

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

**Decision Notice**

**Date: 14 September 2011**

**Public Authority:** Buckinghamshire County Council  
**Address:** County Hall  
Walton Street  
Aylesbury  
Buckinghamshire  
HP20 1UA

**Summary**

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The complainant requested information from the public authority that demonstrated land at the front of her property formed part of the public highway. The Council stated that it had disclosed all the information it held. The Commissioner has investigated and decided that on the balance of probabilities the Council holds no further information.

**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 dispute with Buckinghamshire County Council (the "Council") for some time regarding land at the front of her property. The complainant believes that it forms part of her property and that she may – for example – erect fencing to enclose the area in question or plant trees within that area. The Council maintains that the land forms part of the public highway and that any attempt to enclose the area will be met with enforcement action. The dispute led the complainant to submit the request for information that is the subject of this notice.

## The Request

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4. On 16 May 2010, the complainant wrote to the Council with the following request for information:

*"...The area to which you refer is clearly recorded with the land registry as belonging to my address and for the past 2 years various conflicting claims have been made over my property by your department:*

- 1) *Adoption of land under act of 1980.*
- 2) *The land was donated by the builder in 1974.*
- 3) *Extension – public land that extends over private land.*

*To date neither your department nor the council has been able to provide the required documentation to support any of the above claims. It is clear that there is a complete lack of understanding or comprehension of the law in relation to these matters within your department.*

*In a bid to finally conclude this matter under the 'Freedom of Information Act of 2000' I demand that you provide the relevant documentation to support your claim of adoption extension and donation over my property. I require this information to be submitted within 20 days from the date of this letter as directed under the act of 2000."*

5. The Council responded on 27 July 2010. It said that the complainant had been informed of the status of the land when she visited the Council's offices in 2008. It also said that she had also been supplied with plans showing the relevant highway boundaries. The Council enclosed a copy of a plan it said highlighted the areas around the complainant's property that were the responsibility of the Council to maintain and that were considered to form part of the public highway.

6. On 18 August 2010 the complainant wrote to the Commissioner setting out her dissatisfaction with the Council's response to her request. At that stage the Council had not been asked to conduct an internal review of its handling of the request and, following correspondence between the Commissioner, the Council and the complainant, her letter of 18 August 2010 was forwarded to the Council by the Commissioner on 12 October 2010.
7. The Council issued the findings of its internal review on 22 October 2010. It acknowledged that its response to the request of 16 May 2010 was significantly outside the statutory timescale and also said that the request should have been considered under the provisions of the EIR, rather than the Act. The Council stated that it had been unable to locate the original adoption plan that demonstrated the status of the land in question but that it did hold a certified copy in the form of a 'site plan'. The Council stated that a copy of the site plan had previously been provided to the complainant but it provided a further copy with the findings of its internal review. The Council said that having reviewed the matter it considered that there might have been some confusion about the terminology used in its correspondence; it said that it might not have been explained to the complainant that the plan previously supplied to her was the certified copy of the adoption plan.

## **The Investigation**

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### **Scope of the case**

8. The complainant contacted the Commissioner with a complaint within the statutory timescale for response and before the Council had been afforded the opportunity to reconsider its handling of the request. The Commissioner set up case reference FS50316905 to consider that complaint but closed it when the Council issued the findings of its internal review. The complainant wrote to the Commissioner on 18 February 2011 to express her dissatisfaction with the information disclosed by the Council. She stated that the Council had not disclosed sufficient evidence of its claims regarding the status of the land. The Commissioner then set up a new complaint reference.
9. The Commissioner's role in relation to complaints made to him is to determine whether a public authority has handled a request for information in line with the relevant access regime; either the Act or the EIR. He has no remit to comment on disputes over the status of land or to comment on whether information held by a public authority is sufficient to substantiate any claims over a piece of land. The Commissioner's investigation in this case was therefore limited to

considering whether the Council held any further information relevant to the request and, if so, whether it should be disclosed.

## Chronology

10. The Commissioner wrote the complainant on 3 August 2011 and set out the matters that he was able to investigate. He also said that it appeared from the information available to him that the complainant would be satisfied if the Council confirmed that it held no further information relevant to her request. The Commissioner clarified that the Council's position was that it had, on a number of occasions, disclosed all the relevant information it held. The Commissioner suggested that, given the Council's position, the underlying issue behind the complaint appeared to have been satisfied and said that he intended to close the case.
11. The complainant's representative telephoned the Commissioner on 16 August 2011 and acknowledged that the complainant was seeking clarification of whether further information was held. Although the Council had already stated on a number of occasions that it held no further information and the complainant's representative acknowledged that the complainant was seeking clarification of this point, he asked that the Commissioner issue a formal ruling.

## Analysis

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### Substantive Procedural Matters

Is further relevant information held by the Council?

12. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose environmental information if it does not hold the information at the time of the request. All of the exceptions under regulation 12(4) are subject to the public interest test but it is accepted by the First-tier Tribunal (Information Rights) and the Commissioner that 12(4)(a) is an anomaly and that it is not possible to consider whether the public interest favours disclosure of information that is not held by a public authority.
13. The Commissioner's approach in cases involving disputes about the level of information held by a public authority is well established and is in line with his specialist guidance on this issue.<sup>1</sup>

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<sup>1</sup> <http://www.ico.gov.uk/foikb/FOIPolicyInformationheldonbalanceofprobabilitiestest.htm>

14. In summary, the Commissioner considers the balance of probabilities that further information is held and in arriving at his decision will generally consider the scope and thoroughness of any searches and any other explanation of why the information is not held.
15. In this case the Commissioner considers the explanation offered by the public authority to be the most relevant factor in arriving at his decision. The Council's reasoning is set out in the findings of its internal review dated 22 October 2010. Based on the Council's reasoning, and the fact that the complainant has no evidence that further information exists, the Commissioner has determined that on the balance of probabilities no further information is held by the Council. In reaching his decision the Commissioner considered the context of the complaint to him to be relevant; the complainant disputes the Council's claim that the land in question forms part of the public highway. There seems no logical reason that the Council would therefore withhold any information it holds that substantiates its claim.

### **Procedural Requirements**

16. The Council has acknowledged that it breached regulation 5(2) of the EIR by failing to respond to the complainant's request for information within 20 working days.

### **The Decision**

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17. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - It correctly found that it held no further information relevant to the request.
18. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
  - The Council breached regulation 5(2) of the EIR by failing to respond to the request within 20 working days.

### **Steps Required**

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19. The Commissioner requires no steps to be taken.

## Right of Appeal

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20. 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,  
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)

21. 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.
22. 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 14<sup>th</sup> day of September 2011**

**Signed .....**

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

## Legal Annex

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

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#### **Regulation 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.

#### **Regulation 12(2)**

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

#### **Regulation 12(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.

#### **Regulation 12(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...