

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

Decision Notice

Date: 26 July 2010

Public Authority: City of Bradford Metropolitan District Council
Address: City Hall
Centenary Square
Bradford
BD1 1HY

Summary

The complainant submitted a request to the City of Bradford Metropolitan District Council ('the Council') for information from environmental records held on a property in Thackley, Bradford. The complainant specified that he wished to view the records in person. The Council stated that the requested information could only be accessed on the provision of a fee based on the property search regulations. The Commissioner's decision is that the Council breached regulation 5(1) as it failed to make information available on request and regulation 5(2) as it failed to make the requested information available within the statutory time for compliance. The Commissioner also found that the Council breached regulation 6(1) by failing to comply with the complainant's request to make the information in a particular format. The Commissioner requires the Council to make the requested information available for the complainant to inspect within 35 days of this notice.

The Commissioner's Role

1. 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.

Background

2. Section 3 of the Local Land Charges Act 1975 (LLCA) compels all local authorities to generate, maintain and update a Local Land Charges Register. Under the LLCA applicants can obtain an 'Official Search' of the register by submitting form LLC1 to the relevant Local Authority. This is usually accompanied by form CON29R.
3. The CON29R form is comprised of two parts. Part 1 contains a list of standard enquiries about a property. Optional enquiries are contained in Part 2.
4. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority.
5. The complainant represents a company which provides information about property and land issues.

The Request

6. On 21 December 2009 the complainant requested:

"all information required to complete a HIP compliant CON29R... Specifically I would like access to the information held which will allow me to answer the following questions on the Con29r:

1.1 (a) to (h), 1.2, 2(a) to (d), 3.1, 3.2, 3.3, 3.4(a) to (f) 3.5, 3.6(a) to (l), 3.7(a) to (f), 3.8, 3.9(a) to (n), 3.10(a) and (b), 3.11, 3.12(a), (b) (i) and (ii) and (c), 3.13"¹

The complainant specified that he wished to inspect this information in relation to a specific named property.

7. The Council responded to the complainant on the same day. The Council referred to a previous letter sent to the complainant by its Assistant Director Corporate Services, dated 2 September 2009. The Council informed the complainant that it maintained the position set out in this letter. The letter of 2 September 2009 stated that the Council was aware that the Local Government Association (LGA) and the Local Land Charges Institute (LLCI) were seeking an opinion about access to property search information on behalf of all local authorities.

¹ Annex A details the nature of the information relevant to each CON29R enquiry.

Pending receipt of this opinion, the Council did not intend to change its current procedures for accessing this type of information. The Commissioner understands from the [Council's website](#) that the current procedure is that applicants are charged a fee to receive answers to various CON29R questions. Information relevant to some of these questions is available for free. A total fee of £83.50 is charged for an answer to all enquiries on the CON29R form.

8. On 21 December 2009, the complainant requested an internal review of this decision. The Council acknowledged this request on 22 December 2009.
9. On 5 January 2010, the Council communicated the outcome of its internal review to the complainant. The Council confirmed that it maintained the position it had set out in its initial response.
10. After the intervention of the Commissioner, the Council wrote again to the complainant on 3 June 2010 reconsidering his request under the Environmental Information Regulations ('EIR'). The Council stated that it felt that it was reasonable to provide information in another format to the format requested by the complainant (inspection), and to make a charge for this information. The Council also stated that as it was aware that the complainant intended to re-use the information in compiling a Home Information Pack ('HIP'), it had applied the exception at regulation 12(5)(c) to the requested information. This exception applies where disclosure would adversely affect intellectual property rights. The Council's public interest test favoured maintaining the exception.

The Investigation

Scope of the case

11. On 13 January 2010, the complainant contacted the Commissioner to complain about the Council's compliance with the provisions of the EIR. The Council has confirmed that it will permit the complainant to inspect information relevant to questions 1.1(a)-(e), 1.2, 2(a), 3.1, 3.9(a)-(n), 3.10, 3.12(a) and 3.12(b)(ii) of the CON29R form free of charge. The Council has also confirmed that it does not hold any information relevant to question 3.3. The complainant accepts that this is the case. Information relevant to these questions has therefore been excluded from the scope of the investigation. During the course of the investigation, the Council also decided that it did not wish to continue to rely on regulation 12(5)(c) (intellectual property), and so the application of this exception has not been considered.

