

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 November 2011

Public Authority: Denbighshire County Council
Address: County Hall
Wynnstay Road
Ruthin
LL15 1YN

Summary

The complainant requested information relating to property search information and charging under various regulations. The Council stated that no information was held which fell within the scope of some parts of the complainant's request. The Council withheld other information by virtue of section 41(1) of the Act, and refused to furnish the Commissioner with a copy of the disputed information under section 51(5) of the Act. The Commissioner has investigated and determined that some of the requests were for environmental information, and should have been considered under the EIR. The Commissioner requires the Council to reconsider these parts of the request under the EIR and either disclose the information requested or issue a valid refusal notice in accordance with regulation 14 of the EIR. In respect of the information that is not considered to be environmental, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold further information.

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. On 15 November 2010, the complainant wrote to the Council and made the following request for information:
 1. *On the 27th July 2010 DEFRA advised your Chief Executive of the need to bring the potential refund (for unlawfully charging personal searchers for EI information) to the attention of those who had been wrongly charged. Can you please produce the written report to show how this has been addressed by the Council.*
 2. *On the 16th July 2009 the LGA sought legal guidance on whether there was an entitlement to Charges fir [sic] EU being refunded. Please advise the date this advice was actioned by the Council and provide a copy of the written record of the decision.*
 3. *On the 16th July 2009 the LGA advised authorities that they could avoid following the ICO's guidance regarding environmental information charges being unlawful pending their own legal opinion or the legal opinion the LGA was seeking. The LGA have confirmed that legal consensus exists regarding environmental information. Please provide the record of the decision the Council took to act contrary thereto*
 4. *On the 11 August 2010 the LGA reported the existence of a fighting fund. 114 authorities had shown their willingness to contribute thereto. Please show me your response to the LGA request and all papers showing how the decision to contribute (or not) was made*
 5. *On the 11 August 2010 the LGA reported on its survey of 156 authorities whose personal search income totalled £4.2 Million in 2009/10. Please advise me of your input into that survey*
 6. *On the 16 July 2009 the LGA wrote to all Heads of Legal and Directors of Finance about seeking authoritative legal advice from a leading QC in this specialist area. Please provide all written records to show your acceptance or rejection of that advice. Please provide copies of any further written advice/guidance on the subject*
 7. *Please provide me with a copy of all Council reports on the issue of searches and the EIR from 2004 to date*

8. *Please provide me with copies of all correspondence you have had with the LGA on the subject of property searches and environmental information. If you believe communications from and to the Local Government Association regarding property search issues are exempt under Section 41 (confidential information) please advise me of:*
- *The specific information you believe falls within the s41 exemption*
 - *Why all LGA information is considered to have the necessary degree of confidence*
 - *The circumstances in which all the LGA information gives rise to an obligation of confidence*
 - *Details of why disclosure would be detrimental to the LGA*
 - *Why disclosure of all the material would be actionable by the LGA*
4. The Council responded to the request on 7 December 2010 with the following (numbering as above):
1. *The Council explained that no information was held falling within the scope of this part of the request.*
 2. *The Council explained that no information was held falling within the scope of this part of the request.*
 3. *The Council explained that no information was held falling within the scope of this part of the request.*
 4. *The Council provided the complainant with a copy of the email that was sent to the LGA, indicating the Council's willingness to contribute to the fund. However, the Council also confirmed that no further written records were held as this decision was a verbal agreement.*
 5. *The Council confirmed that it had had input into the survey, but explained that it was an internet-based survey, and that therefore no information falling within the scope of this part of the request was held.*
 6. *The Council provided the complainant with a response to this element of the request.*
 7. *The Council explained that no information was held falling within the scope of this part of the request.*

- 8. The Council explained that information was held, and it related to guidance on its approach in respect of land charges and their release under the EIR. The Council explained that it was withholding this information by virtue of section 41(1) of the Act.*
5. The complainant wrote to the Council on 23 December 2010 to request an internal review of its handling of his various requests. The complainant asked for specific clarification of the Council's responses to each of the eight elements of his request.
6. The Council issued the outcome of its internal review on 20 January 2011, upholding its decision in respect of each of the eight elements of the complainant's information request.

The Investigation

Scope of the case

7. On 31 January 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The scope of the Commissioner's investigation was agreed with the complainant on 2 June 2011, and focused on the following points:
 - Whether further information is held in respect of parts 1-5 of the complainant's request for information
 - Whether the Council had correctly applied the exemption at section 41 of the Act to the information requested in part 8 of the complainant's request for information.

Chronology

8. On 3 March 2011 the Commissioner wrote to the Council and confirmed that the complaint had been deemed eligible for formal consideration. The Commissioner also requested copies of the withheld information.
9. The Council responded on 11 April 2011 and provided a document which detailed its decision not to provide the Commissioner with a copy of the withheld information, on the basis of section 51(5) of the Act.
10. The Commissioner wrote to the Council on 25 July 2011 and requested further arguments in support of its determination that no information falling within the scope of parts 1-5 of the request was held. The Commissioner also set out his preliminary view, that some parts of the request should have been considered under the EIR, since the information requested was likely to be environmental.

11. The Council responded on 7 September 2011 and provided some further information to support its view that no further information was held. The Council disagreed with the Commissioner's view that parts of the information request should have been considered under the EIR, and maintained its view that the request, in its entirety, had been correctly considered under the Act.

