

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

Decision Notice

Date: 22 November 2010

Public Authority: Harrogate Borough Council
Address: Council Offices
Crescent Gardens
Harrogate
North Yorkshire
HG1 2SG

Summary

The complainant submitted a request to Harrogate Borough Council ('the Council') for information from environmental records held on a property in Wetherby. The complainant specified that he wished to view the records in person. The Council has breached regulation 5(1) as it failed to make the information available on request, and regulation 5(2) as it failed to make it available within 20 working days following receipt of the request. The Council has also breached regulation 6(1) by failing to comply with the complainant's request to make the information available in a particular format. The Commissioner finds that the Council has correctly applied the exception at regulation 12(4)(b) to information relevant to CON29R queries 1.1(f)-(h). However, in relation to this information the Council has breached regulation 14(3)(a) by failing to state the exception it relied upon in its refusal notice. It has also breached regulation 14(3)(b) by failing to conduct a public interest test in relation to this exception. The Commissioner requires the Council to allow the complainant to inspect the remaining 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, to view information necessary to complete the forms LLC1 and CON29R.¹
6. On 6 July 2010, the Council wrote to the complainant and stated that it would not deal with "such enquiries" under the EIR.
7. On 9 July 2010, the complainant wrote to the Council to request an internal review of this decision. The Council acknowledged this request on 16 July 2010.
8. On 17 August 2010 the Council provided the outcome of its internal review to the complainant. This explained that as a result of the [Local Land Charges \(Amendment\) Rules 2010](#), the Local Land Charges Register was now available to inspect free of charge. It also explained that the Council felt that it was reasonable to provide information relevant to CON29R queries in a format other than inspection under regulation 6(1)(a). Information would be provided in the form of a compiled report, and a charge levied for this in accordance with the

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

[Local Authorities \(England\) \(Charges for Property Searches\) Regulations 2008](#) ('the CPSR').

The Investigation

Scope of the case

9. On 31 August 2010, the complainant contacted the Commissioner to complain about the Council's decision to refuse to comply with their request to inspect the requested information.
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 (a)-(e), 1.2, 3.5, 3.9 (a)-(e) and (m), 3.10 (a) and (b), 3.12 (a)-(c). 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 2 (a)-(d), 3.1, 3.2, 3.4 (a)-(f), 3.6 (a)-(l), 3.7(e), as this information relates to Highways and is held by North Yorkshire County Council. It also does not hold information relevant to CON29R queries 3.3(a)-(b) as this information is held by Yorkshire Water. The complainant also accepts that this information is not held and consequently it has also been excluded from the scope of the Decision Notice.
12. The remaining information that falls within the scope of the Decision Notice is information relevant to CON29R queries 1.1(f)-(h), 3.7(a)-(f), 3.8, 3.9(f)-(l) and (n), 3.11 and 3.13.

Chronology

13. On 10 September 2010 the Commissioner wrote to the Council to ask that it answer a series of questions about why it felt it was reasonable to refuse to provide the requested information for inspection. He also drew the Council's attention to previous decision notices issued in similar property search complaints.
14. The Council responded to this email on 11 October 2010.

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 Council contends that some of the information requested by the complainant may not be environmental in nature. It states that some information relevant to CON29R queries 1.1(f)-(h), such as information on "design, construction and demolition" of buildings will be environmental. However, information about "services, fittings and equipment" may not constitute environmental information. In relation to information relevant to CON29R query 3.8, the Council believes that information about enforcement proceedings will be environmental, but information about contravention proceedings might not be. The Council accepts that the remainder of the requested information is environmental in nature.
17. The Council has not however explained whether any non-environmental information is held in relation to the particular property specified by the complainant. It has also not explained why it believes that this information is not environmental in nature.
18. 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.

