

Environmental Information Regulations 2004

Decision Notice

Date: 18 March 2010

Public Authority: Chorley Borough Council
Address: Town Hall
Market Street
Chorley
PR7 1DP

Summary

The complainant made a request for a copy of the neighbourhood consultation letter sent out in relation to a specific planning application. The Council stated that this information was not held and provided the complainant with a copy of the standard template letter sent out in relation to these applications. The complainant maintained that either the information was held, or that the Council had deliberately falsified the template letter provided to him. The Commissioner considered the complainant's request and the way in which this was handled by the Council. He concluded that no further recorded information was held by the Council relevant to the complainant's request and therefore that regulation 12(4)(a) of the EIR applied in this case. However, he also found that the Council breached regulation 14(3)(a) by not citing the specific exception it relied upon when explaining that no information was held.

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.

The Request

2. On 3 August 2009, the complainant requested the following information:

"A dated copy of the neighbourhood consultation letter sent out regarding planning application 08/00553/FUL"

3. The Council responded on 25 August 2009 and stated that the requested information was not held. However, the response explained that neighbourhood consultation letters contain standard text, and a copy of a standard letter was provided with the details of the relevant application populated from the Council's database of planning applications. The Council also informed the complainant that the original letters were issued on 12 June 2008.
4. On 25 August 2009, the complainant requested an internal review of the handling of his request for information.
5. The outcome of the Council's internal review was communicated to the complainant on 16 September 2009. The review concluded that the request had been handled correctly and no additional information relevant to the request was held.

The Investigation

Scope of the case

6. On 25 September 2009, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant stated that he had received copies of the neighbourhood consultation letter from the Local Government Ombudsman (Document A) and from the customer services manger at Chorley Borough Council (Document B). These two documents are identical, although sent from different sources. The complainant suggested that the original neighbourhood consultation letter must be held in order to allow the creation of these copies. He therefore requested that the Commissioner investigate the Council's assertion that it did not hold information relevant to his request. The complainant also alleged that the Council had deliberately falsified the document sent to him in response to his Freedom of Information Request (Document C).

Chronology

7. On 2 November 2009, the Commissioner contacted the Council and asked it to explain the discrepancies between documents A and B and document C. The Council was also asked to confirm whether the original letter was held.
8. The Council responded to these queries on 10 November 2009.
9. On 10 November 2009, the Commissioner requested further clarification about how documents A and B had been produced.
10. The Council responded on 26 November 2009 providing further information.
11. The Commissioner made further enquiries to the Council on 23 February 2010 and received a response on the same day.

Analysis

Substantive Procedural Matters

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 request as set out in paragraph 2 to be environmental information.
14. Regulations 14(3)(a) and (b) require a public authority to issue its refusal specifying on which exception it wishes to rely and, if necessary, how it has considered the public interest test within 20 working days of receipt of the request. Under the EIR, regulation 12(4)(a) provides an exception for cases where the requested information is not held at the time of the request. It is the Commissioner’s view that the Council should have advised the complainant that it does not hold the requested information and that it therefore wished to rely on exception 12(4)(a) of the EIR within 20 working days of the complainant’s request. As the Council failed to refer to the specific exception at 12(4)(a) when informing the complainant no information was held, the Commissioner finds that it breached regulation 14(3)(a).

Exception 12(4)(a)

15. As mentioned above, regulation 12(4)(a) provides a specific exception for cases where the public authority wishes to claim that the requested information is not held at the time the request is received. Although the Council failed to cite this exception when corresponding with the complainant, the Commissioner will go on to consider this case in this context and decide whether regulation 12(4)(a) of the EIR applied to this request
16. The complainant submitted that a copy of the original neighbourhood consultation letter must be held in order to allow the production of documents A and B, which are identical yet were provided by different bodies.
17. The Commissioner therefore asked the Council to explain how these documents had been produced. The Council explained that these letters were created by filling in a standard template with details relevant to each planning application.
18. Document A was created by populating a standard letter with the details of planning application 08/00553/FUL. This letter was sent to the LGO. However,

the Council did not inform the LGO that this was not a copy of any original letter sent out in relation to the application.

19. Document B was a photocopy of document A. Therefore the two documents were identical.
20. The Council has explained to the Commissioner that at the time of the complainant's request, its computer system ("Idox") did not store copies of neighbourhood consultation letters. Instead, it simply stored the text of the standard letter. The Commissioner understands that as a result of this complaint, the Council has amended its software to save images of each neighbourhood consultation letter sent out. However, this facility was not in place in 2008, when the planning application 08/00553/FUL was processed by the Council.
21. The Commissioner is therefore satisfied that at the time of the request, the Council did not hold copies of neighbourhood consultation letters. Based on the submissions received from the Council, he is satisfied that on the balance of probabilities no further recorded information exists relevant to the complainant's request and regulation 12(4)(a) of the EIR applies in this case.
22. The complainant's original complaint also alleges that the Council had deliberately falsified document C. He notes that the details of the planning application contained in this letter differ from documents A and B.
23. The Council has explained that whilst documents A and B were amended to show the name of the company who made the planning application, document C was automatically populated with the details of the applicant held on the Idox system. This meant that the applicant field was filled with the name of the individual contact at the company who submitted the application. There were therefore differences between documents A and B, which were manually amended, and document C, which was automatically populated. The Council has provided the Commissioner with details and images of its computer database which support this explanation.
24. The Commissioner notes that the Council clearly explained that this document was not a copy of any original letter. It states that the requested information is not held and confirms that the letter provided is merely to illustrate what form neighbourhood consultation letters take.

Public Interest Test

25. Regulation 12(4)(a) is subject to the public interest test. However it will not usually be possible for the Commissioner to consider the public interest test in respect of information which is not held, as in this case and therefore he has not commented on it further in this Notice

The Decision

26. The Commissioner's found that the Council breached regulation 14(3)(a) by not informing the complainant of the specific exception on which it relied when concluding no information was held.
27. Although the Council failed to cite regulation 12(4)(a) of the EIR when responding to the complainant's request, the Commissioner is satisfied that this exception applies to the circumstances of this case. As explained above, he is satisfied that on the balance of probabilities the Council does not hold any further recorded information relevant to the complainant's information request.

Steps Required

28. The Commissioner requires no steps to be taken.

Right of Appeal

29. Either party has the right to appeal against this Decision Notice to the First-Tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

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 18th day of March 2010

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Regulation 12(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 course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

Regulation 14(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).