

Environmental Information Regulations 2004

Decision Notice

Date: 23 March 2011

Public Authority: The Governing Body of the University of Reading
Address: Whiteknights House
Whiteknights
PO Box 217
Reading
RG6 6AH

Summary

The complainant made a request to the University of Reading (the "University") for information relating to rights of way over University land. The University refused to provide some of the requested information to the complainant as it stated it was exempt from disclosure under section 43(2) of the Freedom of Information Act 2000. The Commissioner considers that the requested information is environmental information and therefore the request should have been dealt with under the Environmental Information Regulations 2004.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. 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.

The Request

3. From the information which has been provided to us, I understand that the complainant made a request to the University on 5 July 2010. The request was for the following information:
 - 1. Any report prepared in the last 5 years concerning public rights of way across the grounds at Sibly Hall.*
 - 2. Any minute of any discussion or decision on public rights of way across the grounds at Sibly Hall."*
4. On 13 August 2010 the University responded to the request for information. It explained that initially the University had believed that the request should be dealt with under the EIR but on reflection it had decided that it should be dealt with under the Act.
5. It confirmed that in a telephone conversation which took place on 23 July 2010 the complainant agreed a 2 year period in relation to both limbs of the request rather than the 5 year period as originally requested.
6. The University provided the complainant with a previous statutory declaration which it stated would meet the first part of the request. It also stated that it believed that the complainant had seen the plan which accompanied the statutory declaration when he had viewed the pre-application documentation.
7. In relation to the second part of the request, the University detailed the searches it had conducted to find the information the complainant had requested. It provided the complainant with information relating to the Sibly Hall Design Team (SHDT) minutes. It did however refuse to provide the complainant with information relating to two sets of Facilities Management Committee (FMC) minutes (which the Commissioner is now aware are dated 27 April 2010 and 24 June 2010 and the relevant sections of those minutes are labelled 10/18 and 10/29 respectively). It explained that it believed this information was

- exempt from disclosure by virtue of section 43(2) of the Act which relates to commercial interests. It explained why it believed this exemption was applicable in this case.
8. As the complainant was dissatisfied with the response he had received, on 16 August 2010 he asked the University to conduct an internal review of its decision.
 9. On 14 September 2010 the University wrote to the complainant with the result of the internal review. The University upheld its application of section 43(2) in this case. The University's response was redrafted and sent to the complainant again on 24 September 2010 however the review still upheld the University's application of section 43(2).

The Investigation

Scope of the case

10. On 23 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:
11. Whether the University was correct to withhold the relevant part of the two sets of minutes relating to point 2 of the request under section 43(2) of the Act.

Chronology

12. On 14 January 2011 the Commissioner wrote to the University to explain that the request should have been dealt with under EIR.
13. On 11 February 2011 the University responded to the Commissioner. It explained why it did not believe that the request should have been dealt with under EIR. However it did go on to provide its arguments as to why the information should not be disclosed under the EIRs by reference to the relevant exceptions.

Analysis

Substantive Procedural Matters

Is the outstanding information environmental?

14. Regulation 2 of the EIR defines environmental information as being any information 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).”*
15. The full text of regulation 2 can be found in the Legal Annex attached to the end of this notice.

16. In this instance the Commissioner has been provided with a copy of the withheld information. It contains information relating to the potential to claim rights of way over University land. Whilst the information relates to the potential to make such a claim, given that such a claim is being discussed by the University as a possibility, if any such claim were successful this would have an impact on the environment, this information relates to a measure (as set out in regulation 2(1)(c) above) likely to affect the elements of the environment.
17. Regulation 5 of the EIR places a public authority that holds environmental information under a duty to make that information available on request, unless an exception applies. The full text of regulation 5 is available in the Legal Annex attached to the end of this notice.
18. Therefore in this instance, the University did not deal with the request for information in accordance with the EIR in that it did not apply the correct legislation when handling the request.

The Decision

19. The Commissioner's decision is that the University did not deal with the request for information in accordance with the EIR.

Steps Required

20. The Commissioner requires the University to take the following steps to ensure compliance with the EIR:
 - Reconsider the request in accordance with the EIR.
21. The University must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

22. 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.

Other matters

23. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
24. All communications to a public authority, including those not in writing and those transmitted by electronic means, potentially amount to a request for information within the meaning of the EIR, and if they do they must be dealt with in accordance with the provisions of the EIR. It is therefore essential that everyone working in a public authority who deals with correspondence, or who otherwise may be required to provide information, is familiar with the requirements of both the EIR and the EIR Code of Practice in addition to the FOIA and the other Codes of Practice issued under its provisions, and takes account of any relevant guidance on good practice issued by the Commissioner.¹ Authorities should also ensure that proper training is provided.
25. The Commissioner notes that, in this instance, the University failed to process the request under the appropriate legislation. This raises concerns that staff handling requests at the University might not be sufficiently familiar with the requirements of the EIR. The Commissioner expects that the University's future handling of requests will conform to the recommendations of the EIR Code.

¹ The 'Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 No. 3391)' is available at <http://www.defra.gov.uk/corporate/policy/opengov/eir/pdf/cop-eir.pdf>

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

27. 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.
28. 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 23rd day of March 2011

Signed

**Pamela Clements
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;
- (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);

"historical record" has the same meaning as in section 62(1) of the Act;

"public authority" has the meaning given in paragraph (2);

"public record" has the same meaning as in section 84 of the Act;

"responsible authority", in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

"Scottish public authority" means –

- (a) a body referred to in section 80(2) of the Act; and
- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

"transferred public record" has the same meaning as in section 15(4) of the Act; and

"working day" has the same meaning as in section 10(6) of the Act.

Regulation 2(2)

Subject to paragraph (3), "public authority" means –

- (c) government departments;
- (d) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding –
 - 29. any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or

30. any person designated by Order under section 5 of the Act;
- (e) any other body or other person, that carries out functions of public administration; or
- (f) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –
1. has public responsibilities relating to the environment;
 2. exercises functions of a public nature relating to the environment; or
 3. provides public services relating to the environment.

Regulation 2(3)

Except as provided by regulation 12(10) a Scottish public authority is not a “public authority” for the purpose of these Regulations.

Regulation 2(4)

The following expressions have the same meaning in these Regulations as they have in the Data Protection Act 1998(b), namely –

- (g) “data” except that for the purposes of regulation 12(3) and regulation 13 a public authority referred to in the definition of data in paragraph (e) of section 1(1) of that Act means a public authority within the meaning of these Regulations;
- (h) “the data protection principles”;
- (i) “data subject”; and
- (j) “personal data”.

Regulation 2(5)

Except as provided by this regulation, expressions in these Regulations which appear in the Directive have the same meaning in these Regulations as they have in the Directive.

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.

Reference: FS50351681