

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

**Decision Notice**

**Date: 16 May 2011**

**Public Authority:** Hartlepool Borough Council  
**Address:** Chief Executive's Department  
Civic Centre  
Victoria Road  
Hartlepool  
TS24 8AY

**Summary**

---

The complainant requested information relating to the independent valuation of a number of properties. The valuations had been obtained because the Council wished to purchase the properties as part of a redevelopment scheme. The Council refused to provide the information, citing the exclusions under section 12(1), 14(1) and 14(2). It also sought to rely on the exemption under section 41(1) of the Freedom of Information Act 2000 ("the FOIA"). The Information Commissioner ("the Commissioner") decided that the information request should have been handled under the Environmental Information Regulations 2004 ("the EIR"). He also considered that the information sought represented the personal data of the property owners and that it was exempt from disclosure under regulation 13(1) of the EIR. He found that the Council breached regulation 14(1), 14(2) and 11(2) of the EIR but he requires no steps to be taken.

**The Commissioner's Role**

---

1. The 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 Commissioner. In effect, the enforcement provisions of Part 4 of the FOIA are imported into the EIR.

## The Request

---

2. On 13 July 2010, the complainant wrote to the Council and requested information in the following terms:

*"We would request a copy of the valuations carried out on behalf of Hartlepool Borough Council by Appletons in connection with each property acquired by Hartlepool Borough Council in North Central Hartlepool Regeneration Area Phase II (Perth Street area)".*

*These valuations have been put forward as independent valuations and we request copies of the same in order to assist with our ongoing enquiries. We consider that they are not commercially sensitive and that the matter is of considerable public interest".*

3. The Council replied on 5 August 2010. The Council applied section 12(1), 14(1) and the exemption under section 41(1) of the FOIA.
4. The complainant requested an internal review on 24 August 2010.
5. The Council completed its internal review on 15 November 2010. It stated that it wished to maintain its refusal. It also added that it considered that the exclusion under section 14(2) also applied.

## The Investigation

---

### Scope of the case

6. On 19 November 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 whether his request had been correctly refused. He clarified that he did not want the entire valuation report. He said that he only required the valuation figure and the address of the property. This notice is therefore limited to this information.

### Chronology

7. On 24 November 2010, the Commissioner sent a standard letter to the Council to ask for copies of the withheld information.
8. The Council replied on 14 December 2010. It provided a couple of the valuation reports as examples but said that it would not provide all of

the reports (the Council estimates there are about 130) unless the Commissioner confirmed that it would be necessary.

9. The Commissioner wrote to the complainant on 17 February 2011. He asked the complainant to clarify whether he required the full valuation reports. Referring specifically to any information that could identify the property owner, the Commissioner stated that he believed this information would either be exempt under section 40(2) of the FOIA or excepted under regulation 13(1) of the EIR. The Commissioner explained that it was his view that disclosure of this information would be unfair and unnecessary and he asked the complainant to confirm whether he would be willing to withdraw his complaint.
10. The complainant replied on the same day. He said that he did not require any personal information as he was only interested in the valuation figures. He confirmed that he wished to compare the valuation figures with the purchase prices already in the public domain.
11. The Commissioner replied on 18 February 2011. He said that if the complainant only required the valuation figures in isolation, it was not clear how he could use this information to compare the valuations with the final sold prices of individual properties. He invited further clarification from the complainant.
12. The complainant replied on the same day and apologised if this previous response had not made it clear that he would also need the Council to disclose the addresses of the properties.
13. The Commissioner wrote to the complainant on the same day. He reiterated his view that the information represented personal data and that it would not be fair or necessary to disclose it in the circumstances. He invited the complainant to withdraw.
14. The complainant emailed the Commissioner on the same day and confirmed that he did not accept the Commissioner's conclusion and wished the Commissioner to issue a formal Decision Notice.
15. The Commissioner wrote to the Council on 21 February 2010. He set out the details of the complaint and confirmed his intention to issue this notice.

## Analysis

---

### Substantive Procedural Matters

#### Is the information environmental?

16. The Council handled the request under the FOIA however it is the Commissioner's view that the request should have been handled under the EIR. The valuations are information on plans affecting or likely to affect the environment. The valuations were sought in relation to a redevelopment scheme and relate to the Council's plans to demolish the properties in question. These proposals would clearly affect the land which is one of the elements listed in regulation 2(1)(a). As such the information falls within the scope of regulation 2(1)(c) of the EIR.

