

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

### **Decision Notice**

**Date: 23 February 2011**

**Public Authority:** Stockton-on-Tees Borough Council  
**Address:** Municipal Buildings  
Church Road  
Stockton-on-Tees  
TS19 1UE

### **Summary**

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The complainant requested information about planned works on two named roads over a period of 9 years; he subsequently reduced the scope of his request from 9 years to 3 years. The Council provided some of the information which it held electronically but refused to search its manual records stating that to do so for the 9 year period initially requested would exceed the cost limit set out by section 12 of the Freedom of Information Act, and that it could not be certain that it held any manual records relevant to the request. The Commissioner has found that the request should have been considered under the Environmental Information Regulations and that the relevant exception would be 12(4)(b), he has decided that it would not be manifestly unreasonable to comply with the refined request. The Commissioner is also not convinced by the arguments supplied in relation to the original request being manifestly unreasonable. However the complainant has confirmed that information for 3 years (the refined request) would be sufficient for his needs. The Commissioner therefore requires the Council to carry out these searches in relation to the refined request and either provide the complainant with any information it finds or issue a refusal notice which is compliant with the EIR.

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

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1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information

Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

## The Request

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2. On 11 December 2009 the complainant submitted the following request:

*".....to either have copies of or view files regarding Drovers Lane. I hope this will include all the letters from the Parish Council and the work programmes over the last 8 years. I would also like either copies or to view information regarding Letch Lane including information sent to Carlton Parish Council regarding scheduled work in the last 9 years. I would also like access to the accident statistics for Drovers Lane for the last 9 years which will hopefully be all reported accidents rather than just injury accident statistics on which Stockton Council place so much reliance."*

3. The Council provided a response to him on 14 January 2010 (20 working days from the date of the request) in which it refused to disclose the information requested on the basis of the exemption[s] contained in Section 12 of the Freedom of Information Act 2000, in this letter the Council informed the complainant that it could provide him with the requested information at a cost of £625 for 24 hours' work.
4. The complainant requested an internal review of the public authority's decision on 15 January 2010, in this letter he restated his request as follows:

*"1. I asked to view or have copies from the Drovers Lane file which I hoped would include letters from the Parish Council and the work programmed over the last 8 years.....I would also have thought that you would have a spreadsheet or other electronic information detailing programmed work for Drovers Lane. Therefore if I only request the programmed work on Drovers Lane what will be the cost of me?*

*2. I also asked for information about Letch Lane including letters sent to Carlton Parish Council over the last 9 years.....You already seem to have details about the relaying of Letch Lane as you have quoted dates, lengths etc in your letter. If I forget about the Parish Council letters and just get detailed information about relaying etc. which you have already quoted what will be the cost?*

*3. Access to accident statistics for the last 9 years which would hopefully include all reported accidents rather than just injury accidents.....As I understand it you receive accident statistics from Cleveland Police and this data is entered into a database linked to the GIS mapping system. It therefore seems a simple task to export/print off the data requested. What will be the cost of this information?"*

5. On 19 January 2010 the public authority acknowledged the complainant's letter dated 15 January 2010. The complainant responded the same day to complain about the delays he had experienced and the lack of advice and assistance the Council had offered him. The Council responded to this email on 22 January 2010 apologising for any inconvenience which he may be experiencing and confirming that it was dealing with the complainant's refined request of 15 January.

6. In an email dated 26 January 2010 the Council informed the complainant that after considering his refined request the Council were still of the opinion that to comply would exceed 18 hours and therefore exceed the fees limit. The Council stated the following:

*"I would like to invite you to arrange to come into the office at Kingsway House, Billingham, to meet [name redacted]. He will give you access to any files or computerised records we have. He will also answer any questions and will provide you, where possible copies of records if it will assist you"*

7. The Council also advised the complainant that the information in relation to accidents was not held by the Council; the complainant was advised that Cleveland Police held the information about accidents and was provided with the contact details to enable him to submit his request to them.

