

Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004

Decision Notice

Date: 01 June 2011

Public Authority: Havant Borough Council
Address: Civic Centre Road
Havant
Hampshire
PO9 2AX

Summary

The complainant submitted a request to Havant Borough Council ('the Council') for the planning register index from 1977 to 2010. The Council refused the request on the basis that it did not hold a planning register index. During the course of the Commissioner's investigation, the Council reconsidered the request under the Environmental Information Regulations 2004 (EIR) and agreed that although it did not have a specific planning register document; it was able to provide the requested information by extracting it from various sources. The information extracted amounted to 1060 pages and the Council subsequently offered to provide the information free of charge by email, or at a cost of 10p per sheet for hard copies. The Commissioner finds that the Council breached regulations 5(1) and 5(2) by failing to make the requested information available within the statutory time for compliance. 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.

The Request

2. On 26 April 2010, the complainant submitted a request to the Council. The request was as follows:

"I wish to be given access to the complete planning register index for the years from 1977 onwards"

3. The council failed to respond to the request and the complainant emailed the council again on 7 June 2010.

4. On 14 June 2010, the Council issued a response to the complainant. This stated that the Council maintained a statutory planning register and informed the complainant that he could make an appointment to view files from it.

5. The complainant contacted the council on 16 July 2010 stating the following:

*"I require to view the planning register **index** for the years 1977 to 2010.*

I require to be given access to the planning register index and use it to trace any entry in the register"

6. On 28 July 2010, the complainant contacted the Council again to further clarify his request. In this letter he said:

"The index is the statutory planning register index that is required to be included in the planning register by the relevant planning Act and Statutory instrument as the case may be. Its purpose is to enable any person to trace any entry in the register."

7. In a letter dated 13 August 2010 the council informed the complainant that:

".....the planning register comprises a collection of records and datasets in varying forms and there is no single index available for you to trace access to previous planning applications."

The Investigation

Scope of the case

8. On 27 September 2010, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - The council had not issued a valid refusal notice
 - The council had failed to provide him with the information he had requested.
9. During the course of this investigation, the Commissioner was able to clarify the exact information the complainant was seeking. The Commissioner did this by locating a statutory planning register index available from another council, providing this to the complainant and asking if this was the type of information he was seeking. The complainant confirmed that this was the case. The Commissioner then provided this clarification to the council to enable it to locate the requested information.
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

11. In a letter of 24 February 2011, the Commissioner wrote to the complainant to clarify the scope of his complaint and to confirm the information the complainant was seeking.
12. There was then a chain of correspondence (10 March 2011, 17 March 2011, 24 March 2011, 19 April 2011 and 26 April 2011) between the Commissioner and the complainant during which the Commissioner supplied the complainant with copies of information he had found on another council website and the complainant confirmed that this was the type of information he was seeking from Havant Borough Council.
13. The Commissioner wrote to the council on 5 May 2011 to confirm the scope of his investigation in this case and to provide the council with examples of the type of information the complainant was seeking.

14. In a letter dated 13 May 2011 the council informed the Commissioner that in light of the clarification now provided to it, it had reviewed the request and confirmed that it would be able to retrieve the requested information.
15. The Council wrote to the complainant on 23 May 2011 informing him that it could supply the requested information in the form of a list of planning applications for the period 1 January 1977 to 31 December 2010. The council also asked the complainant how he wished to receive the information as it amounted to 1060 pages, the council offered to provide the information free of charge by email, or at a cost of 10p per sheet for hard copies.

Analysis

Substantive Procedural Matters

Is the information environmental?

16. The Commissioner has first considered whether the request made by the complainant is a request for environmental information as defined by the EIR.
17. The Commissioner considers that the information falls within the Regulation 2(1)(c)ⁱ: '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 designed to protect those elements.'
18. In this case all the information would consist of details of planning applications. The Commissioner believes this amounts to a measure (a programme and activity) that is likely to affect the land and landscape [2(1)(a)]. The Commissioner is satisfied that the information would all be environmental information in this instance.

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1)

19. Regulation 5(1) imposes an obligation on a public authority to make the recorded information that it holds available on request (subject to issuing an appropriate refusal notice when it can rely on an exception).
20. In order to determine its position under the EIR it is important as a first step for it to determine what relevant recorded information it holds that is covered by the scope of the request for information.
21. At the beginning of the Commissioner's investigation the Council stated that it did not hold a planning register index.
22. As explained above the Commissioner was able to clarify the information being sought by the complainant. This was subsequently made available to the complainant on 23 May 2011. The failure to provide this information at the time of the request is a breach of Regulation 5(1).

Regulation 5(2)

23. Regulation 5(2) imposes an obligation on public authorities to make information available on request within twenty working days. The Council failed to provide the requested information and therefore failed to provide it in twenty working days. It therefore breached section 5(2). As this information has now been made available there are no remedial steps appropriate for remedying this breach.

Regulation 14 – refusal to disclose information

24. Under the EIR, a public authority is obliged by regulation 14 to inform the applicant within 20 working days if it is refusing to supply the information requested. It is also obliged to specify the reasons for not disclosing the information, state the regulation that applies and the matters that it considered in reaching its decision with respect to the public interest test. The public authority must also tell the applicant that they can make representations (appeal the decision) to the authority and that they ultimately have a right to complain to the Commissioner.
25. In this case the council failed to state the exception it was relying upon; simply stating that it did not hold a single index. In addition to this the council failed to inform the complainant of the matters it took into consideration with respect to the public interest test and failed to inform the complainant of their rights of appeal.

The Decision

26. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the EIR.
27. The Council did not identify the correct access regime; consequently this led to further breaches of the legislation, specifically regulation 14(3).
28. The council failed to provide the relevant recorded information it held that was within the scope of the request and thereby breached Regulation 5(1).
29. The council failed to provide this information within twenty working days and thereby breached Regulation 5(2).

Steps Required

30. The Commissioner requires no steps to be taken.

Right of Appeal

31. 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: 0300 1234504

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 1st day of June 2011

Signed

**Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

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 5(3)

To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

Regulation 5(4)

For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

Regulation 5(5)

Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.

Regulation 5(6)

Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

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 –

- (c) that he may make representations to the public authority under regulation 11; and
- (d) of the enforcement and appeal provisions of the Act applied by regulation 18.