequently accepted this complaint in the absence of an internal review.

### **Applicable legislation**

9. The majority of the request concerns information held by the public authority in relation to its management and maintenance of the building the complainant lives in. This is not considered to be environmental information, however there are elements of the request which are considered to be for environmental information. This Decision Notice is therefore concerned with the applicability of both the Freedom of Information Act, and the Environmental Information Regulations to the requested information.

## The Investigation

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### Scope of the case

### The complaint

10. On 1 November 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He stated that he felt that his freedom of information request of 8 July 2009 *"[...] has not been addressed in the correct manner, so could I please have your considered opinion on this matter [...]"*
11. In subsequent correspondence, the complainant clarified the complaint he was making, confirming on 8 December 2009 that his complaint referred to the request he had made to WDC on 8 July 2009, stating:

*"I would like to make a complaint to you about the fact I requested information under the Freedom of Informations Act 2000 to Warwick District Council on the 8<sup>th</sup> July 2009" [sic].*
12. The Commissioner has assessed the complainant's correspondence and summarises the following points of complaint contained in his letters of 8 December 2009 and 8 January 2010:
  - 1) Part of the information he received was not what he requested – specifically in relation to his request for electrical inspection reports.
  - 2) WDC failed to provide advice and assistance to him.
  - 3) The information he received does not contain any confirmation of authenticity and contents of the information sent.
  - 4) The WDC response of 19 October 2009 misquotes his request.
  - 5) WDC refused his request for it to review its response, and specifically its incorrect response in consequence of its misquoting of the first part of his request.
  - 6) The complainant also made reference to a later request for information to WDC, dated 21 November 2009.
13. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.
14. The Commissioner wrote to the complainant on 4 February 2010 in order to clarify the matters which his investigation would examine.

## Chronology

15. On 4 February 2010 the Commissioner wrote to the public authority. He drew its attention to the misquoting of item 1) of the complainant's request and the consequent possibility that the response had not sufficiently met the request. He suggested that it take steps to remedy any oversight arising from that misquotation and asked it to indicate whether a further response could be provided. The Commissioner also criticised the public authority's grounds for refusing to conduct an internal review. Finally, he asked the public authority for its document retention and disposal policies and relevant schedules, in support of its position that information was not held in respect of previous reports and checks.
16. The Commissioner also wrote to the complainant on 4 February 2010, itemising the complaint under the six grounds listed at paragraph 12 above. The matters raised by the complainant were covered in some depth and those which were considered to remain valid grounds for complaint were identified as items 1) and 5) in the list. The Commissioner explained that his investigation would focus on whether the public authority had responded correctly to the first element of his request for information and, if not, to obtain a response which is in accordance with the legislation; and secondly to examine the public authority's refusal to agree to an internal review of his complaint.
17. The complainant responded in an undated letter, received on 15 February 2010. He restated his requirements in respect of item 1) in the request, and indicated his belief that the information he had requested related to statutory inspections and therefore should be retained in a permanent file for a period, even if they had been superseded. He gave reasons why he had felt it necessary to require authentication of the information which was to be disclosed, [which refers to item 3) in the complaint] and his belief that he was within his rights to do so. He asserted that the public authority was not adhering to the code of practice in records management, issued in compliance with section 46 of the Act<sup>1</sup> (the section 46 code of practice). He also re-stated his belief that he had not received advice and assistance. In support of his view, he made reference to other requests and complaints to the Information Commissioner's Office (ICO) which are not the subject of this Decision Notice.
18. The Commissioner wrote again to the complainant on 22 February 2010, confirming his understanding of item 1) of the complaint. He also

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<sup>1</sup> Available to download at <http://www.justice.gov.uk/guidance/foi-guidance-codes-practice.htm>

explained that, as the complainant had submitted a request for verification of the information disclosed to him, but this was sent to the public authority after his complaint had been made to the ICO, it could not be considered as part of this particular complaint. While he was within his rights to make a supplementary request for verification of information disclosed to him, there is no entitlement to verification of information disclosed, under the Act.

19. A request for verification of information disclosed would only entitle an applicant to information held by the public authority in its records, which verified the previous disclosure. It would not entitle the applicant to have the public authority conduct a verification exercise on the previous disclosure. Any request for information in verification of information previously disclosed would be treated as a separate request, for which a separate complaint would be required, if necessary, in due course.
20. The Commissioner further explained that there is no absolute obligation to provide advice and assistance, and the duty to provide advice and assistance exists primarily to cover circumstances in which an applicant is having difficulty framing a request in a way which the public authority can comply with. It is largely for a public authority to judge whether an applicant requires advice and assistance. As it was not apparent in this case what advice and assistance the complainant might have required, and as the public authority had been able to establish what information he required [notwithstanding the misquoting error already under consideration], there was no clear requirement to provide any.
21. The public authority replied on 24 February, confirming that a further response had been provided in respect of item 1) in the complaint. That response, also dated 24 February, explained that the complainant had been provided with a copy of the Electrical Inspection Report for 2009 and no previous copies had been retained.
22. The public authority explained that it was unable to confirm that the disposal of superseded copies of checks had been done in accordance with the current document retention and disposal policy but stated that, in accordance with its policy, if it has an updated certificate the old one can be disposed of. The public authority provided a copy of the relevant document retention schedule, explaining that it did not specifically cover the circumstances of the requested information but that it believed it complied with relevant legal obligations, for example: gas safety inspection certificates are retained for two years. It further explained that it was unable to provide any evidence of the disposal of the documents mentioned in the complaint and acknowledged that this was an area which would need to be reviewed, and which would be addressed as a priority.

