

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

### **Decision Notice**

**Date: 11 November 2009**

**Public Authority:** Wolverhampton City Council  
**Address:** Civic Centre  
St Peter's Square  
Wolverhampton  
West Midlands  
WV1 1SH

### **Summary**

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Having received a requested survey report on 6 February 2008 from Wolverhampton City Council (the Council), the complainant submitted a further request to the Council on 3 April 2009 for certain figures and test results associated to the survey report. A response to the request was not provided other than an acknowledgement of receipt dated 7 April 2009. The Commissioner found that to the extent that any information held would be environmental information the public authority has breached regulation 5(2) of the EIR by not providing a response within 20 working days. To the extent that this does not apply the Commissioner found that by not providing a response within 20 working days the Council breached section 1(1) of the Act. The Commissioner requires the public authority to either provide the information or issue a valid refusal notice that complies with regulation 14 of the EIR and/or section 1(1) of the Act within 35 days of the date of this notice.

### **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 (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. This Notice sets out his decision.

## The Request

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3. On 3 April 2009 the complainant requested the following information:

*“A copy of the figures and how they were obtained and the figures reached concerning the Class outcomes 1-4 on VOC [volatile organic compounds] Hazards and Structural Collapse Hazards, on the survey report that was sent to me dated 6 February 2008. Can you also supply me with a list of the tests that were undertaken to test for VOCs and their results, and the results from the survey undertaken to the adjoining property?”*

4. On 7 April 2009 the Council wrote to the complainant acknowledging receipt of the complainant's request advising that the request had been passed to its Complaints Co-ordinator.
5. On 15 May 2009 the complainant wrote to the Council to request a review under its internal review procedure stating she had still not received a response from the Council.
6. There was no response from the Council to the request for an internal review or any information given regarding the complaints procedure.

## The Investigation

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### Scope of the case

7. The complainant contacted the Commissioner on 30 June 2009 to complain about the Council's failure to respond to her request. The complainant did not receive a response regarding any complaints procedure.

### Chronology

8. On 3 August 2009 the Commissioner wrote to inform the Council that a complaint had been received and reminding it of its statutory duty to respond within 20 working days of a request for information. Since the public authority had acknowledged receipt of the request but had not responded, it was asked to respond within 10 working days and to provide a copy of the response if it had already responded to the complainant.
9. On the same date the Commissioner wrote to the complainant and informed her about the letter it had written to the Council.
10. On 26 August 2009 the complainant submitted a further complaint to the Commissioner to advise that the Council had still not responded.

11. On 10 September the Commissioner contacted the Council to advise that the complainant had submitted a further complaint, and wrote to query whether a response had been provided to the complainant and requested a copy.
12. On 22 September 2009 the Commissioner wrote to the complainant and informed her that the case had been allocated to a case resolution team.
13. On the same date the Commissioner wrote to the public authority again concerning this complaint asking for a reply.
14. The Commissioner made a number of attempts to contact the Council between 29 September and 6 October 2009 by telephone. To date the Council has not responded.
15. On 6 October 2009 the Commissioner wrote to the Council seeking to establish whether it had provided the complainant with a response to her request. The Commissioner asked the Council to respond by 13 October 2009, and stating that if the Council did not respond, the Commissioner would have no option other than to draft a Decision Notice citing a section 5 breach of the Regulations, compelling the Council to respond within 35 days.

## **Analysis**

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16. The complaint that has been brought to the Commissioner in this case is that, apart from an acknowledgement letter, the Council has completely failed to respond to a request for information. In this scenario, without having information covered by the request available to view, it is not immediately evident whether the appropriate access regime will be the Act or the EIR. The Commissioner considers however that from the wording of the request it is at least possible that if information is held some of it may be environmental information as defined by regulation 2(1) of the EIR. This is because there may potentially be information covered by this request about the state of the land and landscape, or information about a likely effect on human health and safety stemming from a factor such as a release of emissions from a VOC into the atmosphere. Equally however, it is also possible that if information is held some or all of it is not of this nature, and thus should be properly dealt with under the Act. For this reason the Commissioner has considered the Council's compliance with both pieces of legislation.

## **Procedural Matters**

### **Regulation 5 (For full text see Legal Annex)**

17. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than twenty

working days after the date of receipt of the request. To date no response has been received.

### **Section 1 (1) (for full text see legal annex)**

18. Section (1) of the Act provides that, subject to certain exclusions, any person making a request for information to a public authority is entitled to be informed whether or not the public authority holds that information and to have that information communicated to them.
19. Section 10(1) of the Act provides that section 1(1) should be complied with promptly and in any event within the statutory time limit for compliance, which in this case would be twenty working days. To date no response has been received.

### **The Decision**

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20. To the extent that any information held is environmental information as defined by regulation 2(1) of the EIR, the public authority has breached regulation 5(2) by failing to provide a response compliant with regulation 5 of the EIR within twenty working days of the receipt of the request.
21. To the extent that paragraph 20 does not apply the public authority has breached section 10(1) of the Act by failing to provide a response compliant with section 1(1) within twenty working days of receipt of the request.

### **Steps Required**

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22. To the extent that any information held is environmental information as defined by regulation 2(1) of the EIR, the Commissioner now requires the Council to either provide the information or issue a valid refusal notice that complies with regulation 14 of the EIR. Unless the exception from the duty to confirm or deny under 12(5)(a) is claimed then any refusal notice should explicitly confirm or deny whether the information is held.
23. To the extent that paragraph 22 does not apply, the Commissioner now requires the Council to respond to the request in accordance with the requirements of section 1(1)(a) by informing the complainant whether it holds the information or issuing a refusal notice explaining why it is excluded from the section 1(1)(a) duty to confirm or deny if information is held. If the information is held then the Council should respond to the complainant's request in accordance with the requirements of section 1(1)(b) by either communicating the information to the complainant or issuing a refusal notice. Any refusal notice issued should comply with the requirements of section 17 of the Act.
24. 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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25. 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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26. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://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 11th day of November 2009**

**Signed .....**

**Lisa Adshead  
Senior FOI Policy Manager**

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

## **Legal Annex**

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### **Duty to make available environmental information on request**

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.

(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.

(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.

(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.

(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 a standardised procedure used.

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

### **Exceptions to the duty to disclose environmental information**

12. - (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if -

(a) an exception to disclosure applies under paragraphs (4) or (5); and

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) 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.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that -

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect -

- (a) international relations, defence, national security or public safety;
- (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- (c) intellectual property rights;
- (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
- (f) the interests of the person who provided the information where that person -
  - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
  - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
  - (iii) has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.

(6) For the purposes of paragraph (1), a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).

(7) For the purposes of a response under paragraph (6), whether information exists and is held by the public authority is itself the disclosure of information.



(8) For the purposes of paragraph (4)(e), internal communications includes communications between government departments.

(9) To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs (5)(d) to (g).

(10) For the purposes of paragraphs (5)(b), (d) and (f), references to a public authority shall include references to a Scottish public authority.

(11) Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is withheld by virtue of these Regulations unless it is not reasonably capable of being separated from the other information for the purpose of making available that information.

### **Refusal to disclose information**

14. - (1) 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.

(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) 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).

4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

(5) 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.

## **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”.”

## **Time for Compliance**

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

**Section 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

**Section 10(3)** provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

**Section 10(4)** provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

**Section 10(5)** provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

**Section 10(6)** provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

Reference: **FS50256703**



Information Commissioner's Office

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”