8. In an email dated 28 January 2010 the complainant rejected the Council's offer to view the requested information in situ, instead he further refined his request to the following:

*"Under point 1 all I am requesting is detailed information about programmed work and by that I mean planned major repairs/relaying work (as I believe was supposed to be carried out in 2008 on Drovers Lane)*

*Similarly with Point 2 I am only interested in the major relaying of Letch Lane.*

*To make it easier I will also be happy if I get the information on the above points for 2007/2008, 2008/2009 & 2009/2010. If it is too hard to get information about 2007/08 then leave it out please*

*I am not interested in the Find and Fix repairs that have been done"*

9. The complainant confirmed in this email that he had submitted his request for accident statistics to Cleveland Constabulary.
10. On 10 February 2010 the Council provided the complainant with electronic information that it held in relation to his email of 28 January 2010. The Council made no reference to any manual files.
11. The complainant emailed the Council on 11 February 2010 requesting a review of the information which had been provided to him as he felt that it was incomplete and did not show all of the information he had requested. The complainant stated that in his opinion one of the spreadsheets supplied to him had been heavily edited.
12. The Council responded by email on 26 February 2010 providing the clarification he had requested. In this email the Council explained that it did not hold an un-edited version of the spreadsheet he was querying as it is a record of schemes which were actually implemented, it further explained that schemes which are not carried out in a year are rolled forward and held in reserve to the future year. The Council informed the complainant that he could request a copy of the reserve schemes spreadsheet if he wished to. Again, the Council made no reference to having checked any manual files.

## **The Investigation**

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### **Scope of the case**

13. On 13 February 2010 the complainant contacted the Commissioner to complain about the way his initial request for information dated 11 December 2009 and his subsequent refined request of 28 January 2010 had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - The Council's fees notice of £625 was exorbitant
  - The Council offered no advice or assistance.
  - The Council failed to respond within 20 working days.
  - The Council supplied a heavily edited spreadsheet with all information relevant to the request deleted.

- The Council did not provide any outline of the types of information it held which might have met the request.
14. The Commissioner has not considered the Council's response to the request for accident statistics, as this did not form part of the complaint made to him.

## **Chronology**

15. The Commissioner wrote to the Council on 5 July 2010 informing it that in the Commissioner's opinion this request should have been considered under the EIR because the request was for environmental information. The Commissioner asked the Council a series of questions based upon its handling of the request, with particular focus on whether any further information was held, the searches undertaken and the Council's time estimate in complying fully with the request of 11 December 2009 and subsequent refined request of 28 January 2010. The Commissioner also wrote to the Complainant on the same date to outline the scope of his investigation.
16. In an email received on 7 July 2010 the complainant again stated that he had not been offered any advice or assistance by the Council, that he did not believe the Council had no record of a scheme which they were proposing to implement and that the Council had provided him with heavily edited information (namely a spreadsheet), he claimed that this could be proven by the fact that he had been able to find more detailed information on the Council website in the form of a spreadsheet showing planned works to Drovers Lane. The complainant provided links to the information he had found on the Council website.
17. The Council responded to the Commissioner in a letter dated 2 August 2010, in which it agreed that the information requested was environmental, supplied the Commissioner copies of the electronic information which had been provided to the complainant and gave its arguments for refusing to provide further information. The Council stated that in response to the refined request it had provided the information which it held electronically. The Council confirmed that it had issued a fees notice in relation to the initial request. The Council explained that it may not hold any further information but it could not be certain until all of its manual records had been checked. The Council explained to the Commissioner that it was manifestly unreasonable to spend time searching for information which may not exist. It again offered to meet with the Complainant in an attempt to resolve his complaint.

18. The Commissioner wrote to the complainant on 1 September 2010 providing an update and asking the complainant to consider if it would be beneficial to meet with the Council to view the information it held in an attempt to informally resolve his complaint.

19. The complainant responded to the Commissioner the same day in which he stated:

*"They (the Council) refused to supply any information unless I paid them £625.00.*

*They offered no help or advice as to what information is available. They offered no help or advice as to how I could refine or limit my request.*

*They have totally ignored the 20 day period for supplying information - I submitted the Fofl [sic] request on the 11th Dec. 2009 and I am still waiting for the above un-edited documents.*

*They eventually supplied a heavily edited spreadsheet with all information about **Drovers Lane** deleted.*

*They have not supplied any Committee Minutes etc. of 2008/09 where these schemes were discussed. These minutes are all held electronically and can be searched using key words etc."*

20. In this email the complainant refused the offer to meet with the Council. He stated that if the Council were unable to supply information which was readily available to them, such as minutes of meetings, he did not feel it would be beneficial to either party.

