

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

Decision Notice

Date: 24 March 2011

Public Authority: Walsall Metropolitan Borough Council
Address: Civic Centre
Walsall
WS1 1TP

Summary

The complainant submitted a request to Walsall Metropolitan Borough Council ('the Council') for information from environmental records held on a property in Willenhall. The Council confirmed that it held the requested information and made this available for inspection within 20 working days. The complainant 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 that because of an administrative error, the Council failed to make the requested information available as soon as possible and has consequently breached regulation 5(2). 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 represents a company which provides information about property and land issues.

The Request

6. On 24 August 2010 the complainant requested

"...building control information that will enable the completion of 1.1(f)-(h) and 3.8 of the CON29R".¹

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

7. The Council acknowledged this request on 25 August 2010.
8. On 27 August 2010, the complainant wrote to the Council to enquire why the requested information had not yet been provided.
9. On 7 September 2010 the Council wrote to the complainant to explain that the time taken to respond to requests was dependent on the resources available to the Council, but that it would provide a response within 20 working days at the latest.
10. On 14 September 2010 the Council wrote to the complainant to state that the requested information was available for inspection and an

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

appointment for 16 September 2010 had been made for him to inspect the requested information.

11. On 17 September 2010 the complainant wrote to the Council to ask that it conducted an internal review of the way it had handled his request. The complainant asked why the requested information had not been made available more quickly.
12. The Council provided its internal review outcome on 14 October 2010. This reiterated that the information had been made available within the statutory time for compliance, and that the Council was able to deal with similar requests made under its chargeable, 'enhanced' service more quickly because the fees charged provided an additional resource that allowed it to do so.

The Investigation

Scope of the case

13. On 20 October 2010, the complainant contacted the Commissioner submit a complaint. In particular, the complainant stated that he believed the Council could have responded to his request more promptly, especially given that the Council responded to similar chargeable requests within three working days.

Chronology

14. On 21 October 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.
15. On 26 November 2010, the Council provided a detailed response to the Commissioner's queries.

Analysis

Substantive Procedural Matters

Regulation 2

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

17. 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

18. 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.
19. The complainant submitted his request for information on 24 August 2010. The Council responded to the request on 14 September to inform the complainant that the requested information would be made available for inspection and that an appointment had been booked for 16 September 2010. This is 15 working days after the date of receipt of the request.
20. The complainant however contends that the Council did not provide this information "as soon as possible". The complainant explains that this is because when similar information is purchased from the Council's land charges department, under the [Local Authorities \(England\) \(Charges for Property Searches\) Regulations 2008](#) ('the CPSR'), information is routinely provided within 3 working days.

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

21. The Council has different procedures for requests made for property search information under the EIR, and under the Council's 'Enhanced' service, for which a fee is charged. The Council has provided the Commissioner with details of both these procedures. The complainant suggests that a request made under the Enhanced Service, which would be paid for, would be dealt with more promptly, and therefore the requested information was not made available 'as soon as possible'. The first issue for the Commissioner to consider is whether the time taken to respond to an 'Official Search' can be used to assess whether a request made under the EIR has been handled promptly.

22. The Council first points out that responses to requests made under the EIR must comply with certain standards set out in the legislation itself and in the Council's associated Code of Conduct. The Commissioner accepts that the Council is entitled to have processes in place for the monitoring and logging 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 for these officers to prepare a response compliant with the provisions of the EIR. The EIR however have no bearing upon the responses issued under the Council's Enhanced Service. The Commissioner therefore accepts that the Council may have additional procedures for dealing with request made under the EIR that are not necessary when dealing with requests made under the Enhanced Service.
23. The Council also argues that the two services are fundamentally different. This is because the complainant's request made under the EIR seeks information necessary to answer various CON29R queries. It is then for the applicant to interrogate this information and answer the questions. The complainant wished to inspect this. By contrast, the Enhanced Service provides the actual answers to the queries on the CON29R form. The Council states that it is able to deal with requests made under the Enhanced Service more quickly because it can email various departments in order to obtain 'yes or no' answers to queries. By contrast, a request made under the EIR requires the Council to locate the information relevant to these queries, and prepare it for inspection. The Council also points out that this process is complicated by the number of different computer systems that it uses to hold this information. The Commissioner accepts that it is likely to take longer for the Council to provide relevant held information for inspection, rather than providing an answer to a query.
24. The Council also contends that it is entitled to prioritise collating and locating information for requests made under the Enhanced Service, because the fees paid by applicants fund a dedicated staffing resource for this work. The Council argues that it would not be possible to deal with requests made under the EIR in the same time frame, because it does not have the same dedicated financial resource that allows it to do so. The Commissioner accepts that this is the case.
25. As the complainant's EIR request is not for the same information as is provided under the Enhanced Service, the Commissioner does not accept that the time taken to return a search under this service 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 under the Enhanced Service. The Commissioner considers that the Council's processes, such as the request being logged, acknowledged and responded to by a trained FOI Officer, are reasonable. The Commissioner also accepts that it may take more time to extract information for inspection than to use computerised information to answer a query.

