

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

Decision Notice

Date: 18 July 2011

Public Authority: Hartlepool Borough Council
Address: Civic Centre
Victoria Road
Hartlepool
TS24 8AY

Summary

The complainant submitted a request to Hartlepool Borough Council ('the Council') for information from environmental records held on a property in Hartlepool. The Council confirmed that it held the requested information and made this available for inspection within 20 working days. The complainant contends that whilst the Council responded within 20 working days, it did not respond "as soon as possible". The Commissioner has investigated and has found that the Council failed to make the requested information available as soon as possible and has consequently breached regulation 5(2). He does not require the Council to take any further action.

The Commissioner's Role

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

Background

2. Section 3 of the Local Land Charges Act 1975 (LLCA) compels all local authorities to generate, maintain and update a Local Land Charges Register. Under the LLCA applicants can obtain an 'Official Search' of the register by submitting form LLC1 to the relevant Local Authority. This is usually accompanied by form CON29R.
3. The CON29R form is comprised of two parts. Part 1 contains a list of standard enquiries about a property. Optional enquiries are contained in Part 2. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority.
4. The complainant acts on behalf of the original requestor in his capacity as a representative a personal search trade association.

The Request

5. On 19 January 2011, the complainant emailed the Council and asked to inspect the Local Land Charges Register, and information relevant to CON29R queries 1.1(f)-(h), 3.4, 3.6, 3.7, and 3.8. The complainant submitted his request by filling out the Council's "[EIR property search service form](#)".

The complainant requested this information in relation to a specific named property.

6. The Council responded on 20 January 2011 and advised that the requested information would be available for inspection from 15 February 2011. It invited the complainant to identify a suitable time so that it could book a room for him to inspect the information.
7. On 21 January 2011, the complainant wrote to the Council to explain that he was dissatisfied with this response. The complainant in particular queried why he could not view the requested information for 18 working days, whereas information was made available under the Council's chargeable procedure within four working days. The complainant therefore disputed that the Council had complied with regulation 5(2) of the EIR.
8. The Council responded on 11 February 2011 and stated that property search requests made under the EIR were handled by the Council's FOI Officer who would balance these requests with their other

responsibilities. Official Searches were handled by a dedicated team of staff and so the two services were not comparable. The Council reiterated that the requested information would be made available on 15 February 2011.

9. On 14 February 2011, the complainant confirmed his appointment on 15 February 2011 to inspect the requested information.

The Investigation

Scope of the case

10. On 15 February 2011, the complainant contacted the Commissioner to submit a complaint. In particular, the complainant stated that he believed the Council could have made the requested information available for inspection more promptly, given that the Council responded to similar requests made under its chargeable procedure within four working days.

Chronology

11. On 17 February 2011, the Commissioner wrote to the Council to explain that a complaint had been received. He asked the Council several questions about how it had dealt with the complainant's request.
12. On 15 March 2011, the Council provided a response to the Commissioner's queries.

Analysis

Substantive Procedural Matters

Regulation 2

13. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
14. 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 11

Has the Council conducted an internal review?

15. In its email of 15 March 2011 the Council claims that it has not conducted an internal review of the response to the complainant's request, because it has not received any request for such a review to be carried out. It acknowledges that the complainant submitted "queries" on 21 January 2011 and its response of 11 February 2011 addressed these.
16. Regulation 11(1) of the EIR states that an applicant may make representations to an authority if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request. The complainant made clear that he believed that the Council had not complied with regulation 5(2). The Commissioner also notes that the [EIR code of practice](#) states that "Any written reply from the applicant ... expressing dissatisfaction with an authority's response to a valid request for information should be treated as a complaint...These communications should be handled in accordance with the authority's review procedure pursuant to Regulation 11, even if the applicant does not state his or her desire for the authority to review their decision or the handling of their application" (para 60). It is clear from the complainant's email of 21 January 2011 that he was dissatisfied with the Council's response and so the Commissioner considers that the Council should have treated this as a request for internal review.
17. The Council's response to the complainant's email of 21 February 2011 concludes by stating:

"If you remain dissatisfied with this response you have the right to complain to the Information Commissioner".

The Commissioner's contact details are then provided. The Council did not advise the complainant that a further review procedure was available, or how this could be accessed. In light of this, the Commissioner considers that it was reasonable for the complainant to assume that this response constituted the Council's internal review.

18. In his initial email to the Council, the Commissioner also considered that the Council's response of 11 February 2011 was an internal review outcome. The Council stated in its response to the Commissioner that its email of 11 February 2011 was not an internal review, and that no such review has been conducted. However, on the basis of the evidence the Commissioner finds that an internal review was both requested and conducted.