23. The Commissioner replied to the public authority on 9 March 2010, requesting a copy of the applicable section of the document retention policy to which the schedule applied. The public authority subsequently confirmed that, while it had been accepted policy that documents were disposed of as they were superseded by a new report or inspection, no written document to confirm this policy could be produced and that this was a matter which would need to be reviewed as a priority, as previously stated.
24. The Commissioner wrote to the public authority on 18 March 2010, informing it that the various matters had been referred to his Enforcement team. The Enforcement team had previously contacted the public authority and some of the issues addressed in that case were evident in the current case, particularly the public authority's approach to refusal notices and internal reviews. The matters referred to the Enforcement team in the current case were listed as:
- Delays in the provision of a response to the request, beyond the statutory timescales.
  - Mis-quoting the complainant's request and consequently failing to fully address all elements of the request.
  - Failing to advise the applicant of his right to internal review, or his right to bring a complaint to the Information Commissioner.
  - Failing to recognise an expression of dissatisfaction with a response as a request for internal review (with reference to a letter to the public authority from the complainant of 2 November 2009).
  - Failing to agree to conduct an internal review, on spurious grounds.
  - Shortcomings in the public authority's document retention and disposal policies, and associated schedules.
25. The Commissioner wrote to the complainant on 19 March 2010 to inform him of the action he had taken, enclosing a copy of the 18 March letter sent to the public authority. He observed that, even if the disposal of documents had not been done in accordance with the public authority's policies and schedules, this did not mean that the destruction was unlawful, nor that the documents could not have been disposed of – it simply meant that the established custom and practice in this matter had not been formally adopted as council policy. He indicated that he had referred these matters to the relevant section of the ICO which was empowered to deal with procedural shortcomings of the types identified by the investigation, and sought the complainant's view on the matter. The complainant acknowledged this letter on 23 March 2010, thanking the Commissioner for his input and help so far and indicating that he intended to reply after further consideration.

26. On 12 April 2010, the Commissioner wrote again to the complainant, to remind him that he had indicated an intention to respond to his 19 March letter.

27. The Complainant responded on 15 April. He gave his view that a failure to retain previous copies of the requested documents had serious health and safety implications and he considered it to be breaches of the following legislation:

- The Regulatory Reform (Fire Safety) Order 2004;
- The Control of Asbestos at Work Regulations 1987;
- The Consumer Protection Act;
- The Electricity at Work Regulations 1989;
- The Health and Safety at Work Act 1974; and
- The Limitations Act 1980.

28. The complainant argued that the Commissioner's conclusion (that the public authority had not acted unlawfully by its destruction of documents), was wrong. He further argued that the public authority's failure to provide him with a reasonable standard of service was a direct breach of its constitution and his civil liberties. He requested that the Commissioner proceed. He enclosed copies of two letters he had sent to the public authority on 5 March, and 8 March 2010 and its response of 16 March 2010. The Commissioner observes that these letters deal predominantly with requests submitted to the public authority, subsequent to the complaint under consideration in this Decision Notice.

29. The Commissioner wrote again to the complainant on 19 April 2010, explaining the following:

- The public authority had confirmed that it does not hold information prior to the copies of documents which it had already provided to him.
- The provisional view was that this position would be supported on the evidence so far gathered and information could not be recreated.
- The matters complained about were procedural in nature. They related to the way in which a public authority has conducted itself in dealing with a request for information; these elements had been referred to the department within the Information Commissioner's Office equipped to deal with them.
- The complainant's argument that the information was required under other legislation was inconclusive and the Commissioner has no jurisdiction over that legislation. To the extent that his allegations implied poor record-keeping practices by the public authority, the relevant department within the ICO had already been alerted to the matter.



30. The complainant replied in an undated letter, received 5 May 2010. He described a chronology of correspondence beginning on 24 July 2008 and in which, he explains, his various letters contained several requests for information about inspections carried out on his building, and responses from the public authority from December 2008 which provided what he describes as *"...various unverified bits of information"* He comments that at no stage during this process did the public authority state the information requested was not held or destroyed.
31. The complainant further explains that during this process *"WDC did supply me with some inspection reports but never the ones I wanted"*. He refers to a letter from the public authority which states: *"We did indeed supply [the complainant] with copies of inspections after the recent work took place. We did not supply copies of work previous to this as [the complainant] had already received copies of these. [...] According to our records we have sent [the complainant] all the information however if [the complainant] has mislaid his copies of these document please ask him to contact us and we will provide additional copies."* [sic]
32. The complainant suggests that this proves beyond doubt that records of the information he had been seeking were held and had not been destroyed. He continues, and explains that the public authority's response to his 8 July 2009 request duplicated information previously provided to him and refers to various items of correspondence from the public authority which, he argues, support his view that the previous copies of the documents should be retained. He also cites advice from various external bodies with regard to recommended retention of certain documentation.
33. This advice includes a letter from an officer at the Warwickshire Fire and Rescue Service, dated 8 April 2010, which includes the comment:
- "The report which you received from the District Council, as far as I can see, is a report of the District Council officer's findings and is not a Fire Risk Assessment for the building."*
34. The complainant therefore alleges that *"Yet again we have a spurious and misleading piece of information being passed off as a[n] answer to my request."* He further alleges that the correspondence enclosed shows that the public authority *"destroyed information whilst under request"*. He cites the letter from the fire and rescue service as evidence that information which he had requested had been withheld from him by the public authority.

