

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

### Decision Notice

Date: 27 July 2009

**Public Authority:** Blidworth Parish Council  
**Address:** Blidworth Community Centre  
Belle Vue Lane  
Blidworth  
Nottinghamshire  
NG21 ORD

### Summary

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Blidworth Parish Council ("the Parish Council") was asked to provide the names and addresses of everyone renting allotments on the site which the Parish Council owns adjoining Dale Lane in Blidworth. In its initial response, the Parish Council refused to provide this information, stating simply that it was "not allowed". When the Commissioner advised the Parish Council of its obligations when refusing requests, it issued a formal refusal citing section 14 of the Freedom of Information Act 2000 ("the FOIA"). Following an internal review conducted on behalf of the Parish Council by Newark and Sherwood District Council ("the District Council"), regulation 13 of the Environmental Information Regulations 2004 ("the EIR") was cited and the Parish Council refused the request on the basis that the allotment holders would not have reasonably expected personal data about them to be disclosed. The Information Commissioner ("the Commissioner") investigated and was satisfied that the information was exempt under regulation 13(1) of the EIR. However, he found breaches of regulation 11(4) and 14(1).

### The Commissioner's Role

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1. The 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. In effect, the enforcement provisions of Part 4 of the FOIA are imported into the EIR.

## The Request

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2. On 20 June 2007, the complainant wrote to the Parish Council and asked for information in the following terms:

*"I ask to inspect and copy the names and addresses of the folk whom Blidworth parish council is allowing to use an allotment or allotments in the parish..."*

3. The Parish Council responded on 21 June 2007 and stated the following:

*"Names/Addresses of Allotment Holders – not allowed"*

4. Following a complaint to the Commissioner, the Commissioner contacted the Parish Council and advised it of its obligations when refusing requests for information.

5. The Parish Council had received a number of requests from the complainant in the meantime repeating his request for the same information and on 24 January 2008, it wrote to the complainant stating that it would not supply the information in question because it was exempt under section 14 of the FOIA on the basis that the requests made had been repetitious and vexatious. It expressed the view that the requests had no legitimate purpose. It stated that the complainant should write to it if he wished to appeal the decision.

6. On 1 February 2008, the complainant wrote to the Parish Council to complain about the decision. He complained that the Parish Council had never complied with any of his requests for the names and addresses of the allotment holders.

7. On 7 February 2008, the Parish Council wrote to the complainant and stated that it had forwarded his letter of appeal to an independent reviewer.

8. Following a substantial delay, the District Council wrote to the complainant on 19 June 2008 stating that it had been asked to review the Parish Council's decision. It stated on behalf of the Parish Council that it considered the information requested was "environmental" and that the EIR therefore applied. It cited regulation 13 and explained that the information was exempt because the allotment holders would not have reasonably expected their personal data to be disclosed to the public. It provided up to date figures for the total number of allotments at Dale Lane broken down to set out how many residents of Blidworth held plots or half plots and how many non-residents of Blidworth held plots or half plots. It provided a figure for single allotment holders, double allotment holders and how many residents and non-residents of Blidworth were on the waiting list. It stated that the policy was that only residents of Blidworth, Rainworth and Ravenshead are eligible for a tenancy. It explained that it had decided to provide this information in order to try to assist the complainant with his general enquiries about the allotments.

## The Investigation

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### Scope of the case

9. The complainant initially complained to the Commissioner about the Parish Council's refusal to provide the names and addresses of the allotment holders on 8 December 2007. Following the completion of the internal review, the complainant wrote to the Commissioner on 21 June 2008 expressing dissatisfaction with the outcome. When the Commissioner sought clarification on the nature of the complaint, the complainant sent a further letter to the Commissioner on 1 May 2009 confirming that he wished the Commissioner to consider the Parish Council's refusal to provide the names and addresses of the allotment holders. In his letter on 1 May 2009, the complainant also stated that he believed the request should be considered under the FOIA and not the EIR. The complainant also raised an issue concerning the involvement of the District Council in the internal review process. For clarity, this has not been addressed in the Notice, the Commissioner will write to the Council separately about this matter.

### Chronology

10. The Commissioner contacted the complainant on 30 April 2009 to set out his understanding of the complaint.
11. On 1 May 2009, the complainant responded to the Commissioner explaining the scope of his complaint.
12. On 11 May 2009, the Commissioner also contacted the District Council. As it had become involved during the internal review stage, it stated that it would assist the Parish Council in responding to the Commissioner assuming that the Parish Council was happy for it to do so. The Commissioner explained that he wished to find out more about the expectations of the allotment holders and he asked some background questions to help him to understand the context of the request. The District Council agreed to contact the Parish Council and assist it in formulating a response to the Commissioner.
13. On the same day, the Commissioner emailed the District Council confirming the questions he required a response to. He asked for confirmation on whether anything was said or whether any information was given to the allotment holders giving them any expectation that their names and addresses would be held in confidence. The Commissioner also asked whether there was any reason why the allotment holders ought to have had an expectation that their names and addresses would be disclosed to the public such as relevant legislation, requirements or guidance etc.
14. On 20 May 2009, the District Council sent an email to the Commissioner copying in the Parish Council. It explained that whilst the allotments in question are owned by the Parish Council, they have been managed by the Forest Folk Allotment Society for over 60 years. It explained that this is a registered society which holds

