

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

Decision Notice

Date: 2 December 2010

Public Authority: Conwy County Borough Council
Address: Bodlondeb
Conwy
North Wales
LL32 8DU

Summary

The complainant submitted a request to the Conwy County Borough Council ('the Council') for information from environmental records held on a property in Llandudno. The Council failed to respond to this request within 20 working days. During the course of the Commissioner's investigation, the Council reconsidered the request under the EIR and agreed to provide the requested information for inspection free of charge. The Commissioner finds that the Council breached regulation 5(2) by failing to make the requested information that it held available within the statutory time for compliance. He does not require the Council to take any further action.

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.
6. The complainant acts on behalf of the original requestor, in his capacity as a representative of a personal search trade association

The Request

7. On 2 February 2010 the complainant wrote to the Council to request to inspect the Local Land Charges Register and the information necessary to complete a CON29R form. The complainant requested this information in relation to a specific property.
8. The Council acknowledged this letter on 4 February 2010. On 24 February 2010 it wrote to the complainant to advise him that there would be a delay in responding to the request. On 8 March 2010, the Council informed the complainant that it was still waiting for a legal opinion which was delaying its response.
9. On 8 March 2010 the complainant wrote to the Council to request an internal review of the way his request for information had been handled.

The Investigation

Scope of the case

10. On 14 July 2010 the complainant contacted the Commissioner to complain about the Council's failure to respond to his request under the EIR.

Chronology

11. On 26 July 2010, the Commissioner wrote to the Council to explain that a complaint had been received. He 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 the Council respond to the complainant's request under the EIR as soon as possible. The Council acknowledged this email and confirmed its intention to respond on 27 July 2010.
12. On 30 July the Commissioner wrote to the Council to draw its attention to the new [Local Land Charges \(Amendment\) Rules 2010](#), which revoke the fee for inspection of the Local Land Charges Register.
13. On 19 August 2010 the Council wrote to the Commissioner and explained that it had developed a new policy for dealing with requests for property search information under the EIR. The Council expected this policy to take effect from 1 October 2010 once relevant staff had received training. The Council sent the Commissioner a draft copy of this policy.
14. On 28 September 2010 the Council wrote to the complainant with the details of its new procedure for accessing property search information. This explained that the requested information could be inspected free of charge under the EIR. A copy of the letter setting out the new procedure is available on the [Council's website](#).

Analysis

Substantive Procedural Matters

Regulation 2

15. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
16. The Commissioner considers that the information requested falls within regulation 2(1)(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 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.

Regulation 5

17. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of request.
18. The complainant submitted his request for information on 2 February 2010. The Council did not confirm how the complainant could access this information under its new policy until 28 September 2010, and therefore the Commissioner finds a breach of regulation 5(2) as the Council failed to make information available within the statutory time for compliance.

The Decision

19. The Commissioner's decision is that Conwy County Borough Council has breached regulation 5(2) by failing to make the requested information available within the statutory time for compliance.

Steps Required

20. The Commissioner requires no steps to be taken.

Right of Appeal

21. 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 2nd day of December 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 –

- (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;

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.