

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 19 June 2007**

**Public Authority:** Rhondda Cynon Taff County Borough Council  
**Address:** The Pavilions  
Cambrian Industrial Park  
Clydach Vale  
Tonypany  
Rhondda Cynon Taff  
CF40 2XX

### Summary

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1. The complainant requested information relating to the surfaces of lanes throughout the local authority area and information relating to the operation of the Land Drainage Act. In terms of the former, the public authority responded by stating that some of the information requested is not held by the authority, and that to provide the information that is held would exceed the appropriate limit. Following his investigation, the Commissioner has decided that the information requested is not held by the public authority. In terms of the information relating to the operation of the Land Drainage Act, the only information held by the public authority is a copy of that Act, and the request was refused by virtue of the exemption at section 21 of the FOI Act, because copies of Acts of Parliament are accessible to the applicant either on the internet or via Her Majesty's Stationery Office. The Commissioner has decided that this is a request for environmental information and the public authority should therefore have dealt with the request under the Environmental Information Regulations 2004. As there is no equivalent of section 21 of the Act in the regulations, the Commissioner requires the public authority to provide the complainant with the information it holds in relation to the second request.

### The Commissioner's Role

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2. The Commissioner's role 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. 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. In effect, the enforcement provisions of Part 4 of the Act are imported into the regulations.

## The Request

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3. The complainant states that on 28 December 2005 he requested the following information from the public authority (the 'first request'):
  - *"Number of houses provided with [a] tarmac lane [within the local authority area];*
  - *Number of houses not provided with [a] tarmac lane [within the local authority area];*
  - *Percentage [of houses] with [a tarmac lane]; and*
  - *Percentage [of houses] without [a tarmac lane]."*
4. On 5 January 2006 the public authority responded, stating that, "... I regret that even if such information were available, I do not have the resources to provide such details."
5. The complainant repeated his request in a letter to the authority dated 30 January 2006, in which he also requested, 'a copy of your current working order of the Land Drainage Act' (the 'second request').
6. The public authority responded in a letter dated 25 January 2006. It is not apparent to the Commissioner which of these letters is dated erroneously but it appears that the public authority's letter dated 25 January post-dates the complainant's letter dated 30 January.
7. The public authority's letter of 25 January 2006 stated that:
  - *"The number of rear lanes un-made and un-adopted together with the number of dwellings they serve is held;*
  - *The number of rear lanes made up throughout the County Borough together with the numbers of dwellings they serve is not held;*
  - *The number of people provided for and those awaiting provision is not held;*
  - *The number of houses provided with a tarmac lane is not held;*
  - *The number of houses not provided with a tarmac lane is not held;"*
8. In relation to the information at the first bullet point, above, the public authority stated that the cost of compliance would exceed the appropriate limit, as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Nevertheless, the public authority agreed to carry out the work on receipt of payment of £948.75, the estimated cost of compliance. In terms of the second request, the public authority explained that this information was available elsewhere and therefore exempt under section 21 of the Act.

9. On 22 February the public authority wrote again to the complainant, enclosing a schedule of un-adopted rear lanes and inviting the complainant to narrow down his request to bring it within the appropriate limit. The complainant did not do so.
10. On 10 March the complainant approached the Information Commissioner for advice on how to complain about the public authority's decision not to provide him with the information. He was advised to first go through the authority's own internal review process.
11. On 29 March the complainant wrote to the public authority requesting an internal review in relation to the second request only. On 18 April the public authority responded, upholding the application of the section 21 exemption and stating that, "You can view the Land Drainage Act on <http://www.opsi.gov.uk/>. If you do not have internet access at home you are of course very welcome to use the computers in one of our libraries."

## The Investigation

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### Scope of the case

12. On 24 April 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - That the public authority had deliberately overestimated the cost of compliance and had therefore applied the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 inappropriately; and
  - That the public authority had applied the Act inappropriately by withholding information by virtue of the exemption at section 21 of the Act.
13. In addition, the Commissioner has considered whether the information requested is in fact held by the public authority and whether the information exempted by virtue of section 21 of the Act should have been dealt with under the Environmental Information Regulations 2004 (the 'regulations').

### Chronology of the case

14. On 27 September 2006 the Commissioner wrote to the public authority requesting further information about the how it had estimated the fee of £948.75. In particular, the following questions were asked:
  - Please can you describe in detail what steps were taken to locate the information requested?
  - How did you arrive at your estimate?
  - Is the information held electronically?
  - Would providing the information requested involve re-collating information?
  - Would providing the information requested involve producing new information?