35. The Commissioner reviewed the case to date and wrote to the complainant on 26 May 2010. Again the remit of the Commissioner, and the requirement to only allow consideration of events at the time of the request, was clarified.
36. The complainant's allegations that information had been destroyed while the subject of a request were not supported by the evidence he had provided (the Commissioner's interpretation of the public authority's comments quoted at paragraph 29, in the context of the correspondence provided, is that the public authority continued to hold copies of documents previously disclosed to him, not that it held copies of requested information which had not been disclosed). Nor was there any suggestion that any destruction of information had been done *'with the intention of preventing the disclosure [...] of the information'* which is a defining requirement of any offence which may be committed under section 77 of the Act.
37. The complainant replied to the Commissioner in an undated letter, received on 11 June 2010. He argued that his complaint was wider than simply the public authority's response to his 8 July 2009 request and that his letter, received on 5 May 2010, *"states a clear full and precise account of my dealings with Warwick District council leading up to my letter of 8<sup>th</sup> July 2009 and should be investigated as such unless you have a good cause as to why not[...] Can I also state the essence of my complaint is about legal requirements."*
38. The complainant argued that the Commissioner was obliged to act on facts, not probabilities and stated:
- "The facts as I see it are as follows WDC are guilty of breaking their own FoI and DPA policy along with parts of their Handling Policy especially their Document Management (s4) in very much all parts. And as this policy is all but in name the FoI Act 2000 then WDC have seriously broken the FoI Act 2000 in what I feel is a unlawfull manner along with the regulations of the Acts of Statute the information I asked for on the 8<sup>th</sup> July 2010\*. And if this is not correct please inform me as to why not, if it is, correct please inform as to why it is, and deal with my complaints [...]"* [sic]
39. The Commissioner understands the complainant's argument to be that the scope of his complaint should be widened, beyond that set-out by the Commissioner on 4 February 2010 and discussed in the complainant's response, received 15 February 2010.

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\* This is understood to be a reference to the complainant's request of 8 July 2009.

40. The Commissioner accordingly re-examined the complainant's letters, received 15 February and 11 June 2010, and has found nothing material in those letters which is not already included in the scope of the complaint he set out at paragraph 12. These may reasonably be summarised as procedural matters, relating either to records management and the section 46 code of practice, or to the provision of advice and assistance and the conduct of an internal review. The Commissioner also notes that the complainant's 8 July 2009 request appears to be an attempt to obtain information not disclosed to him in response to his previous requests and, to that extent, may be considered to encompass those previous requests. The Commissioner is therefore satisfied that the complainant's arguments about his 8 July 2009 request contain all the essential elements of the complainant's wider arguments and he is not disadvantaged by the approach taken by the Commissioner during his investigation. The Commissioner has therefore prepared and served this Decision Notice on the basis of the grounds of complaint summarised at paragraph 12.

## Analysis

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### The Environmental Information Regulations 2004

41. To the extent that the request relates to asbestos surveys and reports, and gas inspections (items 4 and 5 in the public authority's response quoted at paragraph 5, above) that information is considered to be environmental information because it is considered to be 'information on':

*"[...] substances [...] affecting or likely to affect the elements of the environment referred to in [regulation 2(a)]" [EIR regulation 2(b)];*

This therefore falls to be considered under the Environmental Information Regulations 2004, not under the Freedom of Information Act 2000.

### Substantive Procedural Matters

#### Regulation 9

42. The complainant argues, at item 2) in the summary of the complaint, that the public authority failed to provide advice and assistance.

43. The Commissioner observes that the complainant had not requested advice and assistance in his original request, but subsequently requested a meeting with WDC in a letter of 26 November in which he indicated that the purpose of the meeting was the provision of advice and assistance to him. This had been declined by the public authority and that refusal is referenced by the complainant as the grounds for that specific element of his complaint. Noting that this letter post-dates the complaint submitted to the ICO, the public authority's refusal of the meeting cannot therefore be a 'specified respect' under section 50 of the Act, in relation to the circumstances of the complaint and the request it relates to, at the time the complaint was made.
44. Nevertheless, the obligation to provide advice and assistance rests with the public authority, irrespective of whether it has been explicitly requested by the applicant. The Commissioner has therefore considered whether it would have been reasonable in the circumstances for the public authority to have offered advice and assistance to the complainant.
45. A public authority is considered to have fulfilled its obligations under regulation 9, if it complies with the code of practice issued by DEFRA<sup>2</sup>. The relevant sections of the codes of practice can be found in the legal annex to this Decision Notice.
46. For the most part, the duty to provide advice and assistance is focussed on assisting an applicant in making or clarifying a request, so that the public authority can respond appropriately. The Act, the EIR and the corresponding codes of practice are less clear on the duty to provide advice and assistance once a request has been made and accepted by the public authority, and largely confine themselves to advising a public authority to be flexible in offering advice and assistance most appropriate to the circumstances.
47. The complainant has made numerous requests for information to the public authority and it is not apparent from the content of his letter of 8 July 2009 that he was in need of any advice or assistance with making his request. The letter was sufficiently clear, such that an objective reading of the request would be possible without the need for further clarification and (aside from its misquoting of the request) the public authority has given no indication that it had any difficulty interpreting the request objectively. Neither has the public authority sought to refuse the request on the grounds of cost (which would carry a corresponding obligation to provide advice and assistance as to how the request might be refined to come within the cost limit). The Commissioner therefore

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<sup>2</sup> Available online at <http://www.defra.gov.uk/corporate/policy/opengov/eir/pdf/cop-eir.pdf>

does not consider that advice and assistance would have been necessary in order for the public authority to have provided a full response to the request.

