

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

Decision Notice

Date: 8 December 2010

Public Authority: London Borough of Bromley Council
Address: Civic Centre
Stockwell Close
Bromley
BR1 3UH

Summary

The complainant submitted a request to the London Borough of Bromley Council ('the Council') for information from environmental records held on a property in Beckenham. The Council refused to provide some of the information in the complainant's preferred format of inspection, and stated that a charge would be levied to cover the costs of compiling the information into an alternative format. During the course of the Commissioner's investigation, the Council confirmed that some of the requested information was not held, and agreed to provide the remainder of the 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 also finds that in relation to the information that is not held, the Council has breached regulation 14(2) by failing to provide a refusal notice within 20 working days, and regulation 14(3)(a) by failing to cite the specific exception it relied upon in refusing the request. It has also breached regulation 14(5) by failing to inform the complainant of both his right to seek an internal review and of the enforcement and appeal provisions of the EIR. 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. The complainant acts on behalf of the original requestor, in his capacity as a representative a personal search trade association

The Request

6. On 5 May 2010 the complainant wrote to the Council to request to inspect the following information:

"...pending or current Compulsory Purchases Orders or Outstanding Statutory Notices"

The complainant requested this information in relation to a specific named property.

In a separate email sent on the same date, the complainant requested the following information:

“Building Regulation Approvals, Completion Certificates, and any Building Regulation certificates or Notices issued in respect of work carried out under a competent person self certification scheme. In addition details of any proceedings for the contravention of any provision contained in building regulations...”

The complainant requested this information in relation to the same specific property as in the first request.

7. The Council responded on 11 May 2010 and stated that it would make the requested information available for inspection within 20 working days. It confirmed that once the information had been collated, the Council would contact the complainant again to arrange a suitable time for inspection to take place.
8. On 8 June 2010, the complainant wrote to the Council to enquire when the information would be provided, as the deadline of 20 working days had been exceeded. The Council acknowledged this email on the same day and said it would contact the complainant within the next few days.
9. On 12 July 2010, the Council wrote to the complainant and stated that no information was held regarding “1”. It also confirmed that “most” of the information in relation to “3 - 6” were publicly available on its website. However, it refused to comply with the complainant’s request to inspect information in relation to “2”, and stated that a charge would be levied to provide this information in an alternative format.
10. On 19 July 2010, the complainant telephoned the Council to enquire what the numbers 1-6 referred to in its response of 12 July 2010. The Council provided the following clarification:
 - 1: Pending or current Compulsory Purchases Orders
 - 2: Outstanding Statutory Notices
 - 3: Building Regulation Approvals
 - 4: Building Regulations Certificates
 - 5: Notices for works carried out under self-certification
 - 6: Contraventions of Building Regulations¹
11. On 19 July 2010, the complainant wrote to the Council to ask why there was a discrepancy between its original response of 11 May 2010, which stated that the information would be made available, and its

¹ The Commissioner has used the Council’s numbering throughout this Decision Notice.

email of 12 July 2010, which stated that inspection of all the information would not be permitted.

12. On 19 July 2010, the Council responded and confirmed that it would not allow the complainant to inspect its databases of information but would make extracts of information available for inspection.

The Investigation

Scope of the case

13. On 27 July 2010, the complainant contacted the Commissioner to submit a complaint about the way his request for information had been handled. The complainant stated that information relevant to point "6" was not available online. In particular, the complainant asked that the Commissioner investigate the following issues:
 - o The time that the public authority had taken to respond to the request
 - o The Council's refusal to comply with the request to inspect Outstanding Statutory Notices held in relation to the property
 - o The Council's refusal to make Contraventions of Building Regulations held in relation to the property available
14. During the course of the investigation, the Council confirmed that it would allow the complainant to inspect the 'refined' answers to CON29R queries, rather than the original information used to answer these questions. The complainant has confirmed that he is happy with this approach as an informal resolution to this aspect of his complaint.
15. The Council also confirmed that no information was held in relation to points 1 and 2 of the request. The complainant accepts that this is the case.

