

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

Decision Notice

Date: 23 November 2010

Public Authority: Northumberland County Council
Address: County Hall
Morpeth
Northumberland
NE61 2EF

Summary

The complainant submitted a request to Northumberland County Council ('the Council') for information from environmental records held on a property in Northumberland. The complainant specified that he wished to view the records in person. The Council agreed to provide the information requested but only on the provision of a set fee. The Commissioner's decision is that the Council failed to comply with regulation 5(1) as it failed to make information available on request, and 5(2) as it failed to make information available within the statutory time for compliance. The Council also breached regulation 6(1) by failing to comply with the complainant's request to make the information available in a particular format, and regulation 6(2)(c) by failing to inform the complainant of the enforcement and appeal provisions of the Act when refusing to provide information in the requested format. In addition, the Council breached regulation 14(3)(a) by failing to cite the specific exception it relied upon in withholding information. It also breached regulation 14(5)(a) by failing to make the complainant aware of his right to seek an internal review, and regulation 14(5)(b) by failing to make the complainant aware of the provisions for appeal and enforcement under the Act. 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 compels all local authorities to generate, maintain and update a Local Land Charges Register and to provide local searches. In order to obtain information from a local search, an application for an Official Search must be submitted to the relevant Local Authority on form LLC1. 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 29 April 2010 the complainant telephoned the Council to request access, free of charge, to the land charges register and to information necessary to complete forms LLC1 and CON29R.¹

The complainant requested this information in relation to a specific named property, and specified that he wished to inspect these records in person.

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

7. The Council responded to this request on 1 June 2010 and stated that the complainant could examine 'free to view' information at the Council's premises. However, the remainder of the information could only be accessed by submitting a request for a 'Council compiled component data report' along with the associated fee.
8. On 4 June 2010, the complainant submitted a request for an internal review of this decision to the Council.
9. On 14 June 2010, the Council wrote to the complainant and reiterated its original response. The Council explained that the charge levied was calculated in accordance with the [Local Authorities \(England\) \(Charges for Property Searches\) Regulations 2008](#) ('the CPSR')

The Investigation

Scope of the case

10. On 16 June 2010, the complainant contacted the Commissioner to complain about the Council's decision to refuse access to the requested information.
11. On 4 October 2010, the Council confirmed that access to the Local Land Charges Register, and questions 1.1(a)-(e), 1.2, 3.4(a), 3.4(e)-(f), 3.5, 3.9(m), 3.10(a), 3.12, and 3.13 was available free of charge upon making an appointment. Information relevant to question 2(a) was available free of charge on its website. The Council also confirmed that it did not consider that information relevant to questions 1.1(d)-(e) of the CON29R form was environmental. However, this information is publicly accessible in any event and so the Council will make it available to the complainant. The Commissioner has therefore excluded these parts of the request from the scope of the Decision Notice.
12. The Council also confirmed that the information relevant to questions 3.3(a) and (b) was not held.
13. The Council contends that it is reasonable for it to make the remainder of the requested information available in a format other than inspection. It therefore proposes to make information available as a collated document, and impose a charge for this.

Chronology

14. On 30 June 2010, the Commissioner wrote to the Council and asked that it reconsider its response to the complainant's request under the Environmental Information Regulations. 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. The Commissioner asked that any submission that the Council would like to provide in support of its position was sent by 28 July 2010.
15. The Council acknowledged this email on 1 July 2010, and provided a response on 26 July 2010. This stated that the Local Land Charges Rules 1977 (as amended) provided that a charge could be levied for allowing a personal search of the Local Land Charges Register. The Council suggested that the complaint concerned "a transposition argument which requires resolution by central government". The Council explained that it was not clear from the Commissioner's email whether the complaint concerned access to the Local Land Charges Register only, or information relevant to the CON29R form.
16. On 28 July 2010, the Commissioner wrote to the Council to explain that the complaint concerned both access to the Local Land Charges Register and information relevant to form CON29R. The Commissioner also stated that he considered that the requested information was environmental in nature and therefore should be considered under the provisions of the EIR. He asked that the Council provide a submission in support of its position as set out in his email of 28 July 2010.
17. On 30 July 2010, the Commissioner wrote to the Council to draw its attention to the provisions of the new [Local Land Charges \(Amendment\) Rules 2010](#).
18. On 4 October 2010, the Council provided a detailed submission in support of its position to the Commissioner.