48. There is no absolute obligation to provide advice and assistance in every case. If a public authority is able to ascertain what the requester requires and provide it, without giving advice and assistance, there is clearly no need for it to use its resources in providing unnecessary advice or assistance in those circumstances. There is also the specific provision in regulation 9 of the EIR to provide advice and assistance *"so far as it would be reasonable to expect the authority to do so"*. The Commissioner would be unlikely to agree with an argument that a public authority has failed to provide advice and assistance if it appeared to him that advice and assistance was unnecessary, or would not be reasonable in the circumstances.
49. It is clear from the complainant's correspondence that he is familiar with the process of making requests for information, indeed the public authority has provided evidence of a number of responses given to his various requests over a significant period prior to the request under consideration here. On that basis, while he complains that advice and assistance was not offered, it is not clear from the context of the request, his complaint, or his correspondence, what advice and assistance he might have expected or required. Similarly, the public authority has held meetings with the complainant at which, the Commissioner understands, various matters related to his requests have been raised. The Commissioner considers that this would be likely to come under the description of 'advice and assistance' in the context.
50. Accordingly, the Commissioner finds that the public authority did not breach regulation 9 of the EIR.

## **Regulation 11**

51. Unlike the Freedom of Information Act 2000, the Environmental Information Regulations 2004 contain a specific obligation at regulation 11, for the provision of representations and reconsideration.

**Regulation 11(1)** provides that –

*'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)** provides that –

*'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)** provides that –

*'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.'*

52. The complainant wrote to the public authority on 22 December 2009 requesting an internal review under regulation 11 of the EIR. The public authority refused the internal review, explaining that the request was made under the Freedom of Information Act 2000 and not under the Environmental Information Regulations, therefore regulation 11 was not considered to apply.
53. The Commissioner observes that the applicable legislation is determined by the nature of the information requested. It is not necessary for an applicant to have any knowledge or understanding of the Act or the EIR (nor, for that matter, the Data Protection Act) and he is not expected to specify the relevant legislation under which his request is made. It is, rather, for the public authority to determine the governing legislation under which it should respond.
54. The Freedom of Information Act 2000 differs from the EIR in that there is no absolute requirement for a public authority to conduct an internal review under the Act. Regulation 11 of the EIR, however, does provide an obligation for a public authority to undertake reconsideration of its response, on receipt of representations from an applicant to that effect. The council appears to have considered the request only under the Act and refused an internal review, which it may do if the EIR do not apply. The Commissioner finds its explanation for declining an internal review, quoted in paragraph 7, unhelpful in that it fails to make clear that it is declining an internal review under the Act, rather than refusing it because the complainant has asked for it under the wrong regime.
55. In this case the Commissioner has determined that elements of the request relate to environmental information and therefore the council was wrong to neglect consideration of the EIR. By its refusal to undertake

reconsideration of its response following representations from the complainant, the public authority has breached regulation 11(3) of the EIR.

## Exceptions

### Regulation 12(4)(a)

56. The public authority stated that it did not hold previous copies of checks. Where this concerns the complainant's application for copies of *"...all previous asbestos surveys and reports since 1995 and also the missing gas inspection possibly carried out in 1997"* this is considered to be environmental information and should therefore have been refused, citing the exception provided at regulation 12(4)(a). By its failure to refuse the information citing regulation 12(4)(a) the public authority breached regulation 14(3)(a) and, by failing to issue the refusal within 20 working days, the public authority breached regulation 14(2).
57. The public authority provided the Commissioner with information about the searches it had carried out in order to locate the information which it held, described by the complainant's request. It explained that it had conducted searches of:
- all electronic storage network locations
  - e-mail folder searches
  - retained paper files for relevant contracts and projects at both the complainant's flat, and his building in general.
58. The public authority has explained to the Commissioner that its practice in relation to the sort of documentation requested by the complainant, relating to the inspections of its housing stock and other premises, was to retain only the current inspection report and discard the older reports as they are superseded. The Commissioner asked the public authority for a copy of its document retention and disposal schedule and policy, and asked it to show that this practice was in accordance with that policy. It has been unable to do so and the public authority has conceded that this has highlighted a failing in its document management procedures, which it undertook to address.
59. The Commissioner is aware that the public authority has engaged with the complainant on numerous occasions in respect of material similar to that described in the request under consideration and has received copies of current reports. He is satisfied that the an objective interpretation of the request would not have required disclosure of the current reports, and is also satisfied that the searches conducted by the public authority described above are reasonable and appropriate and would be likely to

have located the information held by it, which meets the description in the complainant's request.

60. The Information Tribunal, in the case of *Linda Bromley & others and the Environment Agency* (EA/2006/0072)<sup>3</sup> found that, in cases where there is dispute over whether information is held, the standard of proof required is the normal civil standard of 'the balance of probabilities', stating:

*"We must therefore consider whether the Information Commissioner's decision that the Environment Agency did not hold any information covered by the original request, beyond that already provided, was correct. In the process we may review any finding of fact on which his decision was based. The standard of proof to be applied in that process is the normal civil standard, namely, the balance of probabilities."* (paragraph 10)

and

*"We may only consider, in light of the evidence placed before us, whether the scope, quality, thoroughness and results of those searches entitles us to conclude that the Environment Agency does not hold further information falling within the scope of the original request."* (paragraph 12)

61. The Commissioner has considered the public authority's explanation for its disposal of information in the absence of an applicable policy and corresponding document retention and disposal schedule, and also notes the searches undertaken by the public authority for information of the description in the complainant's request. He also notes that the public authority has been dealing with the complainant on the same subject for an extended period and is therefore likely to be familiar with what information it holds. He is satisfied that, on the balance of probabilities the public authority did not hold any information of the description in the complainant's request, at the time of the request. Whilst he accepts that the current reports that were previously disclosed to the complainant were held at the date of the request, as stated at paragraph 59, he is satisfied that these do not fall within the scope of the request.

