

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 September 2013

Public Authority: Hampshire County Council
Address: The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant has requested inspection of environmental information from Hampshire County Council (the council) to enable it to answer the questions on the Con29R property search form. The council refused to provide some of the information in the requested format relying on regulation 6(1)(b). It also stated that in the alternative the complainant was directed to the council's paid services to provide answers to the search questions.
2. The Commissioner's decision is that the council was correct to say that some of the requested information was publically available and easily accessible in another form or format, ie that regulation 6(1)(b) applied to questions 3.4, 3.5, 3.6 and 3.11. However, he finds that the council has breached regulation 5(1) in failing to make all the requested information available on request and regulation 5(2) as it failed to make it available within the statutory time for compliance. The Commissioner also finds that the council did not complete an internal review within the prescribed time frame and therefore breached regulation 11(4).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with appropriately redacted versions of the notices falling within the scope of question 3.7.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. Section 3 of the Local Land Charges Act 1975 compels all local authorities to maintain 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. 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.
6. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority. The complainant represents a company which provides information about property and land issues.

Request and response

7. On 19 December 2011 the complainant made a request under the EIR for the following information relating to questions found on the Con29R form:

"I would like to receive a complete list of answers proposed/approved within Hampshire to the following questions found on Form CON29R:

Question 3.2 – Land to be acquired for road works

Question 3.4 – Road Schemes

Question 3.5 - Railways

Question 3.6 (a) to (l) on the Con29. The list should indicate the name of the scheme, details of what is proposed or approved and details of the roads that will be affected along with the date the scheme is approved.

Question 3.7 – All Outstanding Notices

Question 3.11 – All Compulsory Purchase

I am happy to be emailed a list if this is easier for you, or to be sent a hard copy of the list. Please note we will also require regular updates to the list dependent upon how often you update the list. Please indicate in your reply how often such lists are updated.

If easier for you, I am happy to view this data in the form of a map, if appropriate, on a case by case basis as and when they arrive."

8. The council responded on 25 January 2012. It stated that as the complainant had not specified a property for which he required the requested data, it relied on regulation 12(4)(b) as it considered it would be manifestly unreasonable to provide a list of the requested information for all properties in Hampshire. It also advised that the information was available for inspection free of charge and that if the information was requested in a specific format, it offered a search service for which there was a charge. This charge was based on the Local Authorities (England) (Charges for Property Searches) Regulations 2008. At the time of the request this was £18.35. It also stated that the information was still in the course of completion and therefore relied on 12(4)(d) to withhold it.
9. On 9 February 2012 the complainant contacted the council to arrange to view the information pertaining to the Con29 enquiries. The council acknowledged this email on the same day asking for no more than five specific properties so that the information could be prepared.
10. The complainant states that following the response from the council he specifically asked to view the requested information in relation to a specific property in Fleet, Hampshire.
11. On 13 February 2012 the council wrote to the complainant again to say that it was no longer appropriate to deal with requests to view EIR information on a case by case basis and that a more formal arrangement needed to be made, and it would be in touch regarding these.
12. The complainant repeated his request on 15 February 2012 expressing dissatisfaction at being denied access to the requested information and asking when the council would make the information available for inspection as it had now exceeded the 20 working day time frame for making requested information available.
13. On 13 September 2012 the complainant asked for a further update on when the council would be providing access to the requested information and again expressed dissatisfaction at the delay in providing access. He chased a response again on 29 October 2012.
14. The council provided the outcome of its internal review on 5 November 2012. It stated in relation to each of the Con29 questions whether the information was publically available, and where it could be accessed. It therefore relied on regulation 6(1)(b) and regulation 8 in relation to questions 3.4, 3.5, 3.6 and 3.11.
15. In relation to questions 3.2 and 3.7 the council stated that the information was not publically available and that council officers in the Highways Asset Information Team use their knowledge, skill and judgement to decide whether to call up documents in order to answer

Con29 questions. It stated that it therefore considered that regulation 12(4)(b) applied to these questions.

