

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

**Decision Notice**

**Date: 31 March 2011**

**Public Authority:** Cumbria County Council  
**Address:** The Courts  
English Street  
Carlisle  
Cumbria  
CA3 8NA

**Summary**

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On 8 September 2010 the complainant requested information from the public authority. The public authority has not responded to this request, despite the intervention of the Commissioner, and is therefore in breach of either section 10(1) of the Act or regulation 5(2) of the EIR. The Commissioner therefore requires the public authority to identify whether the information requested is environmental information and respond to the request or issue a valid refusal notice.

**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.

## The Request

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3. On the 8 September 2010 the complainant wrote to the public authority requesting the following information:
  - 1 "In August 2000 H & H Borderway Motor Auctions Ltd offered for sale a Jaguar Car Registration No [a specific car registration number] for [a named individual], County Court (29 AUG 2000). Hence as the instructions came from Cumbria County Council and the actions were at the public's expense, can you please identify the valid lawful authority that was valid to commit the actions and use the name of the County Court as the seller of the goods."
  - 2 "When replying please identify Cumbria County Councils [sic] as highways authority Lawfull [sic] authority to prohibit my personal freedom [sic] of passage along any public highway that is a public right of way that contains [sic] Traffic calming humps -cushions & table top humps to such a height and design that prevent the passage of the Standard Avon registration No [a specific car registration number]..."
4. The public authority wrote to the complainant on 17 September 2010 stating that he would receive a reply to the request for information regarding the alleged sale of the Jaguar by 6 October 2010. This letter did not mention the second request.
5. On 24 September 2010 the complainant wrote to the public authority to point out that its letter of 17 September 2010 did not acknowledge the second request.
6. The complainant wrote to the public authority again on the 8 October 2010 to chase up a response to both his requests. He stated that it is his legal and human right to see a copy of the original valid writ or warrant of execution in relation to the sale of the Jaguar and a copy of Cumbria County Council's lawful authority to construct traffic calming measures in relation to the second request.

## The Investigation

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### Scope of the case

7. On 20 October 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled in that he had received an acknowledgement letter but no further response.

8. During the course of the investigation the Commissioner identified that the request for the lawful authority in relation to the Jaguar was a request for personal data of the complainant and should have been dealt with as subject access request under the Data Protection Act 1998. The first part of the request is therefore outside the scope of this Decision Notice and is dealt with under a separate data protection case.

### **Chronology**

9. Following a phone call from the ICO, the public authority on the 9 December 2010 sent a copy of its response to the complainant's request dated 21 October 2010 to the Commissioner. This response was in relation to the first request only.
10. The complainant called the Commissioner on the 14 December 2010 stating that he had not received the response dated 21 October 2010. The Commissioner then wrote to the complainant on the 14 December enclosing a copy of the response.
11. On 16 December 2010 the complainant wrote to the public authority expressing his dissatisfaction with the response and repeating the requests.
12. The complainant also wrote to the Commissioner on the 16 December 2010 stating that he was not happy with the Commissioner's response to his complaint.
13. The Commissioner wrote to the public authority on 4 January 2011 asking the public authority to accept the complainant's letter of 16 December 2010 as a request for internal review. The Commissioner pointed out that the complainant's letter of 16 December 2010 confirms that the public authority's response of 21 October 2010 did not address all the points raised in the request for information dated 8 September 2010.
14. On 3 February 2011 the complainant wrote to the public authority stating that the time period for a response to the Commissioner's letter of 4 January 2011 had passed.
15. The Commissioner wrote to the public authority on 15 February 2011 referring to the letter of 4 January 2011.
16. On the 11 March 2011 the complainant wrote to the Commissioner enclosing a letter from the public authority dated 9 March 2011 stating that an independent review will be carried out and to expect a response in due course. No further correspondence has been issued by the public authority to date.

## Analysis

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### Substantive Procedural Matters

17. The public authority has failed to deal with the request in accordance with the legislation in that it failed to respond within the statutory time limits.
18. Whilst the public authority, in its letter of 11 March 2011, refers to a review being carried out, the Commissioner is of the opinion that no response at all to request 2 has been issued.

### The Decision

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19. The Commissioner's decision is that the public authority did not deal with the request for information, i.e. request 2 above, in accordance with section 10(1) of the Act or, if applicable, regulation 5(2) of the EIR.

### Steps Required

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20. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Identify whether the information requested is environmental information.
  - Write to the complainant with a response to his request in accordance with either section 1(1) of the Act, or regulation 5(1) if the information is environmental, or issue a valid refusal notice.
21. 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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22. 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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23. 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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

24. 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.
25. 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 31<sup>st</sup> day of March 2011**

**Signed .....**

**Andrew White  
Group Manager – Complaints Resolution  
Information Commissioner’s Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### Freedom of Information Act 2000

#### General Right of Access

##### **Section 1(1) provides that -**

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

##### **Section 10(1) provides that –**

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

### Environmental Information Regulations 2004

#### Duty to make available environmental information on request

##### **Regulation 5 provides that –**

"(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.

(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."