

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

Decision Notice

Date: 23 November 2010

Public Authority: Gedling Borough Council
Address: Civic Centre
Arnot Hill Park
Arnold
Nottingham
NG5 6LU

Summary

The complainant submitted a request to Gedling Borough Council ('the Council') for information from environmental records held on a property in Mapperley. The Council confirmed that it held no information in relation to the complainant's request. The complaint contends that whilst the Council responded within 20 working days, it did not respond "as soon as possible". The Commissioner has investigated and has found no evidence to suggest that the Council did not comply with the complainant's request as soon as possible. He therefore finds that the Council has complied with regulation 5(2) of the EIR. The Commissioner notes that the Council did not specify the exception it relied upon in refusing the request and therefore finds a breach of regulation 14(3)(a). 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 acts on behalf of the original requestor in his capacity as a representative a personal search trade association.

The Request

6. On 5 August 2010 the complainant requested

“...building regulation approvals, building regulation completion certificates and any building regulation certificates or notices issued in respect of work carried out under the competent person self certification scheme, which have been granted, issued or refused, or (where applicable) are the subject of pending applications, and any authorised proceedings for contravention of any provision contained in building regulations”.

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

7. The Council responded on 31 August 2010 and stated that it did not hold any information relevant to the complainant's request.
8. On 31 August 2010, the complainant submitted request for an internal review of the way his request had been handled to the Council. In particular, the complainant contended that his request had not been dealt with as soon as possible.
9. On 2 September 2010, the Council provided its internal review outcome to the complainant. This upheld the way the Council had

handled the request and pointed out that a response had been sent within the statutory time for compliance.

The Investigation

Scope of the case

10. On 9 September 2010, the complainant contacted the Commissioner submit a complaint. In particular, the complainant stated that he believed the Council had not responded to his request as soon as possible.

Chronology

11. On 9 September 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.
12. The Council acknowledged this email on 9 September 2010.
13. On 4 October 2010, the Council provided a detailed response to the Commissioner's queries.

Analysis

Substantive Procedural Matters

Regulation 2

14. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
15. 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

16. 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.
17. The complainant submitted his request for information on 5 August 2010. The Council responded to the request on 31 August 2010. This is 17 working days after the date of receipt of the request.
18. The complainant however contends that the Council did not provide this information "as soon as possible". In his request for an internal review, the complainant explains that this is because when he previously purchased similar information from the Council's land charges department, under the [Local Authorities \(England\) \(Charges for Property Searches\) Regulations 2008](#) ('the CPSR'), information was routinely provided within 24 hours. The complainant also stated that he had been informed by a member of Council staff that an 'official search' could be provided within ten working days.¹ In his complaint to the Commissioner, the complainant further stated that the Council had used a more complex procedure to deal with his EIR request rather than "the previous simple system".

Can the time taken to respond to an 'Official Search' be used to assess whether an EIR request has been dealt with promptly?

19. The complainant suggests that a request for an Official Search, which would be paid for, would be dealt with more promptly.
20. The Council explained that fee paying search requests are directed to the Land Charges officer upon receipt, whereas EIR requests are registered through the departmental FOI officer and then sent to the relevant department so that a search for information can be conducted.
21. The Commissioner accepts that the Council is entitled to have processes in place for the monitoring of FOI and EIR requests. It is reasonable for the Council to forward requests made under EIR to specialist officers, who can assess whether a request is valid, and

¹ An 'official search' is submitted on the forms LLC1 and CON29R. The search is comprehensive and investigates whether there are any restrictions imposed on a property which are legally binding on successive owners. Public authorities conduct these searches internally by collating information held on the property in question.

- prepare a response compliant with the provisions of the EIR. In addition, it is reasonable for the Council to have a senior member of staff check the results of any searches conducted to locate relevant data and ensure the Council has complied with its obligations under the EIR.
22. The Council also points out that when it compiles responses to Official Searches, it is required to interrogate data held on its "primary office system", dating back to 1 January 1986. However, the complainant's EIR request specified information relevant to a certain property. The Council therefore conducted a search of all the property records it held, some of which date back to 1974 and are held in hard copy, rather than electronic format. This process took "considerably longer" than conducting a conventional Official Search, which does not require a manual search of archived material to be conducted.
 23. The Commissioner accepts that it would inevitably take longer to provide a response to the EIR request in question than to provide a response to an 'official search'. This is because the process of searching additional records, especially in hard copy format, would inevitably take staff longer to perform than simply conducting an electronic search.
 24. The complainant believes that the Council has not complied as quickly as possible because responses to official searches are provided more promptly. However, the Commissioner notes that the request is not in fact directly comparable to a request for an Official Search. The Council is entitled to set its own parameters for what it is satisfied constitutes an 'Official Search' – in this case, a search of information held electronically, dating back to 1986. The complainant's request was not framed in the same terms. The Commissioner considers that the Council was correct to conduct a search of *all* the records it held that might fall within the scope of the complainant's request.
 25. However, the Council also states that "priority is given to responding to fee-paying clients". The Commissioner notes that there is some overlap in the processes undertaken in responding to the EIR request in question and a request for an Official Search. This is the search of the computerised electronic records held by the Council. The Commissioner does not accept that requests made under the EIR should be accorded less priority than similar chargeable requests, but does accept that any public authority is entitled to prioritise its workload to satisfy the range of demands made on it by stakeholders.
 26. The complainant states that he was informed by a named member of Council staff that Official Searches could be returned within ten days.