## **The Freedom of Information Act 2000**

62. The remainder of the requested information is not considered to be environmental information, therefore items 1), 2) and 3) in the request

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<sup>3</sup> Available online at [http://www.informationtribunal.gov.uk/Documents/decisions/EA20060072\\_lindabromleyVinf\\_or\\_31Aug07.pdf](http://www.informationtribunal.gov.uk/Documents/decisions/EA20060072_lindabromleyVinf_or_31Aug07.pdf)



(as quoted by the public authority at paragraph 5, above) fall to be considered under the Freedom of Information Act 2000.

## **Substantive Procedural Matters**

### **Section 1**

63. The complainant complains that he had requested "*All the Periodic Electrical Inspection Reports*" but that the public authority's response had referred to "*The electrical Installation Report for 1999*" which it stated is no longer held. This is also item 4) in the complainant's grounds of complaint listed at paragraph 12. The Commissioner observes that there is no requirement for a public authority to quote a request back to the applicant in its response, and therefore item 4) in the list is not a valid ground of complaint. However he also notes that, by misquoting the complainant's request, the public authority made it unclear whether its response adequately addressed that specific element of the complainant's request.
64. The public authority has explained that, with regard to the disclosure of the fire risk assessment requested by the complainant, the document previously disclosed to him (titled 'fire risk assessment' and dated 10 June 2008) was what it held matching the description of a 'fire risk assessment', at the time of the request. The 'fire risk assessment statement' document, referred to at paragraph 33, above, was produced as part of a routine follow-up exercise on the part of the council and the fire and rescue service subsequent to the conduct of the risk assessment, and is largely produced by an external consultant. The risk assessment statement was completed, and submitted to the fire and rescue service in April 2010 and, so far as can be ascertained, the document did not exist on 8 July 2009 (the time of the request) as it had not been started.
65. For the reasons examined at paragraphs 56-61, above, the Commissioner is satisfied that, on the balance of probabilities, the public authority did not hold any information of the description in the complainant's request, at the time of the request. Whilst he accepts that the current reports that were previously disclosed to the complainant were held at the date of the request, he is satisfied that these do not fall within the scope of the request.

## Procedural Requirements

### Section 16

66. The complainant argues, at item 2) in the summary of the complaint, that the public authority failed to provide advice and assistance.
67. A public authority is considered to have fulfilled its obligations under section 16 of the Act, if it complies with the code of practice issued by the Secretary of State in compliance with section 45 of the Act<sup>4</sup>. The relevant sections of the codes of practice can be found in the legal annex to this Decision Notice. As in regulation 9 of the EIR quoted at paragraph 48, section 16 of the Act contains the provision “*so far as it would be reasonable to expect the authority to do so*”. For the reasons considered at paragraphs 42-50, above, the Commissioner considers that the public authority has not committed a breach of section 16 of the Act.

### Summary

68. The complainant raised six grounds of complaint, listed at paragraph 12. The Commissioner has considered these grounds and his analysis in respect of these is given, where appropriate, in the various subsections above. For the sake of clarity, the outcome of that analysis is now summarised, with specific relation to each ground of complaint.

***1). Part of the information he received was not what he requested – specifically in relation to his request for electrical inspection reports.***

No information is held in respect of the electrical inspection reports, other than that which had been previously disclosed to the complainant. See the analysis under ‘Section 1’ and, additionally, ‘Regulation 12(4)(a)’.

***2). WDC failed to provide advice and assistance to him.***

There is no absolute obligation to provide advice and assistance under either the Act or the EIR. See the analysis under ‘Section 16’ and ‘Regulation 9’.

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<sup>4</sup> Available online at <http://www.justice.gov.uk/guidance/foi-guidance-codes-practice.htm>

***3). The information he received does not contain any confirmation of authenticity and contents of the information sent.***

This is not a valid ground of complaint as there is no statutory requirement for a public authority to provide confirmation of authenticity for any information disclosed. See, however, the Commissioner's comments in 'Other Matters' below, in particular paragraphs 75-81.

***4). The WDC response of 19 October 2009 misquotes his request.***

This is not a valid ground of complaint as there is no statutory requirement to quote an applicant's request in any response to that request. See, however, the Commissioner's comments at paragraph 63 and in 'Other Matters' at paragraphs 82-86.

***5). WDC refused his request for it to review its response, and specifically its incorrect response in consequence of its misquoting of the first part of his request.***

This is recorded, below, as a breach of regulation 11(3) in respect of the environmental information. See the analysis sections for 'Regulation 11' and also paragraphs 72-73 and 86 in the 'Other Matters' section ,below.

***6). The complainant also made reference to a later request for information to WDC, dated 21 November 2009.***

That request was submitted to the public authority after the complaint was made to the Commissioner in this case, therefore there can be no 'specified respect' in which that request was not dealt with in accordance with the Act, at the time this complaint was received. Therefore it has not been considered in this Decision Notice.

## The Decision

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69. The Commissioner has decided that the following elements of the request were not dealt with in accordance with the Act and the EIR:

- In respect of environmental information, by its failure to issue a refusal notice within 20 working days, the public authority breached regulation 14(2). By failing to cite regulation 12(4)(a) in refusal of

information not held by the public authority, it has breached regulation 14(3)(a). By failing to inform the complainant of his right to request an internal review, the public authority breached regulation 14(5)(a) of the EIR.