Scope of the case

16. The complainant contacted the Commissioner on 26 November 2012 to complain about the way his request for information had been handled. He was concerned about the time it had taken the council to respond to his request and conduct an internal review. He was also concerned about the decision to refuse to provide the requested information and disputed that some of the information the council had stated was publically available was sufficient for the purposes of answering the Con29 questions.
17. During the course of the Commissioner's investigation, the council amended its response to the complainant. It advised that the information in response to questions 3.2 and 3.6 was now available for inspection free of charge, and that it would now release the information required for question 3.7 with personal data redacted. It also confirmed to the Commissioner that its position was that the complainant could access the information through the various inspection facilities it had directed him to in response to each question, or use the council's paid service, the charge for which is currently £18.65.
18. Following this additional response from the council the complainant responded to the council and confirmed that he accepted that the information in respect of 3.2 was available, so the Commissioner considers this is outside the scope of the request. However, the complainant continues to dispute that the format the information is available for inspection in with regard to the remaining questions is not sufficient to answer the Con29 question.
19. The Commissioner notes that whilst it is common for property search information to be requested in the same format as accessed by council searchers, it is clear that the request in this case did not specify this as the required format. Instead the complainant had stated that he was happy to be sent the information in a list by email or in hard copy once it was clear that there were constraints in viewing the information in person.
20. The Commissioner considers the scope of this investigation to be to determine whether the council has complied with the EIR in its responses to the request, specifically with reference to questions 3.4, 3.5, 3.6, 3.7 and 3.11.

Reasons for decision

Regulation 6

21. Regulation 6(1) provides an applicant with the right to request that information be made available in a particular form or format. It is the Commissioner's view that although regulation 6(1) may appear primarily to be concerned with the form or format information is provided in, it should be interpreted broadly and does provide a right to request the inspection of environmental information. A public authority should comply with this preference unless, in accordance with regulation 6(1)(a), it is reasonable to make the information available in another format, or, in accordance with regulation 6(1)(b) the information is already publicly available in another format that is easily accessible to the complainant.
22. As outlined in paragraph 17, the council's final position in respect of this request is that the information is publically available through various inspection facilities, or else it is accessible using the paid search service. The Commissioner therefore considers that the council is relying on regulation 6(1)(b) as it is stating that the information is publically available and reasonably accessible to the complainant.
23. The council has confirmed to the Commissioner that the information that is now publically available in respect of questions 3.6 and 3.11 is the same as that accessed and used by the council searchers when they compile answers to the Con29 questions in response to a paid property search. The information used to answer question 3.6 is a page of the council's website containing the Hampshire Local Transport Plan 2011-2031 in addition to the public notices section of the council's website.
24. With regard to question 3.11 the information which is both publically available and used by council searchers is a list of all compulsory purchase orders (CPOs). The format in which it is accessible to the public is a printed list of all CPOs. The complainant was concerned that this information was not indexed and was not searchable, however the council has confirmed that the available list is the same as that held in the council's record management system. It advised that the council searchers use their expertise in order to locate relevant information to a property search query from these records.
25. As the information in respect of questions 3.6 and 3.11 is publically available in the same format as is accessed by the council officers, the Commissioner considers that it is publically available and reasonably accessible to the applicant. He therefore concludes that the council's application of regulation 6(1)(b) to questions 3.6 and 3.11 was correct.

26. Turning now to question 3.4, the council's response to the complainant was to direct him to the pages of its website containing the Hampshire Local Transport Plan 2011-2031. The page contains links to various documents relating to the transport plan and links to the town access plans for the county's borough and district councils. Information relating to road schemes within 200 metres of the property in Fleet is contained within the Fleet Town Access Plan.
27. The complainant states that the website pages do not contain details of specific schemes and is concerned that the council has directed him to town access plans for local councils, which again he considers do not contain specific data regarding road schemes. He also asked whether the council used the information it has directed him to when its officers answer Con29 queries for payment of the fee.
28. The council explained that the information used by council officers is an internal tracking document which is not suitable for disclosure or publication in its current form as it contains details of resources deployed on the scheme, progress reports, project milestones and cost information. However, the council has stated that the information contained within the tracking document in relation to the existence of road schemes is the same as that which is contained in the town access plans, the transport plan and the transport statements contained on the website.
29. The Commissioner acknowledges that there is a degree of searching required to locate the information to answer question 3.4 in relation to a specific property. However, he found that a simple "ctrl F" search of the relevant documents for the names of roads in close proximity to the property directed him to the relevant pages.
30. The Commissioner notes the complainant's concerns that in providing links to local councils' town access plans, the council had directed him to information which was held by other public authorities. However, the Commissioner finds that regulation 6(1)(b) does not specify that the information which is publically available and reasonably accessible, must be held by the public authority to which the request has been made. As he considers that the documents which the council has directed the complainant to provides access to information to answer question 3.4, then the information is publically available and easily accessible to the applicant and therefore the council has correctly applied regulation 6(1)(b) to this information.
31. In response to question 3.5, the council again directed the complainant to a website containing easily accessible publically available information. The webpage in question is a specific page of Network Rail's website and contains information about its Route Utilisation Strategies. Question 3.5 very specifically asks for information about whether the property is

within 200 metres of a proposed railway, tramway, light railway or monorail. The council has explained in its response to the Commissioner that there have been no such schemes in Hampshire for many years and that there have been no notifications of any such schemes within the working experience of the current officers. In any case, it is clear from the Network Rail information that there are no new rail schemes planned within the proximity of the Fleet property.

