

The Environmental Information Regulations 2004.

Decision Notice

Date: 21 February 2011

Public Authority: Central Bedfordshire Council
Address: Priory House
Monks Walk
Chicksands
Shefford
SG17 5TQ

Summary

The complainant submitted a request to the Central Bedfordshire Council ('the Council') for information regarding the dates of visits Environmental Health Officers made in the period March to May 2006 in relation to a noise complaint. The Council did not provide a response to the complainant's initial request. However, the complainant made a further request to the Council for the same information and the Council confirmed that the information was not held. The Commissioner has found that the Council has breached regulation 14(2) in failing to issue a refusal notice within the statutory time for compliance, and regulation 14(3)(a) in failing to cite the specific exception it relied upon in not disclosing the information requested. The Commissioner 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.

The Request

2. On 28 September 2009 the complainant submitted the following request for information to the Council:

"Please supply the dates and times of all weekend and evening noise monitoring visits undertaken by Environmental Health Officers whilst investigating our complaints of noise nuisance against Asda Store in Biggleswade".

The request was titled "Noise Nuisance Investigation March/April/May 2006".

3. On 3 November 2009 the complainant sent a further letter to the Council enclosing his letter of 28 September 2009 and requesting a response as he had not yet received a response.
4. On 19 November 2009 the complainant sent another letter to the Council in which he again enclosed a copy of his letter of 28 September 2009 and asked for a response to it.
5. On 9 December 2009, the Council responded to the complainant's letter of 19 November 2009. However, the Council did not respond to the information request dated 28 September 2009 which had been enclosed with the letter of 19 November 2009.
6. Further correspondence was then sent by the complainant to the Council requesting a response to his information request.
7. On 27 July 2010 the complainant repeated his information request to the Council.
8. On 17 August 2010, the Council responded to the complainant's repeated request of 27 July 2010 confirming that the information was not held:

"Our records indicate that whilst visits were undertaken, no such visits during March, April and May 2006 took place during the evening or at weekends."

The Investigation

Scope of the case

9. On 10 March 2010, the complainant contacted the Commissioner to submit a complaint about the way his request for information had been handled.
10. After the complainant had submitted his complaint to the Commissioner, the Council confirmed that it held no information that fell within the scope of the request. The complainant does not dispute this and fully accepts that this is the case so the Commissioner has not considered this point further. The Decision Notice instead focuses on the whether the Council has complied with its procedural responsibilities in responding to the complainant's request.

Chronology

11. On 16 November 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 provided a response on 22 November 2010. This stated that the requested information was not held and the complainant had accepted this. It also stated that the Council did not have an audit trail relating to the complainant's request of 28 September 2009 and so could not explain why it had not been responded to.

Analysis

Substantive Procedural Matters

Regulation 2

13. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
14. The Commissioner considers that, if held, the information requested falls within regulation 2(1)(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)".

Information about noise emissions 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 14

15. Regulation 14(2) provides that any refusal notice shall be issued as soon as possible and no later than 20 working days after the date of receipt of the request.
16. The complainant's original request was submitted on 28 September 2009. It is not clear that this was received by the Council, but it is clear that the Council received the complainant's letter of 19 November 2009 which contained a copy of the request. The Council responded to this letter on 9 December 2009 but did not respond to the information request at this time. The Council responded to the information request on 17 August 2010, outside 20 working days and so the Commissioner finds a breach of regulation 14(2).
17. Regulation 14(3)(a) provides that:

"The refusal shall specify the reasons not to disclose the information requested, including –

any exception relied on under regulations 12(4), 12(5) or 13"
18. On 17 August 2010, the Council confirmed that it did not hold any information relevant to the complainant's request.
19. Where information is not held, the Council should confirm this to the complainant, 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"
20. The Council failed to specify the exception, and so the Commissioner finds a breach of regulation 14(3)(a) as it failed to apply the appropriate exception at regulation 12(4)(a).

21. Regulation 14(3)(b) provides that a refusal notice should specify:

“the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b)...”
22. Exceptions under section 12(4) and (5) of the EIR are subject to a public interest test via 12(1)(b). However, the Commissioner recognises that in practice, a public authority cannot conduct a public interest test in relation to information that it does not hold. Consequently, he does not find a breach of regulation 14(3)(b).

The Decision

23. The Commissioner’s decision is that Central Bedfordshire Council has breached regulation 14(2) in failing to issue a refusal notice within the statutory time for compliance and regulation 14(3)(a) in failing to cite the specific exception it relied upon in not disclosing the information requested.

Steps Required

24. The Commissioner requires no steps to be taken.

Right of Appeal

25. 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 21st day of February 2011

Signed

**Andrew White
Group Manager – Complaints Resolution**

**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 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).

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.