- By failing to reconsider its response following representations from the complainant, the public authority breached regulation 11(3) of the EIR.
- By failing to inform the complainant of his right to bring an appeal to the Information Commissioner, the public authority breached regulation 14(5)(b) of the EIR in respect of environmental information.

## Steps Required

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70. The Commissioner requires no steps to be taken.

## Other matters

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Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

### Internal review

71. The Act does not require an authority to have a review procedure in place. However both the Code of Practice made under section 45 of the FOIA (the "Code") and the Commissioner recommend it is good practice to have one. Paragraph 38 of the Code recommends that "Any written reply from the applicant....expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint..."
72. In this instance, despite receiving the complainant's expression of dissatisfaction, the authority declined to conduct a review. The Commissioner expects that, in future, the authority will conduct internal reviews in accordance with the Code.

### Section 46 – records management code of practice

73. The Commissioner observes that, if a public authority disposes of documents as a matter of established custom and practice, rather than in accordance with a formal document retention and disposal policy and

schedule, this is not, of itself, a breach of the Act however it is likely to contravene the code of practice on the management of records, issued by the Lord Chancellor under section 46 of the Act<sup>5</sup> (the section 46 Code). In particular, the Commissioner refers to paragraph 12.4 of the section 46 code, which states:

***"Making disposal decisions***

**12.4** *Disposal of records should be undertaken only in accordance with clearly established policies that:*

- a) Reflect the authority's continuing need for access to the information or the potential value of the records for historical or other research;*
- b) Are based on consultation between records management staff, staff of the relevant business unit and, where appropriate, others such as legal advisers, archivists or external experts;*
- c) Have been formally adopted by the authority;*
- d) Are applied by properly authorised staff;*
- e) Take account of security and confidentiality needs."*

74. The complainant also argues, at item 3) in the summary of the complaint, that the public authority failed to provide any confirmation of authenticity and contents of the information sent.

75. The complainant has previously been provided with a copy of the public authority's *'Freedom of Information and Data Protection Policy'* and argues (with specific reference to subsection 4.3 in a section of that policy headed *'Document Management'*), that this obliges the public authority to provide confirmation of the authenticity of the information it discloses. Section 4.3 states:

*"4.3 All records should be complete and accurate so as to be sufficient to*

*- protect the legal and other rights of the Council, its clients and any other persons affected by its actions and*

*- provide authenticity of the records so that the evidence derived from them is shown to be credible and authoritative.*

*- records shall be arranged in both paper and electronic record keeping systems."*

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<sup>5</sup> Available to download at: <http://www.justice.gov.uk/guidance/foi-guidance-codes-practice.htm>

76. The Commissioner observes that the section quoted by the complainant contains wording clearly derived from paragraph 8 of the code of practice set out by the Lord Chancellor in compliance with section 46 of the Act which was in force at the time (the code of practice was revised in July 2009), which stated:

## **8 Active Records Management**

### *Record Creation*

*8.1 Each operational/business unit of an authority should have in place an adequate system for documenting its activities. This system should take into account the legislative and regulatory environments in which the authority works.*

*8.2 Records of a business activity should be complete and accurate enough to allow employees and their successors to undertake appropriate actions in the context of their responsibilities, to*

- o facilitate an audit or examination of the business by anyone so authorised,*
- o protect the legal and other rights of the authority, its clients and any other person affected by its actions, and*
- o **provide authenticity of the records so that the evidence derived from them is shown to be credible and authoritative.***

77. The Freedom of Information Act 2000 is principally concerned with the provision of information in response to a request, however it follows that the efficient administration of the Act is only possible if a good standard of records management is maintained by public authorities, in other words, that a public authority knows what information it holds, and how to find it. Section 46 of the Act concerns itself with the provision of a code of practice in relation to records management.

78. It is clear from the context and the preceding sections of the document cited by the complainant, above, that section 4 relates to the records management policy adopted by WDC in accordance with the section 46 code of practice which was in force at the time. It does not refer to a need for formal verification of responses given to freedom of information requests, but to the evident need for a public authority to have in place ways to ensure that its records are accurate and truthful.

79. The Commissioner is clear, there is no requirement under the Act that a public authority must routinely provide to the requester evidence of the authenticity of information it discloses in response to a request, nor is it necessary to provide a list of contents of any disclosed information. It is sufficient that the public authority has in place policies and processes whereby it can be satisfied that the information it holds is, to use the terms adopted by WDC, 'credible and authoritative'. This is clearly derived directly from the section 46 code of practice as it was worded at the time.
80. The Commissioner is satisfied that the above is the correct interpretation of section 4.3 of the policy cited by the complainant and that there is nothing in the public authority's *'Freedom of Information and Data Protection Policy'* which should be interpreted as requiring it to authenticate its disclosures, to an applicant. Similarly, there is no statutory requirement for a public authority to provide authentication of disclosures made under the Act. It is sufficient that a public authority's records management practices enable it to be sure that the information disclosed is accurate and truthful.