Regulation 5

19. 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.
20. 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 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

21. 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).
22. The Council contends that it is reasonable for it to make information available in a form other than inspection. In its submission of 11 October 2010, the Council states that its "position generally is as quoted in paragraph 51 of the Basingstoke Decision Notice ([FER0302281](#))". This quote reads:

"it would arguably be possible for an officer to meet the complainant's agent, escort him or her...to the back office computer, log onto the computer...talk him or her through the complicated processes to retrieve, refine and compile the necessary CON29R information (whilst keeping him or her under constant supervision) and then escort him or her to the front office area".
23. The Council states that as it provides answers to CON29R queries at cost, it is "unreasonable to expect it to provide another service", specifically allowing the complainant to inspect information relevant to the CON29R queries. It argues that providing inspection would create

"disruption to staff, our own services and be a drain on resources at a time when there will be a limit on future resources".
24. The Council uses a planning processing system ('UniForm'). Information is held on this system and can be viewed on its land charges processing system ('TLC'). These systems are only available on back office computers. Information can be accessed by inputting an address, or drawing a 'spatial extent'. However, "additional research and cross-referencing is often needed to verify results".

25. The Council also argues that to provide CON29R information for inspection would require a separate room to be set up with a dedicated PC and software license. Applicants would need to be trained to use this software. The Council states that providing inspection would also necessitate the conversion of paper records held in filing cabinets to electronic format, and all of the information held relevant to CON29R queries being placed online.
26. The Commissioner however does not accept that the Council has demonstrated why it would be reasonable to provide information in another format in relation to this request. The Commissioner notes that he would consider the complainant's request satisfied if the Council was to provide the complainant with photocopies or print-outs of the relevant information, redacted as appropriate. This option is open to the Council and would remove difficulties around the complainant accessing back office computers and maintaining the security of records.
27. In decision notice FER0302281, the Commissioner found that, based on the paragraph quoted above, Basingstoke and Deane Borough Council could "reasonably comply with the complainant's request to receive information in a particular form, specifically inspection." As the Harrogate Council has chosen to rely on the same argument, the Commissioner again finds that in relation to this specific request, the Council has accepted that it could comply with the complainant's request to inspect information.
28. Consequently, the Commissioner considers that the exception to complying with this preference under regulation 6(1)(a) has been applied incorrectly. 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) and the complainant should be permitted to inspect the requested information.

Regulation 8

29. 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".
30. The Council has stated that even if the requested information was made available for inspection, it would still be entitled to charge a fee. This is because it believes that if it were to make raw data available, it

could be misinterpreted by the complainant. Therefore, it contends that it is necessary to prepare information for inspection so it can be understood by the complainant. This involves filtering, refining and compiling raw data. The Council states that it is able to charge a fee for this service. 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.

31. The complainant's request is for "the information which the Council holds which will enable us to complete and/or answer the questions in the... form CON29R". The Commissioner therefore believes that the Council should make this information available. It is for the Council to determine what activities it needs to undertake in order to provide this information. However there is no obligation on the Council to provide the complainant with anything above the information that would allow the completion of questions on the CON29R form.
32. 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 collating it for inspection.
33. 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.
34. The Commissioner notes that in this case, the Council has refused to allow the requested information to be inspected and so has not breached regulation 8(2)(b). However, the Commissioner is of the opinion that the complainant is entitled to inspect this information free of charge.

Regulation 12(4)(b)

35. Regulation 12(4)(b) provides an exception for requests that are 'manifestly unreasonable'. Whilst the EIR do not define the term, the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable.

36. In its original refusal notice and internal review, the Council did not rely upon regulation 12(4)(b). In this case, the Commissioner has chosen to exercise his discretion to consider the late application of this exception.
37. There is no single test for what sorts of requests may be considered to be manifestly unreasonable. Instead, each individual case is judged on its own merits taking into account all of the circumstances surrounding the request. It is the Commissioner's view that regulation 12(4)(b) will apply where it is demonstrated that a request is vexatious or that compliance would incur unreasonable costs for the public authority or an unreasonable diversion of public resources.
38. The Council considers that the complainant's request for information relevant to CON29R queries 1.1(f)-(h) is manifestly unreasonable. This is because the complainant had recently been provided with this information. The Council states that the complainant submitted a request for answers to CON29R enquiries 1.1(f)-(h) under the Council's existing procedure on 4 June 2010, and paid the associated fee. The information was provided to the complainant under this procedure on 23 June 2010. The complainant's request under the EIR was submitted on the following day, 24 June 2010. The Council therefore considers that the request is manifestly unreasonable as the complainant had been provided with the relevant information the day before his request under the EIR was submitted.
39. The Commissioner notes that the EIR is both applicant and motive blind. However, he appreciates that for vexatious or, as is relevant here, manifestly unreasonable requests, the context of the request and the requester's previous contact with the public authority may be relevant.
40. The Commissioner must decide whether complying with the request would place a burden on the Council that is manifestly unreasonable and engage the exception at regulation 12(4)(b).
41. In determining the threshold needed to engage this exception the Commissioner has taken into account the comments of the Information Tribunal in *DBERR v Information Commissioner and Platform* (EA/2008/0096), which stated that:

