

Freedom of Information Act 2000 Section 50 Environmental Information Regulations 2004

Decision Notice

Date: 27 July 2009

Public Authority: Stoke City Council
Address: Civic Centre
Glebe Street
Stoke-on-Trent

Summary

The complainant made a request to inspect the building control and traffic schemes information within 200 metres of a named address. The Council refused to grant inspection of the information stating that as the information was available through the completion of a standard search form (CON29) and on payment of a fee based on the property search regulations, regulation 6(1)(b) removed the need to comply with regulation 5(1). The Commissioner has investigated and found that the request is a request to inspect environmental information but that the Council cannot use regulation 6(1)(b) to refuse the request to inspect the information. The Council must make the information available for inspection in accordance with regulation 5(1) within 35 calendar days of this notice.

The Commissioner's Role

1. 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

2. Local authorities have traditionally made charges for providing property search information, but there has been a lack of consistency in this area. The Local Authorities (England) (Charges for Property Searches) Regulations 2008 (CPSR) were introduced in order to provide a framework within which local authorities

could make charges for property searches services, specifically for granting access to property records held by the local authority and for answering queries about a property. In essence they permit charging to be made on a cost recovery basis. The information requested was part of the property searches being conducted by the complainant.

3. Property search reports are a compulsory component of a Home Information Pack (HIP) which is required for most residential properties that are put on the open market. They are compiled from information provided by a local authority in response to various standard enquiries. The enquiries that require answering for the purposes of a HIP, in most cases, relate to those questions contained in the standard CON29 local search enquiry forms.

The Request

4. The complainant made the following request for information to Stoke City Council (the Council) on 16 January 2009:

"I would like to make arrangements to inspect the Building Control / Traffic Schemes abutting / Highway Schemes within 200m records in situ as soon as possible for the following land and buildings:

[named property]"

5. The Council responded on 20 January 2009 informing the complainants that the information requested is part of the Local Land Charges Search service and is currently available in the CON29R on payment of an appropriate fee.
6. The complainants responded on 30 January 2009 explaining to the Council that the information request was made under the EIR and as such should be made available for inspection free of charge.
7. The Council responded on 9 March 2009. The Council agreed that the information requested was environmental information however it stated that under regulation 6(1)(b) it was not obliged to comply with the request as the information was available by other means as it can be requested via completion of a CON29R form and the payment of the appropriate fee.

The Investigation

Scope of the case

8. On 17 February 2009 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:

- The information requested is environmental information
- They should be allowed to inspect the information free of charge in accordance with regulation 8(2)

9. The Commissioner's investigation has focused on determining if the information requested is environmental information falling within the scope of the EIR and if so if that information should be made available for inspection free of charge.

Chronology

10. The Commissioner telephoned the public authority on 19 May 2009 to request a copy of the withheld information.
11. The Commissioner telephoned the public authority on 27 May 2009 to clarify which elements of the information contained within the CON29R form the information requested relates.
12. The Commissioner further telephoned the Council on 2 June 2009 to enquire what records had been inspected to obtain the answers to the relevant questions on the CON29 form.
13. The Council responded on 5 June 2009 and explained that to obtain the information requested it had searched within its geographic information system.

Findings of fact

14. Both the Council and the complainant agree that the information request relates to questions 1.1(f) – (h), 3.4 and 3.6 of the CON29R form. These are:

1.1 Planning and Building Decisions and Pending Applications

Which of the following relation to the property have been issued or refused or (where applicable) are the subject of pending applications:-

- (f) building regulations approval
- (g) a building regulations completion certificate
- (h) any building regulations certificate or notice issued in respect of work carried out under a competent person self-certification scheme

3.4 Nearby Road Schemes

Is the property (or will it be) within 200 metres of any of the following:

- (a) the centre line of a new trunk road or special road specified in order, draft order or scheme
- (b) the centre line of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway.
- (c) the outer limits of construction work for a proposed alteration or improvement to an existing road, involving (i) construction of a roundabout

(other than a mini roundabout); (ii) widening by construction of one or more additional traffic lanes

(d) the outer limits of (i) construction of a new road to be built by a local authority; (ii) an approved alteration or improvement to an existing road involving construction of a subway, underpass, flyover, elevated road or dual carriageway; or (iii) construction of a roundabout (other than a mini roundabout) or widening by construction of one or more additional traffic lanes.

