

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

Decision Notice

Date: 17 December 2009

Public Authority: Somerton Town Council
Address: Council Office
8 Cary Court
Somerton Business Park
Somerton
TA11 6SB

Summary

The complainant submitted a request to Somerton Town Council ('the Council') for information about the purchase of a site known as Etsome Terrace, and expenditure undertaken on this site. The Commissioner considers that this information requested by the complainant constitutes environmental information and should have been dealt with under the Environmental Information Regulations 2004 ('EIR'). His decision is that the Council has breached Regulation 5(1) and Regulation 5(2) in failing to disclose information to the complainant and must now do so within 35 days of this notice.

The complainant also requested the Council's Assets and Liability register, and details of the Council's expenditure in 2002/2003 and 2003/2004. The Commissioner's decision is that the Council failed to comply with section 1(1)(b) of the Act and must now do so within 35 days of this notice. The Commissioner found that Somerton Town Council also breached section 10(1) of the Act.

The Commissioner's Role

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.

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 (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into The Regulations.

The Request

2. On 22 May 2009 the complainant requested the following information:
 - 1) All correspondence, contemporaneous records and invoices relating to the purchase of the Etsome Terrace site.
 - 2) All correspondence and invoices relating to expenditure undertaken on the site, including the memorial garden
 - 3) Spreadsheets showing the Council's expenditure for the years 2002/3 & 2003/2004
 - 4) The Council's Asset and Liability register
3. On 22 June 2009, the Council responded and stated that the information the complainant had requested would be available for him to inspect at the Council Offices on 29 June 2009 between the hours of 2 p.m. and 4 p.m.
4. The complainant presented himself at the Council Offices at the specified time but found that they were closed and unattended.
5. The complainant wrote to the Council on 29 June 2009 to complain about the lack of access afforded to him. He suggested an alternative date for him to inspect the information requested.
6. On 1 July 2009, the Council contacted the complainant and stated that due to staff sickness, it was not possible to provide the complainant with another appointment to inspect the information. They advised the complainant to contact the Council "in the future" to resubmit his request for information.

The Investigation

Scope of the case

7. On 25 August 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

Chronology

8. The Information Commissioner's Office telephoned the Council on 21 September 2009. The Council accepted that it had not yet provided the complainant with the information he had requested.
9. On 21 September 2009, the Information Commissioner's Office wrote to the Council to advise that since the original arrangements to provide information had fallen through, the Council should provide a new response to the complainant's request. The Commissioner asked that this be provided within ten working days.

10. On 6 November 2009, the clerk to the Council contacted the Information Commissioner's Office. He explained that a majority of the Town Councillors had recently resigned, leaving the public authority suspended. He stated that he would therefore be unable to respond to any communication until the Council became operational again.
11. Councillors from Somerset District Council were temporarily introduced onto Somerton Town Council until elections for permanent councillors could be held. The first meeting of this temporary council was held on 24 November 2009. It is the Commissioner's view that the Council is therefore now active as a public authority for the purposes of the Act.

Analysis

The full text of relevant sections of the Act and the EIR is provided in the Legal Annex.

12. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
13. The Commissioner considers that the information requested falls within regulation 2(1)(c): "measures (including administrative measure), 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 these elements". Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore considers the complainant's first and second requests in paragraph 2 to be environmental information. The third and fourth requests are not for environmental information.

Procedural Requirements – Environmental Information Regulations

Regulation 5

14. The Council has failed to communicate the requested information to the complainant with the statutory time for compliance.

Procedural Requirements – Freedom of Information Act

Section 1

15. On 22 June 2009, Somerton Town Council informed the complainant that it held the information he had requested. However, the Council has failed to communicate the requested information to the complainant with the statutory time for compliance.
16. The Council has not withheld information from the complainant under any of the exemptions contained in the Act. The Council implicitly agreed that the

information would be disclosed to the complainant when it invited him to view the information requested.

17. The complainant has indicated to the Commissioner that he would be happy to receive copies of the information he has requested.

Section 10

18. The complainant requested information on 22 May 2009 and has not yet received a substantive response. Somerton Town Council therefore failed to supply the information requested within twenty working days following the date of receipt.

The Decision

19. The Commissioner's decision is that Somerton Town Council has breached Regulation 5(1) and Regulation 5(2) in failing to disclose information in response to the complainant's first and second requests and must now do so within 35 days of this notice.

The Commissioner has also found that Somerton Town Council did not deal with the complainant's third and fourth requests for information in accordance with section 1(1)(b) of the Act as held information was not communicated to the complainant. In failing to comply with the requirements of 1(1)(b) within twenty working days it has also breached section 10.

Steps Required

20. The Commissioner requires Somerton Town Council to respond to the complainant's first and second requests in accordance with Regulation 5 of the EIR by communicating the information requested to him. The Commissioner also requires the Council to communicate the information requested in the complainant's third and fourth requests to him in accordance with section 1(1)(b) of the Act. The public authority must take the steps required by this notice within 35 calendar days.

Failure to comply

21. 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

22. 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 17th day of December 2009

Signed

**Lisa Adshead
Senior FOI Policy Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act

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.”

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.”

“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.”

Environmental Information Regulations

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.