21. The Commissioner wrote to the Council on 7 September 2010 informing it of the complainant's above concerns and asking it for more information about its handling of this request. There were then a series of telephone calls between the Commissioner and the Council to discuss the Council's handling of this case.

22. In a letter dated 12 October 2010 the Commissioner asked further questions of the Council's decision to refuse this request due to the cost limit. The Council acknowledged these further questions on 18 October 2010.

23. The Council provided a detailed response to the Commissioner in an email received on 10 November 2010. In this response the Council described the process it would have to undertake in searching for the information relevant to the request dated 11 December 2009. The Council also confirmed the content of the electronic information which had already been provided to the complainant as follows:

- 2008/9 Structural Maintenance and Breakdown

- 2009/10 Structural Maintenance and Breakdown
  - Tarmac Surfacing Programme 2005/6, 2008/9 and 2009/10
  - LTP & Revenue Schemes 2005/6
  - Officer Decision Records – Capital and Revenue Highways Maintenance Programme 2008/09
  - Officer Decision Records – Capital and Revenue Highways Maintenance Programme 2009/10
  - Maps of Drovers Lane
24. During the course of this investigation the Commissioner also made further enquiries of the Council in order to clarify its position in relation to this request. Initially, the Council provided only arguments for dealing with the initial request rather than the refined request. Therefore the Council supplied its calculations based on the search of manual records spanning 9 years rather than the 3 years which was the focus of the refined request. However, when the Commissioner queried this with the Council, it confirmed that it wished to rely upon the exception at regulation 12(4)(b) in relation to the refined request of 28 January 2010 as well as in relation to the original request. Its position in this respect was that it would still have to check 3 years worth of manual files for the refined request and that the costs involved in doing so rendered the refined request of 28 January 2010 manifestly unreasonable. The Council also confirmed that it held LTP & Revenue Schemes spreadsheets for the years 08/09 and 09/10 as well as the 05/06 versions sent to the complainant.

## Analysis

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### Substantive Procedural Matters

25. The Commissioner has first considered whether the request made by the complainant is a request for environmental information as defined by the EIR.
26. The Commissioner considers that information in relation to road resurfacing falls within the regulation 2(1)(c): information on “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 designed to protect those elements”. The information which is requested is clearly information on a measure or plan or an activity (i.e. resurfacing) affecting or likely to affect one or some of the elements referred to in regulation 2(1)(a).

## Exceptions

### The original request

27. The Council claims that it does not need to respond further to the initial request of 11 December 2009, as the request is manifestly unreasonable under regulation 12(4)(b) in that it would take the Council an estimated 24 hours to search its manual records for information dating back 9 years which it may not hold. Regulation 12(4)(b) is provided in the legal annex to this Decision Notice.

28. The Council stated the following by way of explanation of the searches it would have to undertake:

*"Files containing manual inspection records are separated according the type of Highways Inspection*

- *Detailed Inspections (walked) – these inspections are carried out on a 6 monthly basis. In rural locations, this may include combined driven/walked inspection depending on the nature of the highway*
- *Safety Inspections (Driven) - these inspections are carried out on a monthly basis from a slow moving vehicle*

*Inspections pre October 2005 are filed in the same manner but have been archived in large storage boxes and are retained in a different area of the depot. There are approximately 10 boxes each containing 8 lever arch files.*

*A search of these records would entail the following;*

- a) Look through each file relating to walked inspections. There are two files for each year 2002 – date (16 in total), one file labelled D and one file L (for Drivers & Letch Lane) containing approximately 500 sheets of paper. Each individual inspection sheet would need to be read in all 16 files looking for any notes, details or information relating to defects on these roads.*
- b) Look through each file relating to driven inspections. There is one file for each year 2002 – date (8 in total) containing approximately 500 sheets of paper. As with the walked inspections individual inspection sheet would need to be read in each file looking for any information relating to defects on these roads."*

29. The Council estimated that it would take it 20 hours to search the manual records for the 9 year period originally requested, but as can be seen above its detailed estimate only covered an eight year period. The Commissioner notes that the original request was for information

spanning 8 years in relation to Drovers Lane and for information spanning 9 years in relation to Letch Lane. He acknowledges the possibility that further files might exist for Letch Lane but as the Council has not included them in its estimate, neither has the Commissioner taken them into account in his considerations. The Commissioner accepts that an estimate of 50 minutes to check through a file containing approximately 500 sheets of paper is a reasonable estimate.