- Have you considered whether any information related to the request could be provided within the cost limit?
15. In addition, the Commissioner asked the authority for further information in relation to the use of the section 21 exemption. The public authority responded on 18 October providing answers to the questions put to it and stating that to provide the information requested by the complainant in his first request would involve the creation of new information. This is because information about lanes is not held in the form requested by the complainant, and can only be collated by the manual interrogation of maps and electronic databases, and in some cases, physical inspection of sites.
  16. On 20 November 2006 the Commissioner contacted the public authority requesting clarification of a series of points in relation to the questions raised on 27 September. The public authority responded on 29 November.
  17. On 11 December 2006 the public authority contacted the Commissioner, providing additional information about what information is and is not held by the authority.
  18. On 11 January 2007 the case officer dealing with the complaint contacted the complainant to explain that, in her opinion, the public authority had applied the Act appropriately in estimating the cost of compliance at £948.75 and that the public authority had applied the section 21 exemption appropriately. The complainant was informed that the creation of new information would go beyond the requirements of the Act. He was further informed that his case would be closed if no additional evidence was submitted in support of his complaint.
  19. The complainant responded on 17 January restating his complaint and repeating the arguments set out in his original complaint to the Commissioner. As this letter did not appear to provide any additional evidence to support his complaint, the case was closed.
  20. On 12 February the complainant submitted a 'case review and service complaint form' to the Commissioner, alleging that the Commissioner had not reached the right conclusion in relation to his complaint and had not handled his complaint in accordance with the Commissioner's own published service standards.
  21. Following further correspondence between the Commissioner and the complainant the Commissioner agreed to revisit the case and, if necessary, issue a decision notice in accordance with section 50 of the Act.

### **Findings of the case**

22. In relation to the complainant's first request, lanes in the authority area are either 'adopted' or 'un-adopted' by the public authority, under the provisions of the Highways Act 1980. Information is held by the authority on both adopted and un-adopted lanes. Information relating to adopted lanes is contained on an electronic Geographic Information System (GIS). A list of un-adopted lanes is held in hard copy and was provided to the complainant on 22 February 2006.

23. Whether a lane is or is not adopted does not provide evidence as to whether it has a tarmac surface. For example, not all adopted lanes have a tarmac surface, and there are un-adopted lanes that do have tarmac surfaces. Furthermore, the number of houses served by each lane is not held by the public authority.
24. In relation to the complainant's second request, the public authority holds no information about the operation by the authority of the Land Drainage Act 1991. Instead, the 30 January request was interpreted by the authority to be a request for a copy of the Land Drainage Act itself.

## Analysis

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25. The Commissioner has considered the public authority's response to the complainant's request for information.

### Procedural issues

#### Is the information relating to the complainant's first request 'held' by the public authority?

26. During the course of the Commissioner's investigation the public authority explained that the information requested by the complainant in his first request is not actually held by the authority. The authority has argued that, while information about adopted and un-adopted lanes is held (as outlined in paragraph 20, above), that information does not relate to the specific number of houses served by each lane nor the type of surface of each lane.
27. The public authority has argued that, in order to calculate the number of houses provided (and not provided) with a tarmac lane, it would have to look up each lane and then count the number of houses served in each and every case. In some cases this would involve site visits to inspect the lanes. This would amount to the creation of new information and therefore there can be no requirement for the authority to comply with the request.
28. The Commissioner has considered these arguments and believes that the information as specifically requested by the complainant on 28 December 2005 is not held by the public authority.

#### Would the cost of complying with the first request exceed the appropriate limit?

29. If the cost of complying with a request for information exceeds the appropriate limit – defined as £450 (or 18 hours of work at a rate of £25 per hour) – then in accordance with section 12 of the Act the public authority is not obliged to comply with its duty under section 1(1) of the Act. However, under section 13 of the Act the public authority can charge for the provision of the information if it exceeds the appropriate limit. All relevant sections of the Act are set out in full in the legal annex to this notice.

30. Although the Commissioner has determined that the information relating to the complainant's first request is not held by the public authority, it is apparent that some information about lanes in the public authority's area is held, albeit not the specific information requested by the complainant. The public authority has argued that, for the information that is held, the cost of locating, retrieving and collating the information would exceed the appropriate limit.
31. The public authority has explained that information relating to adopted lanes is contained within an electronic Geographic Information System. Information about un-adopted lanes is held in hard copy only. Both the GIS and the hard copy maps would need to be examined to determine the number of houses served by each type of lane, and in some cases sites would need to be inspected to determine the type of surface.
32. The public authority has stated that there are 508 un-adopted lanes in the authority's area. For each one of these 508 lanes, paper maps would have to be viewed to ascertain whether it had a tarmac surface and to count the number of properties served by each lane. The public authority estimated an average time of three minutes per lane, making a total of 25.3 hours for this aspect of the work alone.
33. The public authority has stated that the search would be simpler for those lanes that are adopted, in that part of the search could be carried out electronically. Nonetheless, as set out in paragraph 22 (above), whether or not a lane is adopted does not guarantee that it has a tarmac surface. An estimate of 12.65 hours was made for this work.
34. The Commissioner considers the estimate of 25.3 hours of work in relation to the un-adopted lanes is reasonable in the circumstances. This work in itself would significantly exceed the appropriate limit. However, the Commissioner believes that the public authority would not be simply locating, retrieving and collating information in this time, but would be creating new information. This would go beyond the requirements of the Act and would fall outside of the fees regime.

