

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

### **Decision Notice**

**Date: 24 June 2010**

**Public Authority:** Isle of Anglesey County Council  
**Address:** Council Offices  
Llangefni  
LL77 7TW

### **Summary**

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The complainant made a request to the Isle of Anglesey County Council to view, free of charge, information relating to a property on Anglesey. The Council agreed to provide the information requested but only on provision of a fee based on the relevant property search regulations. The Commissioner has investigated the case and has determined that the request was to inspect environmental information. The Commissioner has therefore determined that the Council should have allowed the complainant to inspect the information free of charge. Its attempt to levy a charge for the inspection of this information therefore represents a breach of regulation 8(2)(b) of the EIR.

### **The Commissioner's Role**

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1. The Environmental Information Regulations ('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 (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

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2. Section 3 of the Local Land Charges Act 1975 places a statutory obligation all local authorities within England and Wales to generate, maintain and update a Local Land Charges Register and to allow the general public to search for information contained in that register.
3. When a property or piece of land is purchased or leased, a request for a search of the Local Land Charges Register is sent to the relevant local authority. In order to obtain information from a local authority, an application for an official search must be submitted on form LLC1. This is usually accompanied by form Con29R. The Con29R form is comprised of two parts. Part 1 contains a list of standard enquiries about a property. Optional enquiries are contained within Part 2.
4. The Local Authorities (Wales) (Charges for Property Searches) Regulations 2008 ('CPSR') provide a framework within which local authorities can 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 in this case was part of the property searches being conducted by the complainant.
5. The Council's charging regime was in line with the provisions of the CPSR which included a statutory fee of £11 to inspect the Local Land Charges Register. This is applied whether the information on this register is considered to be environmental or not.

## The Request

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6. Between April and October 2009 correspondence was exchanged between the complainant and the Isle of Anglesey County Council ('the Council') in relation to general issues and concerns regarding charges the Council levied for the provision of information relating to property searches. The complainant referred the Council to guidance which the Commissioner had issued in relation to this matter<sup>1</sup>.
7. On 1 October 2009, the complainant made a request to the Council for the following information in relation to a specific named property:

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<sup>1</sup>

[http://www.ico.gov.uk/upload/documents/library/environmental\\_info\\_reg/practical\\_application/fep116\\_property\\_searches\\_and\\_eir\\_v1.pdf](http://www.ico.gov.uk/upload/documents/library/environmental_info_reg/practical_application/fep116_property_searches_and_eir_v1.pdf)

*"...an appointment to view the land charges register free of charge to collate information on the above property.*

*I would also at the same time like to view all the free records holding the information required to answer questions on the Con29R and the records required to answer questions; 1.1 (f)–(h), 3.4, 3.6 and 3.9 (a)–(n)".*

8. The Council responded on 12 October 2009 advising that it was:

*"...unable to make an appointment...to view the land charges register free of charge."*

9. On 13 October 2009 the complainant wrote to the Council to complain about its refusal to allow free inspection of the information requested and that it would not make a designated place available for the inspection of environmental information.

10. On 3 November 2009 the Council wrote to the complainant directing him to its enclosed letter dated 29 April 2009 which provided details of the service it provides to Personal Search Companies. The enclosed letter had informed him that, as of 5 May 2009, the Local Land Charges Unit would be offering a one stop shop for Con29R enquiries at a price of £50. The letter also gave details of its standard Local Authority Search fees.

11. The Council's internal review of its decision in this matter also informed the complainant that:

*"If you require to make a Personal Search in this department, please telephone to make the necessary appointment, for which the usual fee of £11 is payable. As you are aware, we can also arrange appointments for you to visit the Highways and Planning Departments at the same time...However if you wish to obtain information from the Housing, Environment, or Building Control Departments you should arrange to contact the Officers as shown in the letter of 29<sup>th</sup> April.*

*I am unable to make an appointment to inspect all the environmental information as this is not held in one register and the Departments have their own arrangements in place for storage of such information."*

## The Investigation

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### Scope of the case

12. On 3 November 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant stated that he believed the information requested was environmental, and he should be entitled to inspect it free of charge.
13. The complainant has specifically requested free access to inspect the land charges register and all records relating to questions 1.1 (f)–(h), 3.4 3.6 and 3.9 (a)–(n) of the Con29R form.
14. The relevant questions on the CON29R form are detailed below:

#### 1.1 Planning and Building Decisions and Pending Applications

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

- (a) a planning permission
- (b) a listed building consent
- (c) a conservation area consent
- (d) a certificate of lawfulness of existing use or development
- (e) a certificate of lawfulness of proposed use or development
- (f) building regulation approvals
- (g) a building regulation 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

### 3.9 Notices, Orders, Directions, and Proceedings under Planning Acts

Do any of the following subsist in relation to the property, or has a local authority decided to issue, serve, make or commence any of the following: -

- (a) an enforceable notice.
- (b) a stop notice.
- (c) a listed building enforcement notice.
- (d) a breach of condition notice.
- (e) a planning contravention notice.
- (f) another notice relating to breach of planning control.

- (g) a listed building repairs notice.
  - (h) in the case of a listed building deliberately allowed to fall into disrepair, a compulsory purchase order with a direction for minimum compensation.
  - (i) a building preservation notice.
  - (j) a direction restricting permitted development.
  - (k) an order revoking or modifying planning permission.
  - (l) an order requiring discontinuance of use or alteration or removal of building or works.
  - (m) a tree preservation order.
  - (n) proceedings to enforce a planning agreement or planning contribution.
15. The Commissioner's investigation has focused on determining if the information requested from the LLCR and the Con29R as outlined in paragraph 14 is environmental information falling within the scope of the EIR and if so whether that information should be made available for inspection free of charge.

