

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

Decision Notice

Date: 31 March 2011

Public Authority: North Devon District Council
Address: Civic Centre
North Walk
Barnstaple
Devon
EX31 1EA

Summary

The complainant submitted a request to North Devon District Council ('the Council') for information from environmental records held on a property in Ilfracombe. The Council failed to respond to this request. The Commissioner finds that the Council has failed to deal with the request in accordance with the EIR. He requires the Council to either make the requested information available in accordance with regulation 5, or issue a valid refusal notice compliant with regulation 14 within 35 days of this notice.

The Commissioner's Role

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

Background

2. Section 3 of the Local Land Charges Act 1975 compels all local authorities to generate, maintain and update a Local Land Charges Register and to provide local searches. In order to obtain information from a local search, an application for an Official Search must be submitted to the relevant Local Authority on form LLC1. This is usually accompanied by form CON29R.
3. The CON29R form is comprised of two parts. Part 1 contains a list of standard enquiries about a property. Optional enquiries are contained in Part 2.
4. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority.
5. The complainant represents a company which provides information about property and land issues.

The Request

6. On 30 September 2010 the complainant requested access, free of charge, to records containing the information necessary to complete an LLC1 and CON29R form.

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

7. The Council acknowledged the request on 1 October 2010 and on 12 October wrote to the complainant to inform her that a meeting had been held to discuss her request.
8. On 14 October 2010, the complainant wrote to the Council to draw its attention to the decision notices issued by the Commissioner on similar complaints, and to a legal opinion on the matter of access to property search information under the EIR. The Council acknowledged this email on the same day. On 5 November 2010 the complainant wrote to the Council to enquire when she might receive a response to her request.

The Investigation

Scope of the case

9. On 9 November 2010, the complainant contacted the Commissioner to complain about the Council's compliance with the provisions of the EIR.

Chronology

10. On 12 November 2010, the Commissioner wrote to the Council and drew its attention to the decision notice [FER0236058](#), and the subsequent Information Tribunal decision, [East Riding of Yorkshire Council v Information Commissioner \(EA/2009/0069\)](#), which had dealt with a similar request for access to building control information. The Commissioner also outlined his general position in relation to requests for property search information under the EIR. He asked that the Council provide a response to the complainant as soon as possible and in any case by 10 December 2010, and asked that this response was copied to him.
11. The Council negotiated various extensions to this deadline with the Commissioner but exceeded these. As yet no response has been provided to the complainant.

Analysis

Substantive Procedural Matters

Regulation 2

12. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
13. The Commissioner considers that the information requested falls within regulation 2(1)(c): "measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect these elements". Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner

therefore considers the information requested by the complainant to be environmental information.

Regulation 5 and Regulation 14

14. Regulation 5(1) provides that a public authority that holds environmental information shall make it available on request.
15. Regulation 14 states that if a request for environmental information is refused, this refusal should be made in writing in no later than 20 working days after the date of the request. The refusal must specify any exception being relied upon under regulations 12(4), 12(5) or 13; and the matters considered in reaching a decision with respect to the public interest under regulation 12(1)(b). The refusal should also inform the applicant of how to make representations against the public authority's handling of the request and of enforcement and appeal provisions. The Commissioner has ensured that the Council is aware that the information should be considered for disclosure under the EIR.
16. Regulation 5(2) states that information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request. Regulation 14(2) provides that where a request is refused, a refusal notice should be provided within the same timeframe. The complainant's original request for information was made on 30 September 2010. As yet the Council has issued no response and has consequently failed to deal with the request in accordance with the EIR.

The Decision

17. The Commissioner's decision is that North Devon District Council failed to deal with the complainant's request in accordance with the EIR.

Steps Required

18. As the Commissioner has determined the requested information is environmental in nature, he requires the Council to consider the information under the provisions of the EIR. The Council should either provide the information or issue a refusal notice compliant with regulation 14 of the EIR.

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

Failure to comply

20. 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

21. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 31st day of March 2011

Signed

**Gerrard Tracey
Principal Policy Adviser FOI
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

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 –

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