#### Exception

#### Regulation 13(1) – Third party personal data

17. Regulation 13(1) of the EIR provides that information cannot be disclosed to the general public (all disclosures made under the EIR are considered to be to the general public rather than just the requester) if that disclosure would breach any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 ("the DPA"). For clarity, although the Council did not rely on this exception or the equivalent exemption under section 40(2) of the FOIA, the Commissioner has exercised his discretion to consider it because of his dual responsibilities as a regulator of DPA as well as the FOIA and the EIR. In other words, it is appropriate for the Commissioner to take positive steps to consider the exception if it appears to him that the disclosure of the information may breach the DPA.

#### Is the information personal data?

18. Personal data is defined by the DPA as any information relating to a living and identifiable individual. The Commissioner is satisfied that the valuation and the address of the property is personal data as it clearly relates to the property owner at the time and their private property transaction. The view that a property address is personal data was confirmed by the Information Tribunal in the case of Mr Colin P England and the London Borough of Bexley (EA/2006/0060 and 0066). Having heard evidence on the subject, the Tribunal was satisfied that "...knowing the address of a property makes it likely that the identity of the owner will be found." (paragraph 94).

## **Would disclosure breach any of the Data Protection Principles?**

19. The first principle in Schedule 1 of the DPA and the most relevant in this case states that personal data shall only be disclosed in fair and lawful circumstances. When considering the issue of fairness, the Commissioner will consider the reasonable expectations of the individuals concerned and the consequences of any disclosure. He will then balance these issues with any legitimate public interest in the disclosure.

### **Reasonable expectations**

20. The valuations relate to a large number of private property transactions. It was not clear to the Commissioner on what basis it could be argued that the property owners would have expected this information to be put into the public domain. This kind of information is not generally put into the public domain following property transactions. The fact that the final purchase price is put into the public domain does not, in the Commissioner's view, have any bearing on whether or not there was an expectation that the valuation figure would be put into the public domain. This information is clearly different and reveals more information about the property transaction than would typically be known or expected.

### **Consequences of disclosure**

21. The Commissioner considers that the disclosure of personal data where that disclosure was not within an individual's reasonable expectations could be distressing to them as it could represent an unwarranted invasion of their privacy. In these circumstances, the Commissioner also considers that the disclosure could result in unwanted contact.

### **Legitimate public interest interests**

22. The complainant argued that there is a legitimate public interest in being able to compare the valuation figure with the price that the property sold for as he considers that this will demonstrate whether the Council acted unfairly in the price it offered for the properties. There is always some legitimate interest in the disclosure of information held by public authorities to bring about transparency and accountability. The Commissioner considers that this is particularly so in cases that involve the expenditure of public funds. However, in light of the fact that there are robust oversight procedures in place and other forums exist for the stakeholders to settle any dispute that might arise, the Commissioner was not persuaded that the legitimate public interest was sufficiently strong to outweigh the property owner's legitimate expectations of

confidentiality. Furthermore, he would not be satisfied that the disclosure of the property addresses would be necessary.

### **Procedural Requirements**

23. The Commissioner found that the Council breached regulation 14(1) and 14(2) for failing to issue a valid refusal notice under the EIR within 20 working days of the request or by the date of its internal review.
24. The Council breached regulation 11(2) of the EIR for failing to carry out its internal review within 40 working days.

### **The Decision**

---

25. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the EIR:
  - The information requested was excepted from disclosure under regulation 13(1) of the EIR. The Council did not therefore breach the duties to disclose environmental information upon request in regulation 5(1) or 5(2) of the EIR.
26. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the EIR:
  - The Council failed to respond to the request under the EIR. This was a breach of regulation 14(1) and 14(2) of the EIR.
  - The Council failed to undertake an internal review within 40 working days. This was a breach of regulation 11(2) of the EIR.

### **Steps Required**

---

27. The Commissioner requires no steps to be taken.

## Right of Appeal

---

28. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 16<sup>th</sup> day of May 2011**

**Signed .....**

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

## **Legal Annex**

### **Environmental Information Regulations 2004**

#### **Regulation 2 - Interpretation**

##### **Regulation 2(1)** In these Regulations –

‘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 11 - Representation and reconsideration**

**Regulation 11(1)** Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant’s request for environmental information if it appears to the applicant that the authority



has failed to comply with a requirement of these Regulations in relation to the request.

**Regulation 11(2)** Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

### **Regulation 13 - Personal data**

**Regulation 13(1)** To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

**Regulation 13(2)** The first condition is –

- (a) in a case where the information falls within any paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –
  - (i) any of the data protection principles; or
  - (ii) section 10 of the Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it;and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998(a) (which relates to manual data held by public authorities) were disregarded.

**Regulation 13(3)** The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of the Act and, in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

### **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.