## **Chronology**

16. The Commissioner wrote to the complainant and the Council on 17 November 2009 confirming that the complaint had been deemed eligible for formal consideration.
17. On 30 March 2010 the Commissioner contacted the complainant who confirmed that since the Council had refused to allow him to inspect the information free of charge under the EIR, he had obtained it via the Con29R route. He further confirmed that the Council charged a fee of £50.00 for the provision of the information requested.
18. The Commissioner also contacted the Council on the same date for further information in respect of this complaint and the Council provided a substantive response on 27 April 2010.
19. The Council confirmed that:
- "Since [name of complainant] had referred to his intention to visit the Council's premises in person it was not necessary to explore the issue of providing the information by means of a letter...It was made clear ...on previous occasions that the Council was willing to facilitate access to the environmental information at the point of use and delivery."*
20. The Commissioner also contacted the Council on 27 May 2010 to ask the Council whether it considered all of the information on the LLCR to be environmental information.

21. On 16 June 2010 the Council confirmed that there is no information for the property subject to this complaint on the LLCR.

## Analysis

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### Substantive Procedural Matters

22. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR. Full details of the relevant legislation applicable to this case are reproduced in the attached legal annex.
23. 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".
24. The questions on the CON29R form, as detailed in paragraph 14 above relate to information on planning and building regulations, road and traffic schemes, and notices, orders, directions and proceedings under planning acts. The Commissioner considers that in order to obtain the answers to these questions it is necessary to inspect environmental information. The information which is inspected would comprise of a measure or plan on an activity (i.e. road scheme, planning application or building plan) affecting or likely to affect one or some of the elements referred to in regulation 2(1)(a).
25. The Commissioner has also considered whether the Council was correct to levy a fee for the information on the LLCR. The Council has argued that the £11 fee is a statutory requirement as set out under the Local Land Charges Act 1975 and the Local Land Charges Rules 1977.
26. The Commissioner generally considers that the information contained in the LLCR is environmental. However, he accepts that there may be information relating to some properties which may be of a financial or administrative nature. The Commissioner is therefore concerned with the information specific to the property in question.
27. The Council has confirmed that the LLCR does not hold any information in respect of the property subject to this complaint. It has explained there is nothing relevant for the property in terms of planning

permission. The Commissioner cannot therefore assess information which does not exist. He does however take the view that in cases where the information on the LLCR is wholly environmental, that a public authority cannot charge a fee for inspection of the information.

### **Regulations 5, 6 and 8**

28. The complainant made a request to inspect information on the LLCR to collate information on a named property. He also asked to view the records required to answer questions 1.1(f)-(h), 3.4, 3.6, and 3.9(a)-(n) on the Con29R. 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 indicated in paragraph 24 above.
29. Regulation 5(1) provides that public authorities shall make environmental information available on 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 however regulation 8 also specifies two situations where the information must be made available free of charge. The relevant qualifications are contained in regulation 8(2).
  - Regulation 8(2)(a) states that a public authority shall not make any charge for allowing an applicant to access any public registers of lists of environmental information, and
  - Regulation 8(2)(b) states that a public authority shall not make any charge for allowing an applicant to examine the information requested at a place which the authority makes available.
30. The Council has accepted that the information which does exist is environmental. The Council was also prepared to allow the complainant to inspect the information at the point of delivery, therefore was not refusing to allow the complainant access to the information in the form and format of his specified choice. A detailed discussion of whether regulation 6 does provide a right to request to inspect information is not therefore necessary. However, it attempted to impose a fee to inspect the information on the basis that it constituted a 'reasonable charge' to access public registers or lists of environmental information under the Statutory Fee Regulations.
31. It has further argued that there is a distinction between access to environmental information under the EIR and the Con29R system. It



has added that it is prepared to facilitate access to the raw data through onsite inspection however this might not necessarily be in one location or at the same time or date.

32. The Commissioner is of the opinion that the EIR provides the right to request to inspect, free of charge, environmental information held by a public authority and that the complainant is entitled to inspect the requested information free of charge.

### **Regulation 8(2)(b) - charging**

33. In its attempt to levy a charge for allowing the applicant to inspect the requested information, the public authority has breached regulation 8(2)(b) of the EIR.

### **The Decision**

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34. The Commissioner's decision is that the Council did not deal with the request for information in accordance with the EIR. The Council breached the requirements of regulation 8(2)(b) of the EIR by not allowing the complainant to examine the requested information free of charge.

### **Steps Required**

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35. The Commissioner notes that the complainant has received the information he requested, for which he paid a fee. The Commissioner does not therefore need to order the same information be made available again.
36. The Commissioner does not have the power to order a refund in this case and it is up to the complainant to take any further steps to recover any fees which he has paid. However, in view of his decision in this case the Commissioner recommends the Council considers refunding any fees paid or at least the difference between the amount actually paid and what would be considered reasonable in accordance with the Markinson decision. (David Markinson v Information Commissioner (EA/2005/0014:28 March 2006)).

## Right of Appeal

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37. 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](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 sent.

**Dated the 24<sup>th</sup> day of June 2010**

**Signed .....**

**Gerrard Tracey  
Principal Policy Adviser**

**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 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 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.