**The public authority's misquoting of the complainant's request in its response of 19 October.**

81. This is argued as item 4) in the complainant's grounds for complaint.
82. There is no requirement in the Act or the EIR that a public authority must quote the request in its response. Consequently, if a request is not accurately quoted, or is in some way paraphrased, this is not something which would constitute a breach of the legislation and the Commissioner will not consider this as grounds for a complaint under section 50 of the Act.
83. Nevertheless, it is arguably a matter of good practice for a public authority to accurately quote a request in its response, partly so the applicant can ascertain the request which has been addressed, but not least so it can itself verify that its response properly meets the request. This may be particularly appropriate in circumstances such as those under consideration in this Decision Notice, where an applicant may have corresponded on a topic over an extended period and a public authority's responses are similarly numerous. In such circumstances it is perhaps more likely that simple human error might result in the sort of oversight apparent in this case, which is all the more reason to ensure that a request is properly addressed.
84. The public authority has explained that its practice is to conduct electrical inspections at 10-yearly intervals, so the description of the 'electrical

inspection report for 1999' may be thought to be a fair paraphrasing of the request for "...*the electrical inspection reports [...] prior to [2008]*" however it overlooks the possibility that information may be held relating to years other than 1999.

85. The possible consequences of misquoting or otherwise paraphrasing a request are evident in the apparently incomplete response to the first element of the complainant's request. By its subsequent refusal to consider an internal review of the request, the public authority deprived itself of an opportunity to rectify this error, prior to the Commissioner's involvement.



## Right of Appeal

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86. 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 26<sup>th</sup> day of January 2011**

**Signed .....**

**Lisa Adshead  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Freedom of Information Act 2000

#### S.1 General right of access

**Section 1(1)** provides that -

*'Any person making a request for information to a public authority is entitled*

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.'*

**Section 1(2)** provides that -

*'Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.'*

**Section 1(3)** provides that –

*'Where a public authority –*

- (a) reasonably requires further information in order to identify and locate the information requested, and*
- (b) has informed the applicant of that requirement,*

*the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.'*

**Section 1(4)** provides that –

*'The information –*

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or*
- (b) which is to be communicated under subsection (1)(b),*

*is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.'*

**Section 1(5)** provides that –

*'A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).'*

**Section 1(6)** provides that –

*'In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as 'the duty to confirm or deny.'*

### **S.10 Time for Compliance**

**Section 10(1)** provides that –

*'Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'*

**Section 10(2)** provides that –

*'Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.'*

**Section 10(3)** provides that –

*'If, and to the extent that –*

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or*
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,*

*the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.'*

**Section 10(4)** provides that –

*'The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day*

*following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.'*

**Section 10(5)** provides that –

*'Regulations under subsection (4) may –*

- (a) prescribe different days in relation to different cases, and*
- (b) confer a discretion on the Commissioner.'*

**Section 10(6)** provides that –

*'In this section –*

*"the date of receipt" means –*

- (a) the day on which the public authority receives the request for information, or*
- (b) if later, the day on which it receives the information referred to in section 1(3)*

*"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.'*

## **S.16 Duty to provide Advice and Assistance**

**Section 16(1)** provides that -

*'It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it'.*

**Section 16(2)** provides that -

*'Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.'*

## **Environmental Information Regulations 2004**

### **R.2 Interpretation**

**Regulation 2(1)** provides that –

*'In these Regulations –...*

*... "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;*
- (d) reports on the implementation of environmental legislation;*
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).'*

### **R.5 Duty to make available environmental information on request**

**Regulation 5(1)** provides that –

*'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)** provides that –

*'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.'*

## **R.9 Advice and assistance**

**Regulation 9(1)** provides that –

*'A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.'*

**Regulation 9(2)** provides that –

*'Where a public authority decides that an applicant has formulated a request in too general a manner, it shall -*

- (a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and*
- (b) assist the applicant in providing those particulars.'*

**Regulation 9(3)** provides that –

*'Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.'*

**Regulation 9(4)** provides that –

*'Where paragraph (2) applies, in respect of the provisions in paragraph (5), the date on which the further particulars are received by the public authority shall be treated as the date after which the period of 20 working days referred to in those provisions shall be calculated.'*

**Regulation 9(5)** provides that –

*'The provisions referred to in paragraph (4) are -*

- (a) regulation 5(2);*
- (b) regulation 6(2)(a); and*
- (c) regulation 14(2).'*

## **R.11 Representations and reconsideration**

**Regulation 11(1)** provides that –

*'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)** provides that –

*'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)** provides that –

*'The public authority shall on receipt of the representations and free of charge –*

- (c) consider them and any supporting evidence produced by the applicant; and*
- (d) decide if it has complied with the requirement.'*

**Regulation 11(4)** provides that –

*'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 date of receipt of the representations.'*

**Regulation 11(5)** provides that –

*'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.'*

## **R.12 Exceptions to the duty to disclose environmental information**

**Regulation 12(1)** provides that –

*'Subject to paragraphs (2), (3) and (9), a public authority may refuse to*

*disclose environmental information requested if –*

*an exception to disclosure applies under paragraphs (4) or (5); and*

*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)** provides that –

*'A public authority shall apply a presumption in favour of disclosure.'*

**Regulation 12(3)** provides that –

*'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)(a)** provides that –

*'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; '.*

## **R.14 Refusal to disclose information**

**Regulation 14(1)** provides that –

*'If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.'*

**Regulation 14(2)** provides that –

*'The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.'*

**Regulation 14(3)** provides that –

*'The refusal shall specify the reasons not to disclose the information requested, including -*

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and*



- (b) *the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).'*

**Regulation 14(4)** provides that –

*'If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.'*

**Regulation 14(5)** provides that –

*'The refusal shall inform the applicant -*

- (a) *that he may make representations to the public authority under regulation 11; and*  
(b) *of the enforcement and appeal provisions of the Act applied by regulation 18.'*

**Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000**

[The 'section 45 code of practice']