Chronology

12. On 11 May 2010, the Commissioner contacted the Council and explained the requirements of the EIR. He asked that the Council reconsider its response to the complainant's request under the EIR. The Council was advised that it should either disclose the information or explain why it was being withheld. The Commissioner also drew the Council's attention to the decision notice [FER0236058](#), and the subsequent Information Tribunal decision, [East Riding of Yorkshire Council v Information Commissioner \(EA/2009/0069\)](#), which had dealt with a similar request for access to building control information.
13. On 3 June 2010, the Council wrote to the complainant and stated that it felt it was reasonable to provide the requested information in a format other than inspection under regulation 6(1)(a). It also confirmed that it had applied the exception at regulation 12(5)(c) (intellectual property) to the requested information. The Council sent a copy of this letter to the Commissioner.
14. On 12 May 2010, the Commissioner wrote to the Council and asked that it provide more detailed arguments to support its reliance on regulation 6(1)(a), and the exception at regulation 12(5)(c). He also invited any further representations or comments that the Council wished to make in support of its position.
15. On 6 July 2010, the Council wrote to the Commissioner to provide a submission to support its reliance on regulation 6(1)(a). The Council also confirmed that whilst it maintained the requested information constituted its intellectual property, it had reconsidered its public interest test in relation to regulation 12(5)(c). In light of this, it had decided not to rely on this exception.

Analysis

Substantive Procedural Matters

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

Regulation 2

16. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.

17. 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 information requested by the complainant to be environmental information. The Council also agrees that the requested information is environmental.

Procedural Requirements

Regulation 5

18. Regulation 5(1) provides that environmental information shall be made available upon request. Regulation 5(2) provides that this information should be made available within 20 working days following receipt of the request. The complainant's original request for information was made on 21 December 2009. As yet, the Council has not provided the complainant with the requested information, although it has offered to do so upon provision of a fee. The Commissioner therefore concludes that the Council has breached regulation 5(1) by failing to make information available on request and regulation 5(2) by failing to make the requested information available within 20 working days following receipt of the request.

Regulation 6

19. Regulation 6(1) provides an applicant with the right to request that information be made available in a particular form or format. It is the Commissioner's view that although regulation 6(1) may appear primarily to be concerned with the form or format information is provided in, it should be interpreted broadly and does provide a right to request the inspection of environmental information. A public authority should comply with this preference unless it is reasonable to make the information available in another format, or the information is already publicly available in another format.
20. The Council relies upon regulation 6(1)(a) in refusing to allow the complainant to inspect the requested information. Regulation 6(1)(a) provides an exception from a public authority's duty to comply with an applicant's preferred form or format when "it is reasonable for it to make the information available in another form or format". The Council has submitted several arguments to support this view. The Commissioner has considered these below. In assessing the Council's

submission, the Commissioner has considered the findings of the Information Tribunal in [East Riding of Yorkshire Council v Information Commissioner](#) ('the Tribunal decision'). In this case, the Tribunal did not accept that the arguments put forward by East Riding demonstrated that it was reasonable to provide information in another format as set out in regulation 6(1)(a). However, the Tribunal decision emphasised that this did not mean another public authority could not demonstrate that it was reasonable in the circumstances to rely on 6(1)(a) (para. 40).

21. The Council has based some of its arguments on the presumption that it will have to deal with a large volume of requests similar to the complainant's. In its letter to the complainant of 3 June 2010, it states that "we need to consider not just the resource implications of your own request, or even all requests from you, but also the implications of allowing all those who use the official search service to come into our offices to inspect this information". In its letter to the Commissioner of 6 July 2010, it states that in the financial year 2009/10 it received the following numbers of requests:

- Information relating to question 3.7: 1582
- Information relating to question 3.12: 1380
- Information relating to questions 1.1(f)-(h): 2231
- Information relating to question 3.8: 909
- Information held by the Highways department: 2000

Based on the volume of these requests, the Council anticipates that it will take 12.5 additional hours of staff time per week to comply with requests for personal inspection of information, including time spent on removal of personal data, use of staff computers and supervision of applicants.

