

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

**Decision Notice**

**Date: 8 September 2011**

**Public Authority: Selby District Council**  
**Address: Civic Centre**  
**Portholme Road**  
**Selby**  
**North Yorkshire**  
**YO8 4SB**

**Summary**

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The Commissioner finds that council has breached regulation 5(2) of the EIR as it failed to make the requested information available on request within the statutory time for compliance. The Commissioner finds that the council correctly relied upon regulation 6(1)(a) as it was reasonable for it to make information available in a format other than inspection. The Commissioner does not require the council to take any further action.

**The Commissioner's Role**

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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.

**The Request**

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2. On 20 October 2010 the complainant requested access, free of charge, to records containing the information necessary to complete a CON29R

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

3. The Council responded on 15 November 2010. This response confirmed that the Council held information in relation to some CON29R queries. It advised that some of this information could be inspected free of charge, but that a charge would be levied for other information.
4. On 6 December 2010, the complainant wrote to the Council to request an internal review of this decision. The Council provided its internal review outcome on 7 February 2011. This explained that the Council would continue to charge for the provision of information relevant to the CON29R form in line with the [Local Authorities \(England\) \(Charges for Property Searches\) Regulations 2008](#) ('the CPSR'). The Council also applied the exception at regulation 12(4)(b) to the request, and accepted that it had breached regulation 11(4) by failing to conduct an internal review within 40 working days.
5. On 8 July 2011, during the course of the investigation, the council disclosed the requested information to the complainant.

## The Investigation

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### Scope of the case

6. On 7 March 2011, the complainant contacted the Commissioner to complain about the Council's compliance with the provisions of the EIR.
7. In its initial response, the Council confirmed that it will make the information relevant to CON29R queries 1.1(a)-(e), 1.2, 3.5, 3.9(a)-(n) and 3.10(a)-(b) available for inspection free of charge. The Commissioner has therefore excluded these parts of the request from his decision notice. The Council has explained that information relevant to CON29R queries 1.1(f)-(h), 3.7(a) and 3.8 is not held by the Council but by the North Yorkshire Building Control Partnership. Information relevant to CON29R queries 3.3(a)-(b) is not held by the Council but by the relevant water authority. Information relevant to CON29R queries 2(a)-(d), 3.1, 3.2, 3.4(a)-(f), 3.6(a)-(l), 3.7(e), and 3.11 is not held by the Council but by North Yorkshire County Council. The Commissioner has therefore also excluded these parts of the request from the scope of the decision notice.

8. The decision notice consequently sets out the Commissioner's view on whether the Council has complied with the EIR in relation to the outstanding parts of the request: information relevant to CON29R queries 3.7(b)-(d) and (f), 3.12(a)-(c) and 3.13.<sup>1</sup>

## Chronology

9. On 11 May 2011, the Commissioner issued a decision notice ([FER0354514](#)) setting out his view on the way the Council dealt with a similar request for information. In that case, the complainant had also requested CON29R information regarding a specific property. The Commissioner noted that the Council had relied on the same arguments when refusing to provide information in response to both requests. In light of this, the Commissioner wrote to the Council on 18 May 2011, and advised that any decision notice issued in this case would be likely to reach the same conclusions as those set out in decision notice FER0354514. The Commissioner therefore asked that the Council either reconsider its response to this request and disclose the information, or alternatively provide any new submission in relation to this complaint.
10. On 8 July 2011, the council disclosed the outstanding information to the complainant via post.

## Analysis

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### Substantive Procedural Matters

#### Regulations 2, 5, 6 and 8

11. As detailed above, the Commissioner has previously issued a decision notice which considered the Council's response to a similar request for CON29R information. The scope of the investigation - whether the Council has complied with the EIR in relation to information relevant to CON29R queries 3.7(b)-(d) and (f), 3.12(a)-(c) and 3.13 – is identical. However, in this case the council has now disclosed the requested information via hard copy, although it did not permit the complainant to inspect it.
12. Consequently, in relation to regulations 2, 5, 6 and 8 the Commissioner has reached similar conclusions as those set out in decision notice FER0354514, specifically that:

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<sup>1</sup> Annex A details the nature of the information relevant to these CON29R enquiries

- i. The requested information is environmental as defined under regulation 2(1)(c)
- ii. The Council has breached regulation 5(2) – the complainant's request was made on 20 October 2010 and the council did not make the requested information available until 8 July 2011.
- iii. Regulation 6(1)(a) was applied correctly, and the Council has complied with regulation 6(1). This means that the council was entitled to provide the information in a format other than inspection.

## **Regulation 11**

13. Regulation 11(3) provides that a public authority should reconsider its response to a request for information upon receiving representations from the applicant. Regulation 11(4) provides that the outcome of a decision under regulation 11(3) should be communicated to the applicant as soon as possible and within 40 working days.
14. The complainant submitted a request for internal review on 6 December 2010. The Council provided the outcome of its internal review on 7 February 2011. In this internal review it found that it had committed a breach of regulation 11(4) by failing to provide the review within 40 working days. However, by the Commissioner's calculation the Council provided its internal review within this time frame and he therefore does not find that the Council breached regulation 11(4).

## **The Decision**

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15. The Commissioner finds that the council has breached regulation 5(2) of the EIR as it failed to make the requested information available on request within the statutory time for compliance.

## Right of Appeal

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16. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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 8<sup>th</sup> day of September 2011**

**Signed .....**

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

### **Annex A - CON29R Enquiries**

**3.7** Do any statutory notices which relate to the following matters subsist in relation to the property other than those revealed in a response to any other enquiry in this Schedule:

- a) building works
- b) environment
- c) health and safety
- d) housing
- f) public health

**3.12** Do any of the following apply (including any relating to land adjacent to or adjoining the property which has been identified as contaminated land because it is such a condition that harm or pollution of controlled waters might be caused on the property):

- a) a contaminated land notice
- b) in relation to a register maintained under section 78R of the Environmental Protection Act 1990:
  - (i) a decision to make an entry
  - (ii) an entry
- c) consultation with the owner or occupier or the property conducted under section 78G of the Environmental Protection Act 1990 before the service of a remediation notice?

**3.13** Do records indicate that the property is a 'Radon Affected Area' as identified by the Health Protection Agency?

## Legal Annex

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### **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 6 - Form and format of information**

**Regulation 6(1)** Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

- (a) it is reasonable for it to make the information available in another form or format; or
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.

### **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.