

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

Decision Notice

Date: 13 January 2011

Public Authority: Buckinghamshire County Council
Address: County Hall
Walton Street
Aylesbury
Buckinghamshire
HP20 1UU

Summary

On 22 June 2009 the complainant requested information relating to any possible meetings which a named Councillor had had at a specified place. The complainant expected a local by-pass to have been the subject of any meeting which may have taken place. The public authority responded by neither confirming nor denying whether the information was held by reference to section 1(1)(a) of the Freedom of Information Act 2000. The Commissioner has investigated and finds that, given the context of the request, it should have been dealt with under the Environmental Information Regulations (EIR). The Commissioner requires the public authority to respond to the request by either providing the information or issuing a refusal notice compliant with regulation 14(1).

The Commissioner's Role

1. The Environmental Information Regulations (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 EIR 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 EIR.

Background

2. The request is linked to an ongoing dispute over a proposed by-pass for the Buckinghamshire village of Wing. The complainant is concerned along with other residents that plans for a relief road have been altered and the recent linking together of other by-passes has created a '*strategic link between the M1 and M25*'. He has produced a website to highlight the concerns of the local residents relating in part to Buckinghamshire County Council's handling of the proposals. The complainant was most recently concerned with the possibility that the public authority had met with only a selection of local representatives with regard to this matter, hence the submission of his request for information.

The Request

3. On 22 June 2009 the complainant requested the following information:

"Specifically, I request details of the times and dates of any meetings [named Councillor] may have had at Ascott House, Wing, or with representatives of Ascott Estates or the National Trust, and information regarding those present at those meetings, the purpose and agenda of those meetings and any minutes or correspondence arising from them.

This request is made with reference to the Freedom of Information Act 2000."

4. On 21 October 2009 the public authority provided a response to the complainant in which it refused to confirm or deny whether it held the requested information on the basis of the exemption concerning personal data contained in section 40(5)(b)(i) of the Act.
5. On 3 November 2009 the complainant requested an internal review of the public authority's decision.
6. On 8 February 2010 the public authority wrote to the complainant with the outcome of the internal review it had carried out. The internal review upheld the original decision to neither confirm nor deny whether it held the requested information.

The Investigation

Scope of the case

7. On 4 March 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 fact that the public authority had refused to comply with the request, and the delay involved in the public authority's responses.

Chronology

8. On 8 April 2010 the Commissioner wrote to the public authority and informed it that a complaint had been received regarding the request.
9. On 9 April 2010 the public authority responded to the Commissioner, providing further arguments in support of its application of section 40(5)(b)(i) and a brief background to the request.
10. On 4 June 2010 the Commissioner wrote to the public authority to detail the scope of his investigation. The Commissioner sought further clarification regarding matters related to the application of section 40(5)(b)(i).
11. The public authority responded on 4 June 2010.
12. After further communication between the Commissioner and the public authority, on 11 August 2010 the Commissioner proposed to the public authority that the request should have been dealt with under the Environmental Information Regulations 2004 (the EIR).
13. On 31 August 2010 the public authority responded to the Commissioner and provided arguments in support of the request falling under the scope of the Act rather than the EIR.

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.

The full extracts of the regulations included in this Notice can be found in the Legal Annex.

15. Environmental information is defined within regulation 2(1) of the EIR. This is:

“any information in written, visual, aural, electronic or any other material form on -

- (a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...*
- (b) factors, such as substances, energy, noise, radiation or waste, emissions...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...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...’.*

16. The complainant requested information about any meetings a named Councillor may have had at which it seems that he expected a proposed by-pass would have been discussed. The public authority also informed the Commissioner that this was the assumed background for any meetings which may or may not have taken place.
17. The Commissioner considers that any recorded information relating to meetings where a proposed by-pass is discussed is environmental information by virtue of regulation 2(1)(c). The implementation of a by-pass would be likely to affect the state of the land or landscape as noted in regulation 2(1)(a) and have an affect on noise and emissions as noted in regulation 2(1)(b). Therefore the Commissioner considers the requested information in this case to be environmental as it relates to information on an activity which would be likely to affect the land or landscape and noise or emissions affecting the environment.

Regulation 5 and Regulation 14

18. Regulation 5(1) provides that a public authority that holds environmental information shall make it available on request.
19. Regulation 14 states that if a request for environmental information is refused, this refusal should be made in writing and no later than 20 working days after the date of the request. The refusal must specify any exception being relied upon under regulations 12(4), 12(5) or 13; and the matters considered in reaching a decision with respect to the

public interest under regulation 12(1)(b). The refusal should also inform the applicant of how to make representations against the public authority's handling of the request and of the applicable enforcement and appeal provisions.

20. The public authority has been informed that the Commissioner considers that the request is for information that is of an environmental nature and as such should have been considered under the EIR.
21. The public authority has refused to confirm or deny whether it holds the requested information. The public authority has not, however, considered the request under the EIR.

The Decision

22. The Commissioner's decision is that the public authority should reconsider the request under the EIR.

Steps Required

23. As the Commissioner has determined that the request relates to environmental information, he therefore requires the public authority to consider the request under the provisions of the EIR. The public authority should either comply with regulation 5(1) and provide the information if it is held or issue a refusal notice compliant with regulation 14 of the EIR.
24. The public authority must take the steps required within 35 calendar days of the date of this Notice.

Failure to comply

25. 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

26. 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 13th day of January 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;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and

- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

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“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 –

- (g) 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;
- (h) 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);
- (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 or activities designed to protect those elements;
- (j) reports on the implementation of environmental legislation;

(k) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and

(l) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

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 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.