However, this comment is not an official Council policy. The Council points out that the time taken to respond to all requests is affected by staff availability, the amount of information held, and the format it is held in.

27. As the complainant's EIR request was not for the same information that falls within the parameters of an Official Search, the Commissioner does not accept that the time taken to return an Official search can be used as a comparison or a bench mark for responding to complainant's EIR request. He also acknowledges that the Council is entitled to apply its own internal procedures to EIR requests to ensure that they are dealt with in accordance with the legislation. This requirement does not arise when dealing with a request for an Official Search. The Commissioner considers that the Council's processes, such as the request being assessed and a response being provided by a trained FOI Officer, are reasonable.

Did the Council deal with the request as soon as possible?

28. The Council has detailed the process undertaken to respond to this request. It states that:
- o The request was received via email by the building control department on 5 August 2010.
 - o On 6 August, the email was forwarded to the Council's Planning and Environment Services FOI Officer who considered whether the request was valid, and then registered it onto the Council's internal FOI database.
 - o On 6 August, the FOI officer informed the Building Control department that the request was valid and asked it to interrogate records to identify if any relevant information was held.
 - o Between 9 August and 25 August, the Building Control administration officer undertook the following activities:
 - Interrogated the Building Control management system for relevant applications
 - Cross referenced the results to ensure any information from alternative addresses was included
 - Checked whether any data was held on microfiche or CD storage

- Conducted a manual search of hard copy records for relevant information. This included indexes created between 1965 and 1974 by Carlton Urban District Council (active before the formation of the current Council), and paper records created between 1974 and 1985.
 - On 25 August, the results of the search were forwarded to the Building Control manager to be verified.
 - On 31 August, the Building Control manager discussed the findings of the search with the Planning and Environment Services FOI Officer.
 - As no information was found relevant to the request, the FOI Officer sent an email to the complainant explaining this on 31 August.
29. The request was registered as a valid EIR request within one day, and a response letter prepared on the same day that search results were communicated to the Council's FOI officer. The Commissioner considers that the time taken for these processes was not unreasonable, especially given the Council's assertion that it received an above-average number of FOI and EIR requests in July and August 2010.
30. The Council took 12 working days to conduct a search of its records for information relevant to the complainant's request. The Council points out that this work was undertaken by staff in its Building Control section. This department also has responsibility for dealing with applications and inspection requests. It deals with 800 applications and 6500 inspection requests per year. It also registers initial notices, dangerous structures, demolitions, gives advices regarding disability access issues and deals with local land searches and solicitor enquiries. The Council considers that "it would be unreasonable to give EIR requests a higher priority than this other work".
31. During the period where the complainant submitted his request, several members of the staff were absent from the office. In the administration section, which dealt with the search for information relevant to the complainant's request, the two members of staff were only available for 10 working days, six of which followed the receipt of the complainant's request. The Building Control manger, who validated the results of the search for information within the scope of the request is only available for 60% of the week as he works jointly with another local authority. During this period he was also away on leave.

32. The test of whether a public authority has complied “as soon as possible” is a subjective one, because it could be argued that if the Council set aside all of its other tasks and focuses solely on complying with the request, a response could be sent very promptly. However, the Commissioner accepts that a public authority is entitled to balance its duties under the EIR with its other responsibilities and commitments. He also accepts that it was appropriate for the Council to delegate the task of searching relevant records to staff that have experience and knowledge of this area. He considers that the Council therefore complied with this request as quickly as possible particularly given its obligations to comply with a wide range of responsibilities.
33. The Commissioner does not consider that there is any evidence that the Council did not comply with this request as promptly as possible. Consequently, he finds that the Council has not breached regulation 5(2).

Regulation 14(3)

34. Regulation 14(3)(a) provides that a public authority should detail the specific exception it relies upon in any refusal notice issued.
35. The Council informed the complainant that no information was held in relation to his 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”
36. The Council did not cite this specific exception and therefore the Commissioner finds that it has breached regulation 14(3)(a).

The Decision

37. The Commissioner’s decision is that Gedling Borough Council complied with regulation 5(2) in responding to the complainant’s request. However, he finds that the Council has breached regulation 14(3)(a) in failing to cite the specific exception it relied upon in its refusal notice.

Steps Required

38. The Commissioner requires no steps to be taken.

Right of Appeal

39. 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**

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(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Regulation 12(2) A public authority shall apply a presumption in favour of disclosure.

Regulation 12(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

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).