(e) the centre line of the proposed route of a new road under proposals for public consultation

(f) the outer limits of (i) construction of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway; (ii) construction of a roundabout (other than a mini roundabout); or (iii) widening by construction of one or more additional traffic lanes, under proposals published for public consultation.

3.6 Traffic Schemes

Has a local authority approved but not yet implemented any of the following for the roads and footpaths which abut the boundaries of the property:

- (a) permanent stopping up or diversion
- (b) waiting or loading restrictions
- (c) one way driving
- (d) prohibition of driving
- (e) pedestrianisation
- (f) vehicle width or weight restriction
- (g) traffic calming works including road humps
- (i) minor road widening or improvement
- (j) pedestrian crossings
- (k) cycle tracks
- (l) bridge building

Analysis

Substantive Procedural Matters

15. The Commissioner has first considered whether the request made by the complainant is a request to inspect environmental information as defined by the EIR.
16. The Commissioner considers that the information which requires inspection in order to obtain the relevant answers to the questions (as detailed in paragraph 14) above falls within the regulation 2(1)(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 measure designed to protect those elements". The Council has explained that information on traffic schemes, road schemes and building control records is held as layers on its geographic information system, these systems are designed to provide a response to Land Searches and as they are geographic in nature they require a site plan. The Commissioner considers that in order to obtain the answers to the questions detailed in paragraph 14 it is necessary to inspect environmental information as outlined by the Council. The information which is inspected is clearly a measure or plan on an activity (i.e. road scheme or building plan) affecting or likely to affect one or some of the elements referred to in regulation 2(1)(a).

Regulation 5, Regulation 6 and Regulation 8

17. The complainant has made a request to inspect certain information from which he can obtain the answers to questions on the CON29R form. Although the answers to these questions will often be a simple 'yes' or 'no' the Commissioner's view is that in most cases environmental information is being examined so that the answers can be obtained, as is indicated in paragraph 16 above.
18. Regulation 5(1) provides that environmental information shall be made available upon request. In broad terms regulation 6(1) provides that where an applicant requests the information in a particular form or format the public authority is, subject to certain qualifications, obliged to comply with that preference. Regulation 8 provides that a public authority can make a reasonable charge for complying with a request but then specifies two particular situations where the information has to be made available free of charge.
19. The Council has accepted that the information is environmental. However it does not accept that regulation 6 obliges it to make the information available for inspection as it has stated that the information falls within the scope of regulation 6(1)(b) as being available by other means and therefore not subject to regulation 5(1). The Council states that the information can be made available through a standard Land Search procedures following submission of the CON29R search request forms along with the payment of a fee.
20. The first issue that has to be addressed therefore is whether regulation 6 does provide a right to inspect information. It is the Commissioner's view that although regulation 6(1) may appear to be primarily concerned with the particular physical form or format in which the information is provided, it should be interpreted broadly and does provide a right to request the inspection of environmental information. Analysis of the Directive and the Implementation Guide to the Aarhus Convention (the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice on Environmental matters from which the Directive derives) lend support to this:
 - Article 3(5) of the Directive introduces the requirement for arrangements to be made which ensure that the right of accessing information "can be exercised effectively, such as ... establishment & maintenance" of facilities for the examination of the information required"

- Recital 15 of the Directive refers to arrangements to “guarantee that the information is effectively and easily accessible.”
 - The Implementation Guide specifically states that a public authority “must allow” an applicant to examine the original documentation subject to the two caveats which are replicated in 6(1)(a) and (b). Regulation 6(1)(b) provides that a public authority need not comply with an applicant's request for the information to be made available in a particular form or format where “the information is already publicly available and easily accessible to the applicant in another form or format”
21. The Commissioner believes it is clear from the interpretive aids quoted above that the Directive anticipated the EIR would provide a right to inspect environmental information and this supports his broad interpretation of regulation 6
22. Having established that regulation 6 does provide a right to inspect environmental information it is then necessary to consider whether either of the qualifications to this right are relevant to this situation. Regulation 6(1)(a) provides that a public authority is not required to comply with an applicant's stated preference as to form or format where it is reasonable to make the information available in another form or format. The public authority has not provided any grounds for claiming it is reasonable to make the information available in the format it intends to, i.e. hard copy. However for the avoidance of doubt the Commissioner would not accept that it is reasonable for a public authority to avoid allowing the inspection of information merely to justify charging for making information available in hard copy. It is also the Commissioner's view that refusing to make information available for inspection would be counter to the general policy principles of the EIR, i.e. making environmental information as easily accessible as possible. Therefore there needs to be good grounds for a public authority making the information available in a different form or format than that requested.
23. In the Commissioner's view, an authority cannot use regulation 6(1)(b) to refuse a request to inspect information because the information is available by following the standard land search procedures. For regulation 6(1)(b) to apply, as stated above, the information must be both publicly available and easily accessible to the applicant. In the Commissioner's view this criteria is not satisfied by the requirement for an applicant to submit a CON29R form and pay the requisite fee. This is because the charging as embodied in the CPSR acts as a barrier to the information being easily accessible in contrast to, for example, publication on a website or in a public library free of charge.
24. The Commissioner therefore finds that the Council was incorrect in relying on 6(1)(b) as a basis for refusing the complainant's request to inspect the requested information.
25. The Commissioner further notes that regulation 8(1) provides that, subject to paragraph (2) where a public authority makes environmental information available in accordance with regulation 5(1) the authority may charge the applicant for making the information available. Regulation 8(2) states that a public authority