## **Exemptions**

### Section 21

35. The public authority has determined that the only information held by the authority in relation to the second request is a copy of the Land Drainage Act itself. The Commissioner notes that the original request was for 'a copy of your current working order of the Land Drainage Act', and it is not entirely clear that the complainant is actually seeking a copy of the Land Drainage Act itself, or that a copy of that Act falls within the scope of the request. Nevertheless, the Commissioner has looked at whether the public authority applied the Act appropriately in citing the section 21 exemption in relation to the complainant's second request for information, made on 30 January 2006.
36. The Commissioner considers that the information requested in the second request falls within the definition of environmental information in accordance with

regulation 2(1)(c) of the Environmental Information Regulations 2004. This is because any working order of the Land Drainage Act would constitute information on a measure (such as legislation) affecting or likely to affect the state of the elements of the environment.

37. The only information held by the public authority in relation to the second request is a copy of the legislation itself. The Commissioner considers that a copy of the legislation falls within the definition of environmental information. Accordingly, the Commissioner believes that any request for the Land Drainage Act itself should be treated under the regulations and not the Act.
38. Acts of Parliament are available to purchase in hard copy from Her Majesty's Stationery Office and are available electronically on the website of the Office for Public Sector Information. The public authority explained this to the complainant in its letters of 25 January and 18 April 2006. The Commissioner believes this fulfills its requirement under regulation 9 to provide advice and assistance to the applicant.
39. In this case, the Commissioner considers that the Land Drainage Act, as an Act of Parliament available electronically and in hard copy at a cost, is reasonably accessible to the complainant by other means. Nevertheless, the Commissioner notes that there is no direct equivalent of the section 21 exemption in the regulations. Accordingly, the Commissioner has decided that the public authority should release the information requested to the complainant, although he notes that the public authority is entitled under regulation 8 to make a reasonable charge for making the information available.

## The Decision

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40. The Commissioner's decision is that the public authority does not hold the information requested in the complainant's first request. In terms of the complainant's second request, the Commissioner has decided that the public authority should have dealt with the request under the regulations and not the Act. As there is no provision in the regulations equivalent to section 21 of the Act, the Commissioner's decision is that the public authority should disclose the information requested.

## Steps Required

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41. The Commissioner requires the public authority to take the following steps to ensure compliance with the regulations:
  - Disclose the information held in relation to the complainant's second request for information

42. 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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43. 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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44. 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 19<sup>th</sup> day of June 2007**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex

### 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 1(2)** provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

**Section 1(3)** provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

**Section 1(4)** provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

**Section 1(5)** provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

**Section 1(6)** provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

### **Exemption where cost of compliance exceeds appropriate limit**

**Section 12(1)** provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

**Section 12(2)** provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

**Section 12(3)** provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

**Section 12(4)** provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

**Section 12(5)** – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

### **Information Accessible by other Means**

**Section 21(1)** provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

**Section 21(2)** provides that –

“For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

**Section 21(3)** provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”

## **Environmental Information Regulations 2004**

### **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 –

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

- (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;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

“historical record” has the same meaning as in section 62(1) of the Act;

“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

“responsible authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“Scottish public authority” means –

- (a) a body referred to in section 80(2) of the Act; and

- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

“transferred public record” has the same meaning as in section 15(4) of the Act;  
and

“working day” has the same meaning as in section 10(6) of the Act.

### **Regulation 9 - Advice and assistance**

**Regulation 9(1)** A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

**Regulation 9(2)** Where a public authority decides that an applicant has formulated a request in too general a manner, it shall –

- (a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and
- (b) assist the applicant in providing those particulars.

**Regulation 9(3)** Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.

**Regulation 9(4)** Where paragraph (2) applies, in respect of the provisions in paragraph (5), the date on which the further particulars are received by the public authority shall be treated as the date after which the period of 20 working days referred to in those provisions shall be calculated.

**Regulation 9(5)** The provisions referred to in paragraph (4) are –

- (a) regulation 5(2);
- (b) regulation 6(2)(a); and
- (c) regulation 14(2).