"It is clear to us that the expression [manifestly unreasonable] means something more than just "unreasonable". The word "manifestly" imports a quality of obviousness. What is in issue, therefore, is a request that is plainly or clearly unreasonable"

42. The Commissioner accepts that in theory, information provided via official searches or requests under the EIR could become out of date immediately after it was provided, due to new information being added to the Council's records on a particular property.
43. However, the Commissioner accepts that in order for the requested information to have any value, it must when provided be considered to be valid for a reasonable period of time. The Commissioner does not consider that the one day constitutes a reasonable period. He therefore finds that the exception at regulation 12(4)(b) is engaged, as the request for information relevant to queries 1.1(f)-(h) had been provided to the complainant in the preceding 24 hours.

Public interest test

44. However, regulation 12(4)(b) is a qualified exception and therefore subject to the public interest test at regulation 12(1)(b) which states that information can only be withheld if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Public interest arguments in favour of disclosing the information

45. There is an inherent public interest in disclosure of information to ensure that the Council is transparent about the nature and extent of the building control information that it gathers, and how this information is used. Increased transparency and accountability could lead to the Council being more aware that its processes could be open to public scrutiny. In order to facilitate increased scrutiny, the Council might improve its record management, processes for collating information, and facilities for accessing such information.

Public interest arguments in favour of maintaining the exception

46. However, there is also a strong public interest in the Council being able to carry out its functions without the disruption that would be caused by complying with requests that are repeated within a short space of time. The Commissioner considers that the Council's ability to comply with other requests for information would be undermined if it had to routinely deal with repeated requests where it aware that applicants have very recently received the same information. Complying with such requests would also be likely to place an unnecessary burden on the Council's resources.

Balance of public interest arguments

47. The Commissioner has weighed the arguments of increased transparency and access to environmental information against the arguments of compliance with the request placing an unnecessary burden on the Council's resources. The Commissioner accepts that the Council would have to expend additional resources on providing information that it is aware the complainant had received very recently. He believes that the unnecessary burden that this would place on the public authority and the consequent distraction from its other core functions that this would cause outweighs the benefits to the public interest that would be served by complying with the request. The Commissioner therefore concludes that the Council were correct to withhold information under this exception.

Regulation 14(3)

48. The complainant submitted his original request for information on 24 June 2010. Originally the Council only refused to comply with the complainant's request to inspect the requested information. During the course of the Commissioner's investigation, the Council also decided to rely on the exception at 12(4)(b) in relation to the information relevant to CON29R queries 1.1(f)-(h).
49. Although the Commissioner has concluded that this exception was correctly applied, the Council has breached regulation 14(3)(a) by failing to inform the complainant of this in its refusal notice. It has also breached regulation 14(3)(b) by failing to conduct a public interest test in relation to this exception.

The Decision

50. The Commissioner's decision is that Harrogate Borough Council did not deal with the request for information in accordance with the EIR. In relation to CON29R queries 3.7(a)-(f), 3.8, 3.9(f)-(l) and (n), 3.11 and 3.13, the Council has breached regulation 5(1) by failing to make information available on request, and regulation 5(2) by failing to make this information available within the statutory time for compliance. It has also breached regulation 6(1) by failing to comply with the complainant's request to make the information available in a particular format, specifically inspection.
51. The Council has applied the exception at regulation 12(4)(b) correctly to the complainant's request for information relevant to CON29R queries 1.1(f)-(h). However, it has breached regulation 14(3)(a) by

failing to specify, in its refusal notice, an exception that it later relied upon. It has also breached regulation 14(3)(b) by failing to conduct a public interest test in relation to this exception.

Steps Required

52. The Commissioner requires the Council to make information relevant to CON29R queries 3.7(a)-(f), 3.8, 3.9(f)-(l) and (n), 3.11 and 3.13. available for the complainant to inspect free of charge.
53. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

54. 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

55. 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 22nd day of November 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

**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?