shall not make a charge for allowing an applicant (a) to access any public registers or lists of environmental information held by the public authority; or (b) to examine the information requested at a place which the public authority makes available for that examination. The right to inspect information should therefore be free.

The Decision

26. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the EIR. The Council breached the requirements of regulation 5(1) as it failed to make the requested information available on request.

Steps Required

27. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Allow the complainant to inspect the information requested.

28. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

29. 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

30. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 27th day of July 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

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 2(2) Subject to paragraph (3), “public authority” means –

- (a) government departments;
- (b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding –
 - (i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or
 - (ii) any person designated by Order under section 5 of the Act;
- (c) any other body or other person, that carries out functions of public administration; or
- (d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment.

Regulation 2(3) Except as provided by regulation 12(10) a Scottish public authority is not a “public authority” for the purpose of these Regulations.

Regulation 2(4) The following expressions have the same meaning in these Regulations as they have in the Data Protection Act 1998(b), namely –

- (a) “data” except that for the purposes of regulation 12(3) and regulation 13 a public authority referred to in the definition of data in paragraph (e) of section 1(1) of that Act means a public authority within the meaning of these Regulations;
- (b) “the data protection principles”;
- (c) “data subject”; and

(d) “personal data”.

Regulation 2(5) Except as provided by this regulation, expressions in these Regulations which appear in the Directive have the same meaning in these Regulations as they have in the Directive.

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 5(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

Regulation 5(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

Regulation 5(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.

Regulation 5(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

Regulation 6 - Form and format of information

Regulation 6(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

- (a) it is reasonable for it to make the information available in another form or format; or
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.

Regulation 6(2) If the information is not made available in the form or format requested, the public authority shall –

- (a) explain the reason for its decision as soon as possible and not later than 20 working days after the date of receipt of the request for the information;
- (b) provide the explanation in writing if the applicant requests; and

- (c) inform the applicant of the provisions of regulation 11 and the enforcement and appeal provisions of the Act applied by regulation 18.

Regulation 8 - Charging

Regulation 8(1) Subject to paragraphs (2) to (8), where the public authority makes environmental information available in accordance with regulation 5(1) the authority may charge the applicant for making the information available.

Regulation 8(2) A public authority shall not make any charge for allowing an applicant –

- (a) to access any public registers or lists of environmental information held by the public authority; or
- (b) to examine the information requested at the place which the public authority makes available for the examination.

Regulation 8(3) A charge under paragraph (1) shall not exceed an amount on which the public authority is satisfied is a reasonable amount.

Regulation 8(4) A public authority has notified an applicant under paragraph (4) that advance payment is required, the public authority is not required –

- (a) to make available the information requested; or
- (b) to comply with regulations 6 to 14,

unless the charge is paid no later than 60 working days after the date on which it gave the notification.

Regulation 8(6) The period beginning with the day on which the notification of a requirement for an advance payment is made and ending on the day on which that payment is received by the public authority is to be disregarded for the purpose of determining the period of 20 working days referred to in the provisions in paragraph (7), including any extension to those periods under regulation 7(1).

Regulation 8(7) The provisions referred to in paragraph (6) are –

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

Regulation 8(8) A public authority shall publish and make available to applicants –

- (a) a schedule of its charges; and
- (b) information on the circumstances in which a charge may be made or waived.