Analysis

Substantive Procedural Matters

Regulation 2

19. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
20. 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 High Court decision

21. In its letter of 26 July 2010, the Council refers to the High Court decision in the case of [Onesearch Ltd v City of York Council \[2010\] EWHC 590](#). The property search company involved in this case sought a judicial review of a policy of the City of York Council. This policy states that the Council is not obliged to allow open access to all of its unrefined property information.
22. The High Court decision found that whilst the [Local Government Act 1972](#) permits public authorities to allow access to their property search records, it does not compel them to do so. Additionally, the court found that the CPSR do not create any obligation to allow searches of property information. Therefore, the High Court found that York City Council’s policy of refusing to provide access to some property search information was lawful.
23. The Commissioner accepts that if a decision of the High Court addressed the same issues as a decision of the First Tier Tribunal, the High Court decision would take precedence. However, the High Court decision in the case of *Onesearch v York City Council* did not address or make any comment on access to the information requested under the provisions of the EIR, and is therefore irrelevant to this complaint.

Regulation 5

24. 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.
25. The complainant's original request for information was made on 29 April 2010. With the exception of information relevant to CON29R queries 3.3(a)-(b) (which is not held), the Commissioner concludes that the Council has breached regulations 5(1) by failing to make the information available on request, and regulation 5(2) by failing to make information available within 20 working days following receipt of the request.

Regulation 6

Regulation 6(1)

26. 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 under regulation 6(1)(a), or the information is already publicly available in another format, under regulation 6(1)(b).
27. The Council states that whilst it does not permit applicants to inspect information relevant to CON29R enquiries 1.1(a)-(e), 1.2, 3.4(a), 3.4(e)-(f), 3.5, 3.9(m), 3.10(a), 3.12, and 3.13, it will provide the answers to these queries free of charge. The complainant has confirmed that he considers that satisfies his request.
28. The Council states that information relevant to CON29R queries 1.1(f)-(h), 2(a)-(d), 3.1, 3.2, 3.4(b)-(d), 3.6(a)-(l), 3.7(a)-(f), 3.8, 3.9(a)-(l), 3.9(n), 3.10(b) and 3.11 is not available for inspection. As an alternative, it proposes to collate this information and provide it to the complainant at a charge. This information is held by the Council's planning, building control, environmental health and highways teams. The Council has provided arguments about why it feels that it is reasonable to make information available in a format other than the complainant's preferred format of inspection. These are detailed below.

The Council's arguments in favour of regulation 6(1)(a)

Security and accessibility of electronic records

29. The Council states that information held by its planning, building control and environmental health teams is held on a software application called 'MVM'. The pathway used to extract the data required to answer CON29R questions involves logging into a "Details Screen". This screen can contain personal data relating to applications or notices, such as telephone numbers, email addresses, and details of complainants. A user could navigate to other records held on other properties, which might also contain personal data. The Council argues that if it allows an individual to access these records, it places itself open to committing breaches of the Data Protection Act.
30. The MVM system has two levels of access, 'User' and 'Administrator'. Both allow data to be entered or edited. The Council has explored whether it would be possible to modify this system to allow 'read-only' access. This is not possible for information held by the environmental health team, but might be possible for planning and building control records. The planning and building control departments are currently procuring a new IT system to handle its records and the Council contends that it would represent a disproportionate investment to modify the existing system which is likely to be phased out shortly.
31. The Council states that a "detailed knowledge of the systems and their interaction" is required to interrogate the records held. A search of environmental health and building control records can take trained officers up to 20 minutes, and a search of planning information up to an hour.
32. The Council's Highways information is not held in a central system but in a variety of different databases and personal officer files. These are interrogated to provide answers to official CON29R searches. It is impossible to convert these systems to allow read-only access and the data is susceptible to corruption if it were to be accessed by members of the public.
33. The Council anticipates that members of the public without the same experience or knowledge of the Council's computer systems would take at least double the amount of time to complete searches. The Council argues that this would create an unreasonable burden on staffing levels as applicants would need to be accompanied at all times.