**II The provision of advice and assistance to persons making requests for information**

3. *The following paragraphs of this Code apply in relation to the provision of advice and assistance to persons who propose to make, or have made, requests for information to public authorities. They are intended to provide guidance to public authorities as to the practice which it would be desirable for them to follow in the discharge of their duty under section 16 of the Act.*

**Advice and assistance to those proposing to make requests:**

4. *Public authorities should publish their procedures for dealing with requests for information. Consideration should be given to including in these procedures a statement of:*

- *what the public authority's usual procedure will be where it does not hold the information requested (see also III - "[Transferring requests for information](#)"), and*
  - *when the public authority may need to consult other public authorities and/or third parties in order to reach a decision on whether the requested information can be released (see also IV - "[Consultation with third parties](#)"),*
5. *The procedures should include an address or addresses (including an e-mail address where possible) to which applicants may direct requests for information or for assistance. A telephone number should also be provided, where possible that of a named individual who can provide assistance. These procedures should be referred to in the authority's publication scheme.*
6. *Staff working in public authorities in contact with the public should bear in mind that not everyone will be aware of the Act, or Regulations made under it, and they will need where appropriate to draw these to the attention of potential applicants who appear unaware of them.*
7. *Where a person is unable to frame his or her request in writing, the public authority should ensure that appropriate assistance is given to enable that person to make a request for information. Depending on the circumstances, consideration should be given to:*
- *advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf;*
  - *in exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned, would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received).*

*This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.*

#### **Clarifying the request:**

8. *A request for information must adequately specify and describe the information sought by the applicant. Public authorities are entitled to ask for more detail, if needed, to enable them to identify and locate the information sought. Authorities should, as far as reasonably practicable,*

*provide assistance to the applicant to enable him or her to describe more clearly the information requested.*

9. *Authorities should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. Care should be taken not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest as a precondition to exercising the rights of access, or that he or she will be treated differently if he or she does (or does not). Public authorities should be prepared to explain to the applicant why they are asking for more information. It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail, where more information is needed to clarify what is sought.*

10. *Appropriate assistance in this instance might include:*

- *providing an outline of the different kinds of information which might meet the terms of the request;*
- *providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority;*
- *providing a general response to the request setting out options for further information which could be provided on request.*

*This list is not exhaustive, and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.*

11. *In seeking to clarify what is sought, public authorities should bear in mind that applicants cannot reasonably be expected to possess identifiers such as a file reference number, or a description of a particular record, unless this information is made available by the authority for the use of applicants.*

### **Limits to advice and assistance**

12. *If, following the provision of such assistance, the applicant still fails to describe the information requested in a way which would enable the authority to identify and locate it, the authority is not expected to seek further clarification. The authority should disclose any information relating to the application which has been successfully identified and found for which it does not propose to claim an exemption. It should also explain to the applicant why it cannot take the request any further and provide details of the authority's complaints procedure and the applicant's rights under section 50 of the Act (see "Complaints Procedure" in section VI).*

## **Environmental information regulations code of practice (Issued by DEFRA, revised June 2010)**

### **PROVIDING ADVICE AND ASSISTANCE**

19. The Regulations require public authorities to provide advice and assistance to those who propose to make or have made a request for environmental information.

Regulation 9 says:

9. - (1) A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
  - (2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall –
    - (a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request;
    - (b) assist the applicant in providing those particulars.
  - (3) Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.

20. The Code of Practice says:

### **III THE PROVISION OF ADVICE AND ASSISTANCE TO PERSONS MAKING REQUESTS FOR INFORMATION**

8. *The provision of advice and assistance to persons making requests for environmental information differs from that provided to those making general requests for information under FOIA:*
  - *requests for environmental information need not be in writing;*
  - *EIR contains no equivalent to the "appropriate limit" exemption under section 12 of the FOIA; and*
  - *the duty to provide advice and assistance under EIR requires the public authority to request that the applicant provide more particulars within 20 working days of the request where a request is formulated in too general a manner.*

9. *Every public authority should be ready to provide advice and assistance, including but not necessarily limited to the steps set out below. This advice and assistance should be available to those who propose to make, or have made requests and help them to make good use of the Regulations. The duty on the public authority is to provide advice and assistance "so far as it would be reasonable to expect the authority to do so".*
10. *Appropriate assistance might include:*
- *providing an outline of the different kinds of information that might meet the terms of the request;*
  - *providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority; and*
  - *providing a general response to the request setting out options for further information that could be provided on request.*
  - *advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application or make the application on their behalf.*
11. *This list is not exhaustive and public authorities should be flexible in offering advice and assistance most appropriate to the circumstances of the applicant.*

**Lord Chancellor's Code of Practice on the Management of Records  
Issued under section 46 of the Freedom of Information Act 2000  
(November 2002 version, in force prior to July 2009)**

[The 'section 46 code of practice']

**8 Active Records Management**

*Record Creation*

8.1 Each operational/business unit of an authority should have in place an adequate system for documenting its activities. This system should take into account the legislative and regulatory environments in which the authority works.

8.2 Records of a business activity should be complete and accurate enough to allow employees and their successors to undertake appropriate actions in the context of their responsibilities, to

- facilitate an audit or examination of the business by anyone so authorised,

- protect the legal and other rights of the authority, its clients and any other person affected by its actions, and
- provide authenticity of the records so that the evidence derived from them is shown to be credible and authoritative.

8.3 Records created by the authority should be arranged in a record keeping system that will enable the authority to obtain the maximum benefit from the quick and easy retrieval of information.