32. The complainant raised similar concerns about the council's response to this question as he did with regard to question 3.4. He again queried with the council whether the information he had been directed to was the same used by the council officers. The council again explained that it uses the internal tracking document which it considers is unsuitable for publication, but as mentioned in paragraph 31, it has also stated that it is aware that there have not been any railway schemes in Hampshire in recent times. Again the Commissioner considers that the documents the council has directed the complainant to provide sufficient information to answer the question by doing a simple "ctrl F" search for the town of Fleet and the nearby road names. Again therefore the Commissioner finds that the council was correct to rely on regulation 6(1)(b) in respect of question 3.5.
33. The final question to consider is 3.7, which asks for outstanding notices in relation to the specified property. The council initially informed the complainant that it was not able to disclose or publish the notices as they contain specific information about individuals. However, it did not initially state that it was relying on any specific exception in relation to this. In response to this the complainant informed the council that he assumed that any personal data which might infringe the Data Protection Act 1998 could be redacted before access is provided.
34. The council acknowledged this concern and has confirmed that it can now provide redacted versions of the notices for inspection. The Commissioner therefore considers that this would comply with the complainant's request to be provided with the opportunity to inspect the requested information. Consequently, the Commissioner finds that the council did not initially respond in accordance with the EIR in respect of this question, as it did not rely on any specific exception for not providing the information. However, as it has now stated that the information will be made available for inspection in redacted form, at the complainant's suggestion, the Commissioner requires the council to ensure that this information is made available within 35 calendar days.
35. In conclusion, the Commissioner finds that regulation 6(1)(b) was applied correctly to questions 3.4, 3.5, 3.6, and 3.11. However, he finds that the council did not respond in accordance with the EIR in respect of question 3.7.

Regulation 5(2)

36. Regulation 5(1) provides that environmental information shall be made available upon request. Regulation 5(2) provides that this information should be made available within 20 working days following receipt of the request.
37. The complainant made his request on 19 December 2011 and then specified a property to which he required the information around 9 February 2012 but was not provided with access to all the information required to answer the questions within 20 working days, particularly with regard to the information in respect of question 3.7 which has yet to be provided.

Regulation 11(4)

38. Regulation 11 provides applicants with a right to "make representations" to a public authority if it appears to them that the authority has failed to comply with the EIRs in respect of a request for environmental information.
39. On 15 February 2012, the complainant wrote to the council expressing dissatisfaction that he had been denied access to the requested information. The Commissioner acknowledges that the complainant did not specifically request an internal review, but is also mindful of the 'Code of Practice - Environmental Information Regulations 2004' which states:

"60. Any written reply from the applicant (including one transmitted electronically) 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 of the handling of their application."
40. This guidance makes clear that a request for an internal review does not specifically have to ask a public authority to review the decision. As the applicant clearly expressed dissatisfaction with the council's response to his request for Con29 information in respect of a specific property made on 25 January 2012, the Commissioner is of the view that the applicant has made representation within 40 working days of making his request as per regulation 11(2).
41. Regulation 11(4) requires a public authority in receipt of representations from an applicant should consider the grounds of the review and notify the applicant of its decision as soon as possible and no later than 40 working days after the date of receipt. As the council did not provide a substantive response to the complainant's internal review request of 25

February 2012 until 5 November 2012, the Commissioner finds that the council has failed to comply with regulation 11(4).

Other matters

42. The Commissioner notes that whilst he has found that for the most part the council complied with regulation 6(1)(b) in making the requested information available to the complainant, it has also referred to its paid property search service in its responses. In this particular case, it has not been necessary to consider the charges as all the information in question is or will be publically available. However, the Commissioner wishes to make it clear that in line with the recent First-tier Tribunal – Information Rights decision *Leeds City Council v Information Commissioner*, costs which can be charged in line with regulation 8(3) of the EIR must be of a reasonable amount. The Tribunal specifically stated that cost should be construed narrowly so as only to apply to the cost of making the information available, it also stated that public authorities cannot charge for staff time in locating, retrieving or redacting the requested information.
43. The fee which Leeds City Council sought to charge in those cases was £22.50, which the Commissioner and the Tribunal concluded was unreasonable and in breach of regulation 8(3). The fee which Hampshire County Council charges is £18.65 and the Commissioner therefore wishes to ensure that the council is aware of the Leeds City Council Tribunal decision in its future responses to Con29 requests.

Right of appeal

44. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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