Chronology

16. On 29 July 2010, the Commissioner wrote to the Council to explain that a complaint had been received. He asked the Council several questions about how it had dealt with the complainant's request.

17. The Council responded to the Commissioner on 24 August 2010 and explained that it would make the requested information available to the complainant free of charge.
18. The Commissioner wrote to the Council on 24 August 2010 and asked that the Council contact the complainant to explain that the information would in fact be made available, and how this could be accessed. The Commissioner asked that this was copied to him.
19. On 21 September 2010, the Council emailed the complainant, copying in the Commissioner, to state that it did not hold any Outstanding Statutory Notices or Compulsory Purchase Orders in relation to the specified property. The Council advised the complainant that some of the requested information it held was available on its website. The Council instructed the complainant to telephone a named contact point at the Council to arrange access to the remainder of the information.
20. On 28 September 2010 the Commissioner wrote to the Council to enquire if the complainant would be permitted to inspect the requested information in person.
21. On 4 October 2010 the Council confirmed that it would not permit the complainant to inspect its computer databases. This is because the requested information is held on a Uniform system and allowing applicants access to inspect this would cause various difficulties in terms of safeguarding personal data and ensuring the accuracy of the information provided. Instead, the Council would provide a copy of the answers to CON29R queries that it usually provides as a response to a chargeable official search.

Analysis

Substantive Procedural Matters

Regulation 2

22. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
23. 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

24. 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 the request.
25. The complainant submitted his request for information on 5 May 2010. The Council responded to the request on 11 May 2010 stating that access to inspect the requested information in relation to points 3 to 6 of the request would be provided. However, the Council did not confirm how the complainant could access this information until 15 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.

Regulation 14

26. Regulation 14(2) provides that a public authority should issue any refusal notice within 20 working days of receiving a request. Regulation 14(3)(a) provides that a public authority should detail the specific exception it relies upon in any refusal notice issued.
27. The Council has confirmed that no information is held in relation to points 1 and 2 of the complainant's request. Under the EIR, public authorities should refuse 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"
28. Regulation 14(5) provides that any refusal notice should inform the complainant of their right to make representations to the public authority under regulation 11, and of the enforcement and appeal provisions of the EIR provided by regulation 18.

29. The complainant's request was submitted on 5 May 2010. The Council informed the complainant that no information was held relevant to point 1 of the request on 12 July 2010. It informed the complainant that no information was held in relation to point 2 on 21 September 2010. The Council did not cite the exception at regulation 12(4)(a) in relation to either request. The Council did not inform the complainant of his right to seek an internal review nor of the enforcement and appeal provisions of the EIR.
30. Consequently, the Commissioner finds that the Council has breached regulation 14(2) by failing to provide a refusal notice within 20 working days and regulation 14(3)(a) by failing to cite the specific exception it relied upon in refusing a request. The Council has also breached regulation 14(5) by failing to inform the complainant of his right to seek an internal review nor of the enforcement and appeal provisions of the EIR.

The Decision

31. The Commissioner's decision is that the London Borough of Bromley Council has failed to deal with the request in accordance with the EIR.
- o In relation to points 1 and 2 of the request, the Council has breached regulation 14(2) by failing to provide a refusal notice within 20 working days, and regulation 14(3)(a) by failing to cite the specific exception it relied upon in refusing the request. It has also breached regulation 14(5) by failing to inform the complainant of his right to seek an internal review nor of the enforcement and appeal provisions of the EIR.
 - o In relation to points 3-6 of the request, the Council has breached regulation 5(2) as it failed to make information available within the statutory time for compliance,

Steps Required

32. The Commissioner requires no steps to be taken.

Right of Appeal

33. 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 8th 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.

Regulation 12 - Exceptions to the duty to disclose environmental information

Regulation 12(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received

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.