Infrastructure and staffing concerns

34. The planning, building control and environmental health teams occupy buildings which were not designed for general public admittance. Access is by key fobs held by staff members only and there are no reception facilities. Security concerns dictate that all visitors are accompanied whilst they are in the building. Therefore, it would be difficult to accommodate the complainant in this building to allow him to inspect information. The relevant departments are likely to move to new premises shortly and therefore the Council argues that it is unreasonable to invest in making the existing buildings accessible to members of the public who wish to inspect information.
35. The relevant teams only have two or three members of staff and so the Council argues that there is no capacity to assist members of the public who wish to inspect information.

Currency of electronic records

36. The Council states that there can be a delay of several days between the service of notices and the information being recorded on its database. Staff often need to confirm answers to Official Searches with colleagues in another team. This can sometimes take several days as these members of staff might be on site visits.

The Commissioner's analysis of the Council's arguments

37. The Commissioner notes that the complainant's request is for all relevant information. It does not specify that the complainant wishes to inspect a specific database only. The Commissioner considers that the fact that all of the relevant information is not held in a database is not sufficient evidence that it is reasonable to provide information in another format. The Commissioner also notes that regulation 5(2) of the EIR provides that a request should be responded to as soon as possible, and in any case within 20 working days. Therefore, he does not consider that the Council is not able to collate the requested information for inspection within the statutory time for compliance.
38. Whilst the Commissioner accepts that it may be impractical for the Council to allow the complainant to access its back office computer systems, he does not accept that the Council has provided sufficient argument to demonstrate that it would be reasonable to provide the information in a format other than inspection. The request does not specify that the complainant wishes to inspect the information on specific computer systems. The Commissioner notes that the Council could provide this information in hard-copy format for the complainant

to inspect, for example in the form of redacted printed screen-shots or photocopies. This would also remove the need for the complainant to be accompanied for large periods of time, or to access buildings usually restricted to staff members.

39. The Commissioner does not consider that it would be unreasonable to expect the Council to redact information before providing it to the complainant, in order to comply with its responsibilities under the Data Protection Act. Whilst the Commissioner understands that the requested information is held on several different computer systems in separate locations, the Council has provided no evidence to demonstrate why this would make it reasonable to provide information in a format other than inspection, and consequently, the Commissioner considers that the Council cannot rely upon regulation 6(1)(a).
40. Since neither of the exceptions to the Council's obligation to provide information in the form and format requested can be satisfied, the Commissioner concludes that the Council has breached regulation 6(1) in relation to the information relevant to CON29R queries 1.1(f)-(h), 2(a)-(d), 3.1, 3.2, 3.4(b)-(d), 3.6(a)-(l), 3.7(a)-(f), 3.8, 3.9(a)-(l), 3.9(n), 3.10(b) and 3.11.
41. The Commissioner also notes that the Council argues that the concerns detailed above also apply to information held in relation to CON29R queries 1.1(a)-(e), 1.2, 3.4(a), 3.4(e)-(f), 3.5, 3.9(m), 3.10(a), 3.12, and 3.13. This is why the Council provides answers to these questions rather than allows the information to be inspected in its original format. The complainant has stated that he considers that this approach satisfies his request and it is therefore open to the Council to consider providing answers to the outstanding information free of charge rather than produce redacted copies of the requested information.

Regulation 6(2)

42. Regulation 6(2)(c) provides that if the information is not made available in the form or format requested, the public authority shall – “inform the applicant of the provisions of regulation 11 and the enforcement and appeal provisions of the Act applied by regulation 18”
43. In its letter of 1 June 2010, the Council explained that some of the requested information would not be made available for inspection. However, the enforcement and appeal provisions were not explained to the applicant and so the Commissioner finds that the Council has breached regulation 6(2)(c).

Regulation 8

Regulation 8(2)

44. Regulation 8 provides a general right for public authorities to charge for making information available.

Can the Council impose a charge for allowing the complainant to inspect the requested information?

45. The right under regulation 8 to impose a charge for making information available is subject to a number of conditions. The relevant conditions in this case are set out in regulation 8(2).
46. 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.
47. The Commissioner notes that the Council currently imposes a charge for providing the requested information in accordance with the charging provisions set out in the [Local Authorities \(England\) \(Charges for Property Searches\) Regulations 2008](#) ('the CSPR'). Regulations 5, 6 and 7 of the CSPR set out the charges that may be levied for providing access to property search information.
48. The Commissioner's position is that regulation 5(6) specifically disapplies the charging provisions under the CSPR. 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".
49. Consequently, the Commissioner considers that if the property records comprise environmental information as defined by regulation 2 of the EIR, the CSPR 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 CSPR, 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.

