

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

Decision Notice

Date: 26 October 2010

Public Authority: North East Lincolnshire Borough Council
Address: Municipal Offices
Town Hall Square
Grimsby
South Humberside
DN31 1HU

Summary

The complainant submitted a request to North East Lincolnshire Borough Council ('the Council') for information from environmental records held on a property in Immingham. The complainant specified that he wished to view the records in person. The Council agreed that the complainant could inspect the requested information but that a charge would be levied for this. The Commissioner's decision is that the Council has breached regulation 5(1) as it failed to make information available on request, and regulation 5(2) as it failed to make it available within the statutory time for compliance. The Council has also breached regulation 8(2)(b) by attempting to impose a charge to allow the complainant to inspect environmental information. The Commissioner requires the Council to allow the complainant to inspect the requested information free of charge. These steps must be taken within 35 calendar days.

The Commissioner's Role

1. The Environmental Information Regulations ('the EIR') were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that The 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. Information relevant to form LLC1 is found on the Local Land Charges Register.
3. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority.
4. The complainant represents a company which provides information about property and land issues.

The Request

5. On 24 June 2010 the complainant requested access, free of charge in relation to a specific named property, to view information necessary to complete the forms LLC1 and CON29R.¹
6. On 9 July 2010, the Council responded to the complainant and explained that a charge of £22 was levied to allow an inspection of the Local Land Charges Register, and a fee of £40.15 was levied to provide access to CON29R information for each property. The Council explained that these fees were calculated in line with the [Local Land Charges \(Amendment\) Rules 2009](#) and the [Local Authorities \(England\) \(Charges for Property Searches\) Regulations 2008](#) ('the CPSR') respectively. The Council also explained that some information held on statutory registers was available to inspect free of charge.
7. On 12 July 2010, the complainant wrote to the Council to request an internal review of this decision.
8. On 22 July 2010 the Council provided the outcome of its internal review to the complainant. This upheld the previous response and reiterated that any charges were levied in accordance with regulation 8 of the EIR.

¹Annex A details the nature of the information relevant to these CON29R enquiries.

The Investigation

Scope of the case

9. On 28 July 2010, the complainant contacted the Commissioner to complain about the Council's compliance with the EIR.
10. The Council has confirmed that the following information can be inspected free of charge either online or in person – the Local Land Charges Register, and information relevant to CON29R questions 1.1(a)-(h), 1.2, 2(a), 3.10(a), 3.12(a) and 3.12(b)(ii). This information has therefore been excluded from the scope of the Decision Notice.
11. The Council has also confirmed that it does not hold information relevant to CON29R questions 3.3 and 3.13. The complainant accepts that this information is not held. This information has consequently also been excluded from the scope of the Decision Notice.

Chronology

12. On 2 August 2010 the Commissioner telephoned and wrote to the Council and asked that it respond to the complainant's request for information. He also drew the Council's attention to previous decision notices issued in similar property search complaints.
13. On 6 August 2010, the Council wrote to the Commissioner and explained all the information requested by the complainant was available for inspection. A charge was levied not to facilitate this inspection, but to cover the costs of collating and preparing information prior to its inspection. The Council also confirmed that as a result of the new [Local Land Charges \(Amendment\) Rules 2010](#), it now allowed applicants to inspect the Local Land Charges Register free of charge.
14. On 10 August 2010 the Commissioner emailed the Council to make some additional enquires about the charges it levied to provide the requested information. The Council responded to this email on the same day.
15. On 11 August 2010 the Commissioner emailed the Council to state his understanding of Council's position and ask that it confirm whether this was correct. The Council responded on the same day. It confirmed that the Commissioner had summarised its position correctly, and also stated that it did not consider that all the information was environmental in nature.