Analysis

Substantive Procedural Matters

Correct Access Regime

12. The Council considered the complainant's request, in its entirety, under the Act. The information that was withheld by the Council (part 8 of the complainant's information request) was considered by the Council to be exempt from disclosure by virtue of section 41(1).
13. The Commissioner notes that the complainant's requests tend to focus on two broad issues; the refunding of charges brought under the 'Charges for Property Search Regulations' ("CPSR") and the Council's obligations under the EIR.
14. Wherever possible, any decision as to whether the requested information is environmental should be based on what information is actually held by the Council in response to the request, rather than on an assessment of the request itself. In this case, the Commissioner has not been able to consider any of the disputed information when coming to his decision as to whether the requested information is environmental. This is because the Council claims not to hold any information in respect of parts 1-5 of the request, and because the Council is relying on section 51(5) of the Act in refusing to furnish the Commissioner with a copy of the disputed information requested under part 8 of the request. Therefore the Commissioner has had no choice but to base his judgement on an assessment of the request in this case.
15. Parts 1, 2, 4 and 5 of the complainant's request for information were as follows:
 1. *On the 27th July 2010 DEFRA advised your Chief Executive of the need to bring the potential refund (for unlawfully charging personal searchers for EI information) to the attention of those who had been wrongly charged. Can you please produce the written report to show how this has been addressed by the Council*

2. *On the 16 July 2001 the LGA sought legal guidance on whether there was an entitlement to Charges fir [sic] EU being refunded. Please advise the date this advise was actioned by the Council and provide a copy of the written record of the decision*
 4. *On the 11 August 2010 the LGA reported the existence of a fighting fund. 114 authorities had shown their willingness to contribute thereto. Please show me your response to the LGA request and all papers showing how the decision to contribute (or not) was made*
 5. *On the 11 August 2010 the LGA reported on its survey of 156 authorities whose personal search income totalled £4.2 Million in 2009/10. Please advise me of your input into that survey*
16. The Commissioner considers that the broad focus of these four parts of the request was on the CPSR charges. The requests were "on" refunds of the charges made under the CPSR (parts 1 and 2), "on" the Council's contribution, or non-contribution to a fighting fund (part 4), and "on" a Council's survey response relating to its personal search income.
17. Regulation 2(1)(c) of the EIR provides that:

"'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 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 the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)*
18. Due to the description set out in paragraph 16 above, the Commissioner does not consider that parts 1, 2, 4 or 5 of the request would constitute environmental information. The Commissioner therefore considers that the Council correctly applied the Act to parts 1, 2, 4 and 5 of the request.
19. Parts 3 and 8 of the complainant's request were for the following:
- 3. On the 16 July 2009 the LGA advised authorities that they could avoid following the ICO's guidance regarding environmental information charges being unlawful pending their own legal opinion or the legal opinion the LGA was seeking. The LGA have confirmed that legal consensus exists regarding environmental information. Please provide the record of the decision the Council took to act contrary thereto*
- 8. Please provide me with copies of all correspondence you have had with the LGA on the subject of property searches and environmental information.*
20. The Council also considered these parts of the request under the Act, stating that no information falling within the scope of part 3 of the request was held by the Council, and withholding information falling within the scope of part 8 of the request by virtue of section 41(1) of the Act.
21. The Council subsequently provided further details of the nature of information that had been withheld in respect of part 8 of the request. In its initial response to the complainant of 7 December 2010, the Council stated:
- "The specific information related to guidance on our approach in respect of land charges and their release under the Environmental Information Regulations. We did not enter into correspondence from and to the LGA directly from this Authority".*
22. Within correspondence to the Commissioner on 11 April 2011 the Council provided the following statement:
- "the documents withheld include a Legal Opinion prepared by [named individual] in relation to the obligations of authorities under the*

Environmental Information Regulations, together with a summary of the opinion and an annex to the advice known as "the CON 29 table".

The Council went on to state:

"Accordingly, the exception at section 51(5)(a) applies in this case as the Opinion, the summary of the Opinion and the CON29 table all relate to the Council's obligations, liabilities or rights under the EIR".

23. During the course of the Commissioner's investigation, the Commissioner asked the Council for representations to support its view that the requested information had been correctly considered under the Act. The Council stated the following:

"this Authority did consider whether the information requested fell within the definition of Environmental Information and is conscious however that each request is treated on its merits and has not made an automatic assumption that the category of information relating to the land charges issues is always environmental information. We accept that the scope of the definition is wide as defined within the regulations, but there are limits. We suggest that the nature of the information requested in part 8 of the request is too remote when considering the definition within the Directive.

In considering the wording in the definition and the nature of the information itself i.e. the communications between this Council and the LGA on issues such as payment of the proportion of the legal fee, provision of a password/security measures to effect access to the legal opinion, acceptance of the terms and conditions in accessing the opinion and so on, do not fall within the definition".

24. The Council went on to expand on its view that the requested information did not fall within the boundaries of any of the definitions at regulation 2(1) of the EIR. The Council gave an ECJ ruling as an example, to explain that the EIR do not give a general and unlimited right of access to all information held by public authorities which has a connection, "however minimal", with one of the environmental factors set out in the Directive.
25. The Council concluded with its view that even if the Commissioner were to find that some information did fall into one of the categories at regulation 2(1), there would be no direct impact on the elements of the environment and therefore no consequential link to the environmental elements and factors.
26. Having considered the wording of the information request, and the submissions provided by the Council, the Commissioner considers that the requests were for information "on" the EIR themselves, and "on" the

Council's obligations under the EIR. Whilst he accepts that this information may include such factors as those described by the Council in paragraph 23 above, he considers that the overarching subject of the request was the Council's EIR obligations.

27. The Commissioner therefore considers that information "on" authorities' obligations under the EIR would fall within the definition at regulation 2(1)(c) at paragraph 17 above.
28. Paragraph 1 of the Directive 2003/04EC states that "Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment". Therefore the EIR is in itself considered a "measure" and information relating