50. Regulation 8(2)(b) provides that a public authority is not entitled to charge a fee for allowing inspection of information. Therefore, the Commissioner is of the opinion that the complainant is entitled to exercise his right to request to view the information free of charge.

Regulation 8(3)

51. The Council has stated that it will levy a charge for providing a compiled report of information. However, the Commissioner is of the opinion that where information is available for inspection, regulation 8(2)(b) conclusively prevents *any* charge from being levied to provide the requested information. As he has found that the Council should allow the complainant to inspect the requested information, the Commissioner has not gone onto consider the Council's arguments around the interpretation and provisions of what constitutes a 'reasonable' charge under regulation 8(3).

Regulation 14

Regulation 14(3)

52. Regulation 14(3)(a) provides that:

"The refusal shall specify the reasons not to disclose the information requested, including –

any exception relied on under regulations 12(4), 12(5) or 13"

53. On 4 October 2010, the Council confirmed that it did not hold any information relevant to CON29R queries 3.3(a) – (b). This information concerns water drainage agreements and consents. Any information would be held by Northumbrian Water Ltd.

54. Where information is not held, the Council should confirm this to the complainant within 20 working days, citing the exception at regulation 12(4)(a), which provides that:

"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"

55. The Council failed to inform the complainant that this information was not held and so the Commissioner finds a breach of regulation 14(3)(a) as it failed to apply the appropriate exception at regulation 12(4)(a).

56. Regulation 14(3)(b) provides that a refusal notice should specify:

“the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b)...”

57. All exceptions under the EIR are subject to a public interest test. However, the Commissioner recognises that in practice, a public authority cannot conduct a public interest test in relation to information that it does not hold. Consequently, he does not find a breach of regulation 14(3)(b).

Regulation 14(5)

58. Regulation 14(5)(a) provides that a refusal notice should inform the complainant of his right to make representations for review to the public authority under regulation 11. The Council failed to do this and so the Commissioner finds a breach of regulation 14(5)(a).

59. Regulation 14(5)(b) provides that a refusal notice should inform the applicant of the enforcement and appeal provisions of the Act applied by regulation 18. The Council failed to do this and so the Commissioner finds a breach of regulation 14(5)(b).

The Decision

60. The Commissioner’s decision is that Northumberland County Council did not deal with the request for information in accordance with the EIR. He has found the following breaches of the EIR:

- In relation to information relevant to CON29R queries 1.1(f)-(h), 2(a)-(d), 3.1, 3.2, 3.4(b)-(d), 3.6(a)-(l), 3.7(a)-(f), 3.8, 3.9(a)-(l), 3.9(n), 3.10(b) and 3.11, the Council has breached regulation 5(1) by failing to make information available upon request, and regulation 5(2) by failing to make information available within the statutory time for compliance. The Council breached regulation 6(1) as it failed to comply with the complainant’s request to make the requested information available in a particular format. It has also breached regulation

6(2)(c) by failing to inform the complainant of the enforcement and appeal provisions of the Act when refusing to make information available in the format requested by the complainant.

- o In relation to the information relevant to CON29R queries 3.3(a)-(b), the Council has breached regulation 14(3)(a) by failing to cite an exception it relied upon when withholding information. It also breached regulation 14(5)(a) by failing to inform the complainant of his right to request an internal review under regulation 11, and regulation 14(5)(b) by failing to inform the applicant of the enforcement and appeal provisions applied by regulation 18.

Steps Required

61. The Commissioner requires that the Council make the outstanding held information available for the complainant to inspect free of charge.
62. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

63. 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

64. 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 23rd day of November 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

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

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 repair 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 a Conservation Area before 31 August 1974
- 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 or 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?

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);

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.

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 no 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 so requests; and
- (c) inform the applicant of the provisions of regulation 11 and of 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.

Regulation 14 - Refusal to disclose information

Regulation 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.

Regulation 14(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.

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).

Regulation 14(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.

Regulation 14(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