30. In addition to the manual records, the Council also informed the Commissioner that it held requests for highway service, which were generally reported by members of the public, on an electronic system known as FLARE. These records date back to 2005. The Council explained that any reported defects are recorded in the FLARE system and passed to the relevant officer for investigation or action. An initial search of this system, which took the Council an hour to complete, had recovered 103 records in relation to Drovers Lane and Letch Lane. The Council estimated that it would take 4 hours to review these files.
31. The complainant has also raised concerns that he was supplied a spreadsheet which appeared to have hidden or deleted rows and/or columns. He was particularly concerned that the spreadsheet provided to him did not contain information about Drovers Lane. Following searches of the Council website, the complainant found a different version of the spreadsheet which he had been provided with. This spreadsheet contained information relating to Drovers Lane. The complainant therefore felt that the Council had deliberately concealed this information from him.
32. When the Commissioner questioned the Council about the discrepancy between the two versions of the spreadsheet, described above, it explained that the spreadsheet was an internal document used for work planning. The information held in the disputed spreadsheet (Highways Maintenance scheme 2008/09) which was provided to the complainant is a record of the schemes that were actually implemented during the year. It was explained that any schemes that were not carried out in that year would be rolled forward and held in reserve to the future year and so the cycle would continue. The Complainant was advised that this was the reason for gaps/discrepancies within the spreadsheet and that there wasn't an unedited version of the document that was sent to him. Furthermore, in a telephone call between the Council and the Commissioner the Council further explained that the spreadsheet was constantly amended with information being added or deleted. The spreadsheet was not saved in version format, simply overwritten each time information needed to be changed. Therefore the Council no longer holds the version of the

- spreadsheet the complainant is referring to, other than that published on the website, a fact it had overlooked when initially answering the request. The Council confirmed that it had taken no more than 15 minutes to extract the information held within the website version of the spreadsheet.
33. The Council also confirmed that it had spent no more than 2 hours in providing the electronic information listed at paragraph 23 above.
34. The Commissioner therefore considers that a reasonable estimate of the costs that would be incurred in responding to the original request would be as follows:
- time to extract information from manual files = **20 hours.**
  - time already taken for initial review of FLARE system = **1 hour**
  - time to extract information from FLARE system = **4 hours**
  - time already taken to extract information from website version of spreadsheet = **15 minutes**
  - time already taken to provide electronic information listed at paragraph 23 = **2 hours**
  - Total estimate = **27 hours, 15 minutes**
35. The term “manifestly unreasonable” is not defined in the regulations. The Commissioner is clear however that the inclusion of “manifestly” in regulation 12(4)(b) indicates Parliament’s intention that, for information to be withheld under this exception, the request must meet a more stringent test than being simply “unreasonable”. “Manifestly” means that there must be an obvious, clear or self-evident quality to the unreasonableness referred to.
36. There is also no single test for what sorts of requests may be manifestly unreasonable. Rather, it has to be judged on each individual request, bearing in mind all of the circumstances of the case. The Commissioner is of the view however that Regulation 12(4)(b) will provide an exception to the duty to comply with a request where that request is vexatious, where it would incur unreasonable costs for the public authority or where responding would be an unreasonable diversion of resources.
37. The Commissioner is satisfied that the council has not provided evidence to him that the request is vexatious. He has not therefore considered the application of the criteria for vexatiousness to the request. Instead the council has argued that complying with the request would be an unreasonable diversion of resources.

