

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

### **Decision Notice**

**Date: 20 October 2006**

**Public Authority: Horsham District Council**

**Address: Park North  
North Street  
Horsham  
West Sussex  
RH12 1RL**

### **Summary**

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The complainant made a number of requests to the public authority for information relating to her land and the property situated on it and alleged that the public authority had not provided any advice and assistance. The public authority provided the limited information which it held and offered to make available that which the complainant had not yet seen. The public authority confirmed that no further relevant information was held. The complainant disputed that the public authority did not hold any further information relating to her property. The Commissioner decided that the public authority did not hold any further information and had provided advice and assistance and so did not uphold the complainant save for technical breaches.

### **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 2004 ('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.
3. In this case the request was for environmental information. Requests for such information should be processed in accordance with the EIR.

## The Request

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4. The complainant wrote to the public authority on 18 January 2005. In that letter the complainant referred the public authority to a request made previously on 11 November 2004, stating that it should now be reconsidered under the provisions of the Act. The complainant also requested additional information under the Act, for the first time.
5. The request dated 11 November 2004, was set out as follows:
  - 1) *In 1956 a Company of Royal Engineers, had a depot/ married quarters in Worthing Road, Horsham. This depot stood on the land my property is now built on. At this time, the Local Authority (HUDC) imposed a planning condition – namely – that its use as a CRE depot should be limited to 7 years. At the end of that period, the land was to be resold. Can you please shed any light on this stipulation, as once again, the MOD have given us this evidence and suggest the Local Authority can expand on it.*
  - 2) *There should be archived, for the whole of Tanbridge Estate, a Section 52 (Section 106) or an “equivalent agreement”, made at the planning stage or when the MOD left the area.  
Please see **DEED PACKET NUMBER HUDC 142.***
  - 3) *PSA Correspondence – Tolworth Tower HQ.  
Please could you locate the following letters from this government agency. References to these letters are as follows:-*
    - a) *CLAV/4/0248/Lands 2a*
    - b) *CLAV/8/0248/Lands 2a*

*These two letters were dated 21.1.1970 and were sent to the Clerk of HUDC. These letters must definitely be in your archives.*
  - 4) *I require the name of the building regulations officer and the government Body who sent him eg PSA or Local Authority. To assist you with locating the name, can I please refer you to the plans I mentioned earlier reference HI/579/70 – dates on this plan are 4.2.71 and 9.2.71. You will note that the building regulations officer who inspected the site made hand-written notes on it. These, I am sure, will assist you in identifying the officer concerned. As, I am aware, there was only a limited number of building regulations officers working at HUDC at the time. If indeed the officer does not prove to be from the Local Authority, then we must assume that the officer came from the PSA.*
6. The letter dated 18 January 2005 made the following additional request:

*Furthermore, I do require the Building Regulations documentation for my property (plot number 28). This information I have been told by various government bodies and numerous councils should be held at H.D.C. or the P.S.A. I require this to be confirmed either way. I also require to know whether or not my property has a Section 18 Agreement under The 1936 Public Health Act and whether or not it has been the subject of a Section 114 – Water Industry Act 1991.*

7. The public authority responded by letter dated 20 January 2005. The letter pointed out that a response (dated 12 January 2006) had already been provided to the letter of 11 November 2004; that response was outside of the remit of the Act. The public authority then considered the requests under the Act.
8. In relation to the first three requests made in the letter of 11 November 2004, the public authority confirmed that it does not hold the information. In relation to the fourth request, the public authority confirmed that it had had already provided all relevant information held.
9. In relation to the additional request made at paragraph five of the letter dated 18 January 2005, the public authority confirmed that it had already provided all relevant information held. It further advised that information about agreements under the Public Health Act 1936 and the Water Industry Act 1991 should be sought from the appropriate authority, in this case Southern Water.
10. Neither the complainant nor the public authority specifically engaged further complaints procedures in relation to the requests outlined above. The complainant had been in correspondence with the public authority in relation to these and associated issues for a number of years previously. This correspondence continued during the investigation with further letters of request and complaint on similar themes.

## **The Investigation**

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### **Scope of the case**

11. On 2 November 2005 the complainant contacted the Commissioner to complain about the way the requests for information had been handled. The complainant specifically asked the Commissioner to assist with obtaining the “files/documentation on my property held by [the public authority]” and referred to the two letters dated 11 November 2004 and 18 January 2005.
12. The four requests made in the letter dated 11 November 2004 were treated as valid by the Commissioner because, even though they predated the coming into force of the Act of 1 January 2005, there was a clear reference to them in the letter dated 18 January 2005, and a clear request that they be considered under the provisions of the Act. Furthermore the public authority had accepted them for such consideration.