22. The Commissioner does not accept that it is appropriate to consider the impact of dealing with a large volume of requests in assessing whether it is reasonable to comply with the complainant's request to inspect the requested information. Instead, the Council should consider whether it is reasonable to comply with regulation 6(1) in respect of the specific request submitted by the complainant. The Commissioner has therefore dismissed this section of the Council's arguments.
23. In its letter of 3 June 2010, the Council argues that it is reasonable to provide information in a format other than inspection because if it were to allow personal inspection of the information requested by the complainant, it would cause "excessive disruption to the day-to-day activities of the various services which hold it". The Council also argue that allowing the complainant to inspect the requested information

would compromise its ability to safeguard personal data and prevent unauthorised disclosures in line with the Data Protection Act.

24. The Council's Housing and Environmental Health department deals with CON29R enquiries 3.7 and 3.12. Information is held electronically on the Council's APP system, and in hard copy within several different filing systems. An individual accessing the computer system could potentially view personal data relating to complaints to the Council, commercially sensitive information, and information about the investigation of alleged offences and prosecutions. If manual records are inspected, the Council states that it would take up to 15 minutes per request for it to locate the information and remove any personal data included within it. In addition, an applicant would have to inspect information in the department's staff offices as there are no reception facilities available. The Council argues that this would cause disruption and jeopardise the department's efficiency.
25. The Council's Highways department hold some information relevant to the complainant's request. This information is held electronically on a mapping system. The Council states that this software could not easily be accessed by the public and again argues that due to the lack of a reception area, an applicant would have to access its staff offices to inspect the information, causing disruption to its services.
26. The Council's Building Control department deals with requests relating to planning and building regulations. Some of this information can be inspected for free, but access to information relevant to queries 1.1(f)-(h) and 3.8 is not permitted. This information is held in electronic format on the Council's UNIFORM system. The Council is concerned that personal inspection of this information could lead to unauthorised disclosure of third party personal data.
27. The Commissioner does not accept that the Council has provided sufficient arguments to demonstrate that it would be reasonable to provide the information in a format other than inspection. The Commissioner does not accept that it would be unreasonable to expect the Council to redact any personal data before providing it to the complainant. Where records are held electronically, this may involve printing it and redacting relevant data before providing it to the complainant for inspection. The Commissioner notes that the Council has stated that it would be possible to comply with requests of this nature, but involve additional staff time and disruption to services. The Council estimates that to allow inspection of the number of requests received over the financial year 2009/10 would require an additional 12.5 hours of staff time per week. This figure is based on volumes of requests which range from 909 – 2000 for various enquiries. Based on this calculation, the Commissioner does not accept that the work

involved in complying with the complainant's specific request makes it reasonable to provide information in a form other than inspection. Consequently, the Commissioner considers that the Council cannot rely upon regulation 6(1)(a).

28. The Council has not complied with its duty to provide information in the form or format requested by the complainant. The Commissioner does not accept that regulation 6(1)(a) applies to the requested information. Therefore, by failing to comply with the complainant's preferred form or format for receiving the information, the Council has breached regulation 6(1).

Regulation 8

29. Regulation 8 provides a general right for public authorities to charge for making information available. However, that right is subject to a number of conditions. The relevant conditions in this case are set out in regulation 8(2).
30. Regulation 8(2)(a) states that a public authority shall not make any charge for allowing an applicant to access any public registers or 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.
31. As the Commissioner has found that the applicant should have been provided with information in his preferred format, specifically inspection, he has gone on to consider whether the Council is able to charge for allowing that inspection in order to determine what steps the public authority is required to take.
32. The Commissioner notes that the Council intends to impose a charge for providing the requested information. Although the Council does not specifically refer to this, the [Local Authorities \(England\) \(Charges for Property Searches\) Regulations 2008](#) ('CPSR') set out fees that can be charged for the provision of answers to the CON29R form.
33. The Commissioner's position is that regulation 5(6) specifically disapplies the charging provisions under the CPSR. This regulation provides that "any enactment or rule of law that would prevent the disclosure of information in accordance with these regulations shall not apply".
34. Consequently, the Commissioner considers that if the property records comprise environmental information as defined by regulation 2 of the EIR, the CPSR cannot be used as the basis for charging and the Council

must adopt the charging provisions of the EIR. The Council has not disputed that this property information is environmental. Therefore, regardless of the charging provisions of the CPSR, the information should be considered for disclosure under the EIR. For the reasons set out above, the Commissioner considers that the EIR entitle the complainant to request to inspect the requested information free of charge, and the CPSR cannot apply. This position also acknowledges the primacy of EU legislation whereby European law, such as the EIR, takes precedence over domestic law.