Did the Council deal with the request promptly?

26. The Council has detailed the process undertaken to respond to this request. It states that at the time the request was received, its internal processes for responding to EIR requests were being reorganised, and that two departments were involved in processing the request. This process has since been streamlined and EIR requests are channelled through one central point in the Council.
- The request was received via email on 24 August 2010.
 - On 25 August, the request was sent via a centralised mail box to the Access to Information Team ('the AI Team'). The request was registered onto a centralised database. The complainant was also sent an acknowledgment of his request.
 - The AI Team then informed the Building Control Access Team of the complainant's request and some information was collated and returned. However the information was not clear or conclusive and so the AI team sought further clarification.
 - On 2 September 2010 a meeting was held between the AI team and a building control officer. Due to an administrative error, the AI Team had deleted the Building Control Access Team's email of 25 August and so a request for another copy was made.
 - On 14 September 2010 the Building Control Access Team provided the AI Team with the relevant information. An email was sent to the complainant on the same day to inform him that he could inspect the requested information on 16 September.
27. The request was registered as a valid EIR request within one day. The Council prepared a response to the complainant on the same day that search results were communicated to the Council's FOI officer. The Commissioner considers that a reasonable time was taken for these processes.

28. The Council took a total of 14 working days to conduct a search of its records for information relevant to the complainant's request. The Council explains that it took between three and four hours to complete the process of responding to the complainant's request. It has provided the Commissioner with a copy of its extraction process which details the actions that need to be taken to search the three software applications which hold information relevant to the complainant's request. However, the Council points out that it had to liaise between two departments and balance the time spent on collating a response with other work commitments.
29. The search for information relevant to the complainant's request was undertaken by staff in the Council's Building Control Access Team. This department is fee earning and had a duty to conduct inspections, plan checks and provide Building Control and Regulation certificates within prescribed time frames. Work is prioritised based on the order it is received and also the constraints or targets placed on a response. The Council explains that the complainant's request, like other EIR requests, was dealt with in the order it was received and alongside other the Building Control Access Team's work commitments, statutory requirements and ISO targets.
30. The test of whether a public authority has complied "as promptly 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 as quickly as possible. However, the Commissioner accepts that a public authority is entitled to balance its duties under the EIR with its other responsibilities and commitments. This is particularly the case where a request is handled by a department whose sole task is not to handle requests made under the FOI or EIR, but also to ensure compliance with other statutory targets and tasks. The Commissioner accepts that it is appropriate for the Council to delegate the task of searching relevant records to staff who have experience and knowledge of this area, even if this means that the request must be handled alongside other work commitments placed on these staff.
31. However, the Commissioner notes that the process of responding to the complainant was delayed by the fact that an email providing the information necessary to respond to the request was inadvertently deleted by the Access to Information Team. Whilst the Commissioner appreciates that this was an administrative error, he nevertheless concludes that had this not been deleted, the Council could have made the requested information available more quickly. Because of this factor, he finds that the Council has breached regulation 5(2).

The Decision

32. The Commissioner's decision is that Walsall Metropolitan Borough Council breached regulation 5(2) by failing to make the information requested by the complainant available as soon as possible.

Steps Required

33. The Commissioner requires no steps to be taken.

Other Matters

34. Although he has found a breach of regulation 5(2) in the particular circumstances of this case, the Commissioner notes that the Council did comply with regulation 5(1) within the statutory timescale of 20 working days. The Commissioner considers that it may be useful to highlight that complaints of this nature may have the undesirable effect of diverting public authorities' resources away from actually responding to requests in as timely a manner as they might otherwise do.

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 served.

Dated the 24th day of March 2011

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.

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:

- 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

3.8 Has a local authority authorised in relation to the property any proceedings for the contravention of any provision contained in Building Regulations?