13. The issues raised in paragraph four of the letter dated 18 January 2005 were not considered because either they reiterated the fourth request from the letter dated 11 November 2004 or they were not requests for recorded information and they were not of central concern to the complainant.
14. The requests made in paragraph five of the letter dated 18 January 2005 were requests for recorded information and duly considered.
15. The complainant raised the issue of inadequate advice and assistance, chiefly in the correspondence dated 2 November 2005 and 5 December 2005. This issue was duly considered.
16. During the course of the investigation it became apparent that it was not the complainant's primary concern to obtain the information identified in the written requests outlined above. This information was of interest only in so far as it might form part of a file or set of information, allegedly held by the public authority, relating to the complainant's property.
17. This file, information or documentation was variously identified by the complainant as: "the files/documentation on my property held by [the public authority]"; the file from which the "redrawn/falsified map" was taken; and "deed packet HUDC 142".
18. The complainant had not specifically requested this information in either of the letters dated 11 November 2004 or 18 January 2005, nor had she made any separate written requests to the public authority for such information.
19. Therefore, and in an attempt to keep the parameters of the investigation clearly defined, the investigation was initially limited to the issues raised in the complainant's two letters of request dated 11 November 2004 and 18 January 2005.
20. However, the issue of "deed packet HUDC 142" was eventually incorporated into the investigation because it was of overriding concern and interest to the complainant.

### **Chronology of the case**

21. On 7 April 2006 the Information Commissioner's Office telephoned the public authority. It was agreed with the authority's solicitor that he would send all the records relating to the complainant and any relevant document management policies to the Information Commissioner's Office. There was no authority wide policy in this respect.
22. Further to this conversation there was correspondence between the complainant and the public authority in which the public authority provided further advice to the complainant. Copies of the correspondence were supplied to the Information

Commissioner's Office and the complainant stated that she still required to be "given full access to the files and paperwork held on my property".

23. On 23 May 2006 the Information Commissioner's Office wrote to the public authority seeking assurance that the requested information is not held. The scope of the request was detailed by reference to the letters dated 11 November 2004 and 18 January 2005. The public authority's obligations under section 1 and section 16 of the Act were set out. Confirmation was sought in relation to the following:

1. *The reason the information requested was never held or is no longer held (e.g. because so much time has elapsed);*
2. *That the Council is not aware that the requested information is held by any other public authority;*
3. *That the Council does not own nor hold any title to the property or the land, comprising the site in question;*
4. *That therefore the Council neither needs nor is required to retain any information in respect of the site;*
5. *That there are no statutory obligations to retain the information requested or information in respect of the site;*
6. *That there are no other reasons the Council is required to retain the information requested or information in respect of the site; and,*
7. *That all information held which is relevant to the request, has been supplied to the complainant.*

24. On 5 June 2006 the Information Commissioner's Office emailed the public authority with the following additional enquiries:

1. *Whether Horsham Council holds the document: HUDC Deed Packet 142?*
2. *If it does, whether it relates to [the complainant's] land or property?*
3. *Whether the Council holds any other deed packet in relation to [the complainant's] land or property? And,*
4. *If either deed packet is held, whether [the complainant] could be given access to it?*

25. On 8 June 2006 the public authority provided the following response to the Information Commissioner's Office:

*Further in the above matter I am now able to respond to your numbered points as follows:*

*Your letter of 23<sup>rd</sup> May 2006:*

1. *The information sought by [the complainant] in relation to her property concerns private land. The only information held by the Council relates to its planning and building control functions when permission was granted for the construction of 31 dwellings of which [the complainant's] forms one. There is no indication on the planning file HU/579/70 as to any Ministry of Defence restrictions.*
2. *[The complainant] has been advised that the Land Registry may be able to assist if she has issues concerning the boundaries of her plot or land use restrictions imposed upon the Ministry of Defence. With regard to water/drainage she has also been advised to contact Southern Water Authority in relation to agreements under the Public Health Act 1936 or Water Industry Act 1991 which is the sewerage undertaker. As to previous land ownership by the Ministry of Defence she would be best contacting them direct if she has not already done this.*
3. *The Council does not own or hold any title to the property or the land comprising the site in question. It is believed the site was originally owned by the Ministry of Defence and was sold to a private developer. This led to the construction of the estate of which [the complainant's] plot forms part in around 1970 as evidenced by the planning permission file HU/579/70. The papers disclosed to [the complainant] in HU/579/70 form part of the historical record but there is no statutory requirement to retain such background information.*
4. *As a result the Council does not hold nor is required to hold any land ownership details in relation to [the complainant's property]. The Council's only involvement has been as local planning authority when permission was granted in 1970 which documentation has been viewed by the complainant. I also understand there was a private drainage dispute back in 1997 which led to the Council serving a notice under the Building Act 1984 in view of its public health responsibilities of which [the complainant] is well aware.*
5. *The Council has no statutory obligation or other reason to hold land ownership information in relation to private property.*
6. *ditto*
7. *[The complainant] has already been in to view the planning file. The Council has no other information regarding the previous use and ownership of the estate by the Ministry of Defence upon which her property was built.*