Regulation 5

19. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of request.
20. The complainant submitted his request for information on 19 January 2011. The Council responded on 20 January and informed the complainant he could inspect the information from 15 February 2011. The information was therefore made available 18 working days after the date of receipt of the request.
21. The complainant however contends that the Council did not provide this information "as soon as possible". The complainant explains that this is because he has been advised by the Council that information made available in an 'Official Search' is routinely provided within four working days.

Can the time taken to respond to an 'Official Search' be used to assess whether an EIR request has been dealt with as soon as possible?

22. The Council has different procedures for requests made for property search information under the EIR, and under the Council's 'official' search service, for which a fee is charged. The Council does not make a profit from this service. The complainant suggests that an official search, which would be paid for, would be dealt with more promptly, and therefore the requested information was not made available 'as soon as possible'. The first issue for the Commissioner to consider is whether the time taken to respond to an official search can be used to assess whether a request made under the EIR has been handled as soon as possible.
23. The Council has explained to the Commissioner that the information provided in response to an EIR request is the same as the information used to respond to an official search. However, the official search is

produced using the land charges electronic system. The results carry an insurance indemnity.

24. The Council explains that its system for handling requests made for property search information under the EIR was at the time of this request in its infancy. Requests made under the EIR are handled by the Council's FOI officer, who collates the requested information from various departments so it can be provided for inspection. Requests made under the official procedure are handled by the Council's land charges department who use the service's electronic system to answer CON29R queries.
25. The Commissioner accepts that it is reasonable for the Council to forward requests made under EIR to specialist officers, who can assess whether a request is valid, and for these officers to prepare a response compliant with the provisions of the EIR. The EIR however has no bearing upon the responses issued under the Council's official search. The Commissioner therefore accepts that the Council may have additional procedures for dealing with request made under the EIR that are not necessary when dealing with requests made under the official service. The Council points out that the FOI officer has to balance their other work commitments and responsibilities with collating responses to property search requests and the Commissioner accepts that this is reasonable.
26. The Commissioner acknowledges that the Council is entitled to apply its own internal procedures to EIR requests to ensure that they are dealt with in accordance with the legislation. This requirement does not arise when dealing with a request under the official search service. The Commissioner considers that the Council's processes, such as the request being logged, acknowledged and responded to by a trained FOI Officer, are reasonable. The Commissioner also accepts that the Council must balance handling requests for property search information within its other responsibilities.
27. As set out in decision notice FER0355629, the Commissioner accepts that a public authority is entitled to prioritise collating and locating information for requests made for Official Searches, because the fees paid by applicants fund a dedicated staffing resource for this work. It is therefore a separate route to accessing information and cannot be used as a comparison to determine if EIR requests have been handled as soon as possible.

Did the Council deal with the request as soon as possible?

28. The Commissioner has invited the Council to explain the steps it took in order to make the requested information available. The Council has explained that information is collated by contacting various departments within the Council. However, the Council states that it is "impossible to provide you with the time taken for requests as obviously this varies..." It has not provided the Commissioner with any further information about how information was provided in response to this particular request.
29. An acknowledgment was sent to the complainant with a date for inspection within one day of receipt of the request. The Commissioner feels that this was prompt and a reasonable time for this part of the process.
30. The Council has explained to the Commissioner that in hindsight, it may not be appropriate to provide applicants with a date where information will be available at the time of acknowledgment. However, this date was given to the complainant as the Council estimated that it would take this period to collate the requested information.
31. As the Council has failed to provide any evidence that the work involved in dealing with the complainant's request took 18 working days, the Commissioner is not persuaded that it dealt with the request as soon as possible. Consequently he finds a breach of regulation 5(2) of the EIR.

The Decision

32. The Commissioner's decision is that Hartlepool Borough Council breached regulation 5(2) by failing to make the information requested by the complainant available as soon as possible.

Steps Required

33. The Commissioner requires no steps to be taken.

Other Matters

34. Although he has found a breach of regulation 5(2) in the particular circumstances of this case, the Commissioner notes that the Council did comply with regulation 5(1) within the statutory timescale of 20 working days. The Commissioner considers that it may be useful to highlight that complaints of this nature may have the undesirable effect of diverting public authorities' resources away from actually responding to requests in as timely a manner as they might otherwise do.

Right of Appeal

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

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

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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

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

Dated the 18th day of July 2011

Signed

**Gerrard Tracey
Principal Policy Advisor**

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

Legal Annex

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

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

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

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

“the Commissioner” means the Information Commissioner;

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

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

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

Regulation 5 - Duty to make available environmental information on request

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

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