16. On 12 August 2010 Commissioner emailed the Council to ask that it confirm the information requested by the complainant that it did not consider environmental information.
17. On 15 September 2010 the Council responded to the Commissioner and provided details of its charging regimes for property search information.
18. On 17 September 2010 the Commissioner emailed the Council to ask that it confirm the information requested by the complainant that it did not consider environmental information.
19. On 17 September 2010 the Council emailed the Commissioner to explain that it believed it was an applicant's responsibility to confirm whether they sought property search information under the EIR or another regime.

Analysis

Substantive Procedural Matters

Regulation 2

20. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
21. 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.
22. In its email of 11 August 2010 the Council stated that it did not accept that all of the information requested by the complainant constituted environmental information. The Council has not however clarified which specific parts of the information requested is not environmental in nature or the reasons for this and so the Commissioner has not gone on to consider this matter. In the event the Council makes all of the requested information available for inspection.

23. The Commissioner also notes the Council's comments of 17 September 2010. These explain that the Council believes it is for an applicant to specify whether they wish to access information under the EIR or through the Council's own search procedure. The Commissioner notes that in this case the complainant specified in his original request that he wished to access information under the EIR and so this issue is not relevant to the complaint. For the sake of clarity, the Commissioner is of the opinion that the responsibility for identifying the appropriate information access regime for a request lies with a public authority.

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 24 June 2010. The Council has not yet disclosed the requested information although it has agreed to do so if the complainant pays a fee. The Commissioner therefore concludes that the Council has breached regulation 5(1) by failing to make the requested information available, and regulation 5(2) by failing to make the requested information available within 20 working days following receipt of the request.

Regulation 8

26. Regulation 8 sets out the charges a public authority is entitled to make for providing environmental information. Regulation 8(2)(b) provides that public authority shall not make any charge for allowing an applicant "to examine the information requested at the place which the public authority makes available for that examination".
27. The Council has confirmed that all of the information requested by the complainant is available for inspection and has therefore complied with regulation 6(1) by agreeing to provide information in the form or format requested by the complainant.
28. However, the Council intends to make a charge to permit the complainant to inspect the requested information. The Council has confirmed to the Commissioner that this charge is not levied for inspecting the information in itself, but rather to cover the costs of collating and preparing information ready for inspection.
29. The Commissioner rejects that any charge can be made for permitting inspection of environmental information. The Council claims that the charges levied cover the costs of preparing information for inspection.

The Commissioner acknowledges that the Council may need to perform certain activities in order to ready information for inspection, such as locating the correct information, and redacting any exempt information or personal data.

30. However, the Commissioner does not accept that any charge can be levied for these activities. He refers here to the Tribunal decision in [Markinson v Information Commissioner](#). The Tribunal found that whilst a public authority is entitled to levy a reasonable charge for providing information under regulation 8(3), it can only take into account relevant considerations, such as the cost of paper for photocopying, or of postage. It cannot take into account factors such as the cost of staff time in maintaining, identifying, locating or retrieving from storage the information in question.

31. The Tribunal also found that

“Regulation 8(2)(b) provides that the information in question should be made available for inspection free of charge and we believe that, if the costs of locating and retrieving a piece of information should be disregarded for that purpose, it is not open to a public authority to regard it as reasonable to include them in calculating the cost of copying the same material” (para 33)

The Commissioner therefore finds that regulation 8(2)(b) prohibits any charge being made where environmental information is provided for inspection. As the Council has attempted to levy such a charge, he therefore finds that it has breached regulation 8(2)(b) and that the complainant should be entitled to inspect the requested information free of charge.

The Decision

32. The Commissioner’s decision is that North East Lincolnshire Council did not deal with the request for information in accordance with the EIR. The Council has breached regulation 5(1) by failing to make the requested information available, and regulation 5(2) by failing to make this information available within the statutory time for compliance. In addition, the Council has breached regulation 8(2)(b) by attempting to impose a charge for allowing the complainant to inspect environmental information.

Steps Required

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

Right of Appeal

35. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

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 October 2010

Signed

**Gerrard Tracey
Assistant Commissioner**

**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.

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?