- an annual general meeting on the site. It stated that all the business concerning the allotments is handled directly by the society and the Parish Council is only involved when repairs are required. All allotment holders communicate solely with the society which keeps the records. It concluded that the information was not held by the Parish Council as it was held by the society and the allotment holders would not therefore expect the Parish Council to disclose information held by the society. It explained that although the Parish Council, as owner of the land, could no doubt require the society to divulge the names and addresses of the allotment holders, it had never done so during the 60 years of the society's operation.
15. In addition to the above, the District Council stated that there was no reason why the allotment holders ought to have had an expectation that their names and addresses would be disclosed. It also stated that the information was not recorded on any publicly available registers.
  16. On 22 May 2009, the Commissioner sent an email directly to the Parish Council copying in the District Council. He expressed his view that the information was held by the society on behalf of the Parish Council and therefore still subject to the EIR. On this basis, he asked the Parish Council to consult the society about the request in order to ascertain what the legitimate expectations of the allotment holders were concerning records of their names and addresses.
  17. The District Council responded on 8 June 2009 copying in the Parish Council. It stated that following a conversation with the Parish Council and the secretary of the society, the secretary had been very clear that there had never been anything communicated to the allotment holders that would have given them a reasonable expectation that their names and addresses would be disclosed to the public. It stated that in fact the allotment holders were likely to have had the opposite expectation. It explained that following a request for this information by a member of the society's committee in 1999, a formal minute records that the information was refused. The District Council also explained that the complainant had previously requested the information and it had been refused each time. It stated that this would have given the allotment holders a clear expectation that the information would not be disclosed to the public.

## Analysis

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### Procedural matters

18. The Commissioner firstly considered whether the Parish Council had been correct to apply the EIR and not the FOIA to the information request. Regulation 2 of the EIR deals with the interpretation of environmental information and the relevant provisions have been set out in full in the Legal Annex at the end of this Notice. Having considered these provisions and the complainant's request, the Commissioner was satisfied that the request fell within 2(1)(c) of the EIR because keeping allotments is an activity that affects the land and land is an element named in 2(1)(a). The Commissioner considers that the names and addresses of the people keeping the allotments is information on an activity affecting the land

and the information is therefore environmental in nature.

19. Having satisfied himself that the request ought to be considered under the EIR, the Commissioner then considered whether the information was held by the Parish Council and therefore covered by the EIR. In the response provided to the Commissioner on 20 May 2009, the Commissioner was advised that the Parish Council did not hold the information requested as it was in fact held by the society. Regulation 3(2)(a) and (b) provide that for the purposes of the EIR, environmental information is held by a public authority if the information (a) is in the authority's possession and has been produced or received by the authority or (b) is held by another person on behalf of the authority. As conceded by the Parish Council, it could require the society to divulge to it the names and addresses of the allotment holders because it is the owner of the land. The Commissioner's view is that the Parish Council therefore has a significant level of control over the information. It is simply allowing the society to function in an independent way. In view of this, the Commissioner considers that the society is clearly holding the information on behalf of the Parish Council and the information is therefore covered by the EIR.
20. The Commissioner then went on to consider whether the Council had breached any of its obligations under the EIR concerning how it responded to the complainant's request.
21. Regulation 14(1) sets out what a public authority needs to do whenever refusing requests for environmental information. The Parish Council is obligated to ensure that a refusal notice complying with regulation 14(1) is issued within 20 working days following the date of the request. The request was made on 20 June 2007 but the Council did not issue a refusal notice under the EIR until the time of its internal review. It therefore breached regulation 14(1) for not issuing a valid refusal notice complying with the latter regulation within the statutory time limit.
22. The Parish Council offered the complainant an internal review in the response it provided on 24 January 2008 under the FOIA but because a response to the complaint made by the complainant on 1 February 2008 was not provided until 19 June 2008, the Commissioner finds that the Parish Council breached regulation 11(4) to notify the complainant of the outcome of the internal review as soon as possible and no later than 40 working days after the date of receipt of a complaint.