*Your e mail dated 5<sup>th</sup> June 2006*

1. *Yes, the Council holds deed packet number HUDC 142.*
2. *No, this does not relate to [the complainant's] property which is in private ownership. The title conveyance relates to a small parcel of land which now forms part of...Lane and is part of the highway. On 6<sup>th</sup> June [the complainant] made a request to inspect this deed packet and this is being made available to her. For your information*

*I attach a plan showing the approximate boundary of the highway land contained in deed packet HUDC 142.*

3. *No. [the complainant's] property and land is privately owned.*
4. *As indicated arrangements are already in hand for [the complainant] to view deed packet HUDC 142 should she wish to do so. I attach copy letter to [the complainant] dated 8 June to assist.*

26. Attached to the public authority's response was a copy of its letter to the complainant dated 8 June 2006, inviting her to view 'deed packet HUDC 142'.

## Analysis

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27. The Commissioner finds that the public authority does hold 'deed packet HUDC 142'. The public authority has provided evidence, by way of its letter dated 8 June 2006, that it is prepared to make this file available to the complainant. The Commissioner is satisfied that the public authority does not hold any other 'file' of information relating to the complainant's property as envisaged by the complainant.
28. The Commissioner is further satisfied that the public authority does not hold any information in relation to the requests dated 11 November 2004 and 18 January 2005 which has not already been made available to the complainant. This is on the basis that neither the Commissioner's investigation nor the complainant's submissions has revealed any evidence which supports the complainant's assertions to the contrary; those assertions have therefore been rejected.
29. In particular the Commissioner is satisfied that the public authority does not hold any information in relation to the requests numbered one to three in the complainant's letter dated 11 November 2004; any information further to that which was provided in relation to request number four in the complainant's letter dated 11 November 2004; any information in relation to the request made in paragraph five of the complainant's letter dated 18 January 2005 further to the documents provided from the planning file HU/579/70 of which the complainant confirmed receipt in paragraph four of her letter dated 11 November 2004.
30. The public authority responded to the complainant's initial requests for information and confirmed that it does not hold the information requested, further to that which it has provided. The Commissioner has found that this was a correct statement of fact.
31. The public authority has confirmed that it holds the information requested subsequently, i.e. 'deed packet HUDC 142', and has agreed to make it available to the complainant.

32. As the focus of this investigation related to the question of whether the information requested was held by the public authority, the Commissioner was not required to determine whether the information requested fell within the definition of “environmental information” under the EIR. However, as some of the information may fall within the definition of “environmental information”, the Commissioner has considered the duties of the public authority under the Act and the Environmental Information Regulations.
33. In relation to the enquiries about measures under the Public Health Act 1936 and Water Industry Act 1991, the public authority provided the complainant with the name of the appropriate alternative public authority, to which she might redirect her requests. In this case that was Southern Water Authority, however, the address was not provided as required.
34. The Commissioner is satisfied the public authority has properly provided advice and assistance to the extent that it could reasonably be expected to do so, save in respect of the provision of the address of Southern Water Authority. The public authority has continued to respond with extended explanations, the apparent purpose of which is to create as full a picture for the complainant as possible; in particular the correspondence dated 10 May 2006 and 17 May 2006. The public authority is therefore compliant with Regulation 9 of the Environmental Information Regulations and s16 of the Act, save in respect of the failure to provide the address of Southern Water Authority as referred to above.

## **The Decision**

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35. The Commissioner’s decision is that the public authority has complied with its obligations under the Environmental Information Regulations and the Act, save in respect for the failure to provide the address of Southern Water Authority.

## **Steps Required**

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36. The Commissioner requires no steps to be taken.

## **Right of Appeal**

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37. 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@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

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 20<sup>th</sup> day of October 2006**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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