35. Regulation 8(2)(b) provides that a public authority is not entitled to charge a fee for allowing inspection of information. The Commissioner concludes that the complainant has a right to request to inspect the information he has requested access to. Therefore, the Commissioner is of the opinion that the complainant is entitled to inspect the information free of charge. However it is noted that as the Council did not comply with the complainant's request to inspect the information, it has not breached regulation 8(2)(b) by attempting to impose a charge to allow the information to be inspected.

The Decision

36. The Commissioner's decision is that the City of Bradford Metropolitan District Council did not deal with the request for information in accordance with the EIR. The Council has breached the requirements of regulation 5(1) as it failed to make information available on request and regulation 5(2) of the EIR as it failed to make the requested information available within the statutory time for compliance. The Council has also breached regulation 6(1) as it failed to comply with the complainant's request to make the information available in a particular format.

Steps Required

37. The Commissioner requires that the Council make the remainder of the requested information available for the complainant to inspect free of charge.
38. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Right of Appeal

39. 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 sent.

Dated the 26th day of July 2010

Signed

**Gerrard Tracey
Principal Policy Advisor**

**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 –

- (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;

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 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 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.

Annex A - CON29R Enquiries

- 1.1** Which of the following relating to the property have been granted, 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 for existing use or development
 - e) a certificate of lawfulness for proposed use or development
 - f) building regulations approval
 - g) a building regulations completion certificate
 - h) any building regulations certificate or notice issued in respect of work carried out under a competent person self-certification scheme
- 1.2** What designations of land use for the property or the area, and what specific proposals for the property are contained in any existing or proposed development plan?
- 2.** Which of the roads, footways and footpaths named in the application for this search are:
- a) highways maintainable at public expense
 - b) subject to adoption and supported by a bond or bond waiver
 - c) to be made up by a local authority who will reclaim the cost from the frontagers
 - d) to be adopted by a local authority without reclaiming the cost from the frontagers
- 3.1** Is the property included in land required for public purposes?
- 3.2** Is the property to be acquired for road works?
- 3.3** Do either of the following exist in relation to the property:
- a) An agreement to drain buildings in combination into an existing sewer by means of a private sewer, or
 - b) An agreement or consent for (i) a building or (ii) extension to a building on the property to be built over or in the vicinity of a drain, sewer or disposal main?
- 3.4** 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 any 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 works for a proposed alteration or improvement to an existing road involving (i) construction of a roundabout (other than a mini roundabout) or (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, footbridge, 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 published 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 or (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.

3.5 Is the property (or will it be) within 200 metres of the centre line of a proposed railway, tramway, light railway or monorail?

3.6 Has a local authority approved but not yet implemented any of the following for the roads, footways 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 restrictions
- g) traffic calming works including road humps
- h) residents parking contracts
- i) minor road widening or improvement
- j) pedestrian crossings
- k) cycle tracks
- l) bridge building

3.7 Do any statutory notices which relate to the following matters subsist in relation to the property other than those revealed in a response to any other enquiry in this Schedule:

- a) building works

- b) environment
- c) health and safety
- d) housing
- e) highways
- f) public health

3.8 Has a local authority authorised in relation to the property any proceedings for the contravention of any provision contained in Building Regulations?

3.9 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 enforcement 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 buildings repairs notice
- h) in the case of 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) proceeding to enforce a planning agreement or planning contribution

3.10 Do the following apply in relation to the property:

- a) the making of the area Conservation Area before 31 August 2974
- b) an unimplemented resolution to designate the area a Conservation Area

3.11 Has any enforceable order or decision been made to compulsorily purchase or acquire the property

3.12 Do any of the following apply (including any relating to land adjacent to or adjoining the property which has been identified as contaminated land because it is such a condition that harm or pollution of controlled waters might be caused on the property):

- a) a contaminated land notice

- b) in relation to a register maintained under section 78R of the Environmental Protection Act 1990:
 - (i) a decision to make an entry
 - (ii) an entry
- c) consultation with the owner or occupier of the property conducted under section 78G of the Environmental Protection Act 1990 before the service of a remediation notice?

3.13 Do records indicate that the property is a 'Radon Affected Area' as identified by the Health Protection Agency?