38. The council's argument is that it would be manifestly unreasonable to require it to carry out further searches for the information when:
- It has already expended several hours responding to this complaint
  - There is no record that further information is held, the Council do not have an index of manual records
  - It has already searched the relevant databases and provided information contained within them and that it would be a significant imposition on the council to require it to look for the information in its manual files.
39. The Commissioner has borne in mind the decision of the Information Tribunal in case DBERR v The Information Commissioner (EA/2008/0096) when coming to his decision regarding the application of 12(4)(b) to the original request. In that case the Tribunal clearly indicated that "*public authorities may be required to accept a greater burden in providing environmental information than other information*" (see paragraph 39). Its decision was based upon the clear presumption in favour of disclosure provided in the regulations and because of the nature of the obligations laid on the UK via the EU Directive. The Tribunal highlighted that the Regulations make specific provision for extending the time for compliance with particularly voluminous cases.
40. Following the Information Tribunal's decision in the DBERR case and given that there is no set cost limit under the EIR, the Commissioner considers that the cost of searching for this information does not in itself automatically justify the engagement of regulation 12(4)(b). In this case the council's additional arguments were that it was manifestly unreasonable to ask it to search further given that there is no evidence that further information exists in the first instance, and that it would be a significant imposition to look for information in its manual files.
41. The Commissioner is satisfied that the initial searches of the council's FLARE system have been successful in finding some relevant information. Further the Council has not provided any convincing explanation as to why the manual files would be unlikely to hold any information about Drover's Lane or Letch Lane. He is therefore unable to give much weight to the Council's argument on this point.
42. With regard to the argument about the imposition caused by searching the manual files, as the Council has not expanded upon this argument or provided any detail of the impact that answering this request would have upon its ability to carry out its normal duties, the Commissioner is again unable to afford much weight to this argument.

43. In light of the above the Commissioner considers that the Council has not adequately demonstrated that the original request was manifestly unreasonable and that Regulation 12(4)(b) has not been shown to be engaged in this case. He also notes that even if the Council had adequately demonstrated that the request was manifestly unreasonable, it failed to provide the Commissioner with any public interests arguments to justify its refusal.

### **The refined request**

44. Given that the Commissioner has found that the original request has not been demonstrated to be manifestly unreasonable, it follows that he also considers that the same applies to the smaller, refined request.

45. He calculates the costs that would be incurred in responding to the refined request as follows:

- time to extract information from manual files, 9 files at 50 minutes per file = **7 hours, 30 minutes**
- time already taken to extract information from website version of spreadsheet **15 minutes**
- time already taken to provide electronic information listed at paragraph 23 **2 hours**
- Total estimate **9 hours, 45 minutes**

46. He notes that in addition to the Council not having demonstrated why answering such a request would be manifestly unreasonable, the time that would be taken to provide this information would also fall some way below the appropriate limit of 18 hours that would apply under the Act. In light of the Tribunal's comment in the DBERR case as detailed at paragraph 39 above, he would therefore need even stronger reasons to find such a request manifestly unreasonable.

47. In relation to the costs attributable to searching the FLARE system, the Commissioner notes that according to the Council the records on the FLARE system relate only to the "Find and Fix" repairs and that it considered such repairs to have been excluded from the scope of the refined request as detailed at paragraph 8 above. The Commissioner notes that the request of 28 January 2010 was restricted to "planned major repairs / relaying work" and excluded "fix and find" repairs. He therefore accepts the Council's position on this point.

### **The fees notice**

48. As stated above the Commissioner has found that the request should have been dealt with under the EIR, rather than under the Act, and

that the request should not have been refused as manifestly unreasonable on the grounds of costs.

49. The Commissioner's position in relation to charging for the provision of Environmental Information is that charges should not normally exceed the costs of the actual provision of the information, for example photocopying costs. He therefore considers that, to the extent that the charges fall for consideration under the EIR, they did not comply with the provisions of regulation 8.

### **Advice and Assistance**

50. The Commissioner considers that when refusing a request as manifestly unreasonable on the grounds of costs, a public authority should provide appropriate advice and assistance to assist an applicant in submitting a refined request that would not be considered manifestly unreasonable.
51. The Commissioner notes that, when the Council carried out its internal review of the original request, it invited the complainant to attend a meeting at which it offered to answer any questions and provide access to its files. The Commissioner does not consider this offer to view the Council's files in situ to amount to the Council making the information available via inspection, as it is clear that at this point the information falling within the scope of the request had not been extracted from the relevant files.
52. However, the Commissioner considers that in making this offer the Council did meet its obligation to provide reasonable advice and assistance. This is because in the Commissioner's view such a visit could have helped the applicant to understand how the information was stored and to refine his request accordingly. It would have also provided an opportunity to deal with any further queries that arose and assist the complainant accordingly. With regard to the refined request, as the complainant submitted this in the same correspondence in which he rejected the offer of a meeting, the Commissioner finds that it was reasonable for the Council not to repeat its offer.
53. In light of the above the Commissioner concludes that the Council did not fail to provide reasonable advice and assistance as required by regulation 9.