### **Exception**

23. For the avoidance of doubt, the arguments expressed in correspondence written by the District Council are taken to be the views of the Parish Council because all correspondence was copied to the Parish Council and it agreed to be assisted by the District Council.
24. The Parish Council is seeking to rely on the exception under regulation 13(1) of the EIR. This exception provides that if the information requested includes third party personal data and either the first or second condition in 13(2) is satisfied, a public authority shall not disclose the personal data. Regulation 13(2)(i) provides

- that personal data shall not be disclosed if its disclosure would contravene any of the data protection principles.
25. Personal data is defined in the Data Protection Act 1998 (“the DPA”) and will include any recorded information relating to an identifiable living individual. Having considered the nature of the request, the Commissioner is satisfied that the information requested constitutes third party personal data.
  26. The Commissioner then considered whether disclosure would contravene any of the data protection principles. The most relevant in this case is the first Data Protection Principle which provides that personal data shall only be disclosed to the public if its disclosure would be fair and lawful and shall only be disclosed if one of the conditions in Schedule 2 of the DPA is met. The Commissioner’s considerations below have focused on the question of whether the disclosure would be fair to the allotment holders.
  27. In order to help him to decide whether disclosure of the information would be fair in this case, the Commissioner considered the evidence concerning the reasonable expectations of the allotment holders. The District Council explained to the Commissioner that the information is not recorded on any publicly held registers and there is no reason why the allotment holders ought to have expected disclosure of their names and addresses. The secretary of the society confirmed that nothing was said to the allotment holders that would give them a reasonable expectation of public disclosure and if anything the expectation had been set that the information would not be disclosed because of previous refusals to disclose the information.
  28. It is true to say that disclosure under the EIR would not be automatically unfair because the allotment holders did not have that explicit expectation. The Commissioner may consider all the circumstances of a case in order to reach a decision on whether the disclosure would be fair. Nonetheless, the Commissioner’s view in this particular case is that there is no reason why the allotment holders ought to have expected disclosure of the information. Judging by the nature of the information and the context in which the information was given, the Commissioner considers that the allotment holders would justifiably expect the information to be held in confidence in the absence of an explicit indication that it would not be. This expectation would have been supported by the fact that disclosure of the information had been previously refused.
  29. Further, the Commissioner notes that disclosure may lead to attempts to contact the allotment holders. This contact would be an unfair intrusion into the private lives of the allotment holders and could cause distress.
  30. In the circumstances, the Commissioner is satisfied that it would be unfair to make this information publicly available under the EIR.
  31. The Commissioner was also not satisfied that the disclosure would be necessary to meet the legitimate public interest identified by the complainant in securing access to the information, namely in being able to identify the residential status of the allotment holders in order to ascertain whether the allotments are being

rented out appropriately by the Parish Council. As the Commissioner believes that this public interest could be satisfied by knowing only the residential status of the allotments holders (i.e. resident or non-resident), he does not accept that disclosure of the names and addresses is necessary to satisfy this particular public interest. Further, the Commissioner notes that the complainant was provided with anonymous data during the internal review that satisfied the public interest in knowing the residential status of the allotment holders.

## The Decision

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32. The Commissioner's decision is that the Council dealt with the following elements of the request in accordance with the requirements of the EIR:
- It correctly determined that the information was exempt under regulation 13(1) of the EIR
33. However, the Commissioner found that the Parish Council breached the following:
- Regulation 14(1) of the EIR for failing to issue a refusal notice in accordance with regulation 14(1) within 20 working days following receipt of the request.
  - Regulation 11(4) for failing to notify the complainant of the outcome of its internal review no later than 40 working days after the date of receipt of the complainant's request for an internal review.

## Steps Required

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33. The Commissioner requires no steps to be taken.

## Right of Appeal

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34. 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 27<sup>th</sup> day of July 2009**

**Signed .....**

**Steve Wood**  
**Assistant Commissioner**

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



## **Legal Annex**

### **Freedom of Information Act 2000**

#### Vexatious or Repeated Requests

Section 14(1) provides that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

Section 14(2) provides that:

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”

### **Environmental Information Regulations 2004**

#### Interpretation

Regulation 2(1) provides that:

“...‘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”.

#### Application

Regulation 3(2) provides that:

“For the purposes of these Regulations, environmental information is held by a public authority if the information –

- (a) is in the authority's possession and has been produced or received by the authority; or
- (b) is held by another person on behalf of the authority.

### Representation and reconsideration

Regulation 11(3) provides that:

“The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement”.

Regulation 11(4) provides that:

“A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations”

### Personal data

Regulation 12(3) provides that:

“To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13”.

Regulation 13(1) provides that:

“To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data”.

Regulation 13(2) provides that:

“The first condition is –

- (a) in a case where the information falls within any paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –
  - (i) any of the data protection principles; or
  - (ii) section 10 of the Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data

Protection Act 1998(a) (which relates to manual data held by public authorities) were disregarded”.

Refusal to disclose information

Regulation 14(1) provides that:

“If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation”

Regulation 14(2) provides that:

“The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request”

Regulation 14(3) provides that:

The refusal shall specify the reasons not to disclose the information requested, including

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3)”

Regulation 14(5) provides that:

“The refusal shall inform the applicant

- (a) that he may make representations to the public authority under regulation 11; and
- (b) of the enforcement and appeal provisions of the Act applied by regulation 18”.