## The Decision

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54. The Commissioner's decision is that the public authority did not deal with the following elements of the request in accordance with the requirements of the Regulations:
- The Commissioner's decision is that the public authority was not correct to rely upon regulation 12(4)(b) in relation to the complainant's original or refined request.
  - The council incorrectly considered the information under the provisions of the Freedom of Information Act rather than the Environmental Information Regulations 2004.
  - In providing a refusal notice which referred to exemptions under the Act rather than exceptions under the Regulations the council breached Regulation 14(3) in that it did not provide a refusal notice stating which exception it was relying upon when refusing the information nor its reasons for relying upon that exception.
  - To the extent that the charges advised to the complainant fall for consideration under the Regulations, they did not comply with the provisions of Regulation 8.
55. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Regulations:
- The Council provided reasonable advice and assistance in accordance with the requirements of Regulation 9.

## Steps Required

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56. As the public authority has incorrectly relied on regulation 12(4)(b), it is not relieved of its duty to comply with the request under the EIR. In this case the complainant has confirmed to the Commissioner that he would only wish to pursue the provision of the information covered by the refined request. The Commissioner therefore requires the public authority to take the following steps to ensure compliance with the EIR:
- The Commissioner requires the authority to comply with the refined request of 28 January 2010 and to either disclose any information

found to the complainant or to provide him with a refusal notice citing valid exception(s) to disclosing the information under the EIR, other than regulation 12(4)(b). In complying with this step the Council should check the manual files for the three year time period. It should also ensure that any Committee Minutes it holds which reference major repairs / relaying works to Drovers Lane and Letch Lane within the three year time period are provided (either in hard copy or via the provision of a link to the relevant documents on the Council's website) or validly refused. Finally it should ensure that, in relation to the electronic records detailed at paragraph 23 of this notice, any records for the years 07/08, 08/09 and 09/10 that are held but have not already been provided are also disclosed or validly refused.

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

### **Failure to comply**

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58. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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59. 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 23<sup>rd</sup> day of February 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

#### Exemption where cost of compliance exceeds appropriate limit

**Section 12(1)** provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

**Section 12(2)** provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

**Section 12(3)** provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

**Section 12(4)** provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

**Section 12(5)** – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

## **Environmental Information Regulations 2004**

### **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 8(3)** A charge under paragraph (1) shall not exceed an amount on which the public authority is satisfied is a reasonable amount.

**Regulation 8(4)** A public authority has notified an applicant under paragraph (4) that advance payment is required, the public authority is not required –

- (a) to make available the information requested; or
- (b) to comply with regulations 6 to 14,

unless the charge is paid no later than 60 working days after the date on which it gave the notification.

**Regulation 8(6)** The period beginning with the day on which the notification of a requirement for an advance payment is made and ending on the day on which that payment is received by the public authority is to be disregarded for the purpose of determining the period of 20 working days referred to in the provisions in paragraph (7), including any extension to those periods under regulation 7(1).

**Regulation 8(7)** The provisions referred to in paragraph (6) are –

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

**Regulation 8(8)** A public authority shall publish and make available to applicants –

- (a) a schedule of its charges; and
- (b) information on the circumstances in which a charge may be made or waived.

## **Regulation 9 - Advice and assistance**

**Regulation 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.

**Regulation 9(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; and
- (b) assist the applicant in providing those particulars.

**Regulation 9(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.

**Regulation 9(4)** 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)** The provisions referred to in paragraph (4) are –

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

## **Exceptions to the duty to disclose environmental information**

**12.** - (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if -

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that -

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;

#### **Regulation 14 - Refusal to disclose information**

**Regulation 14(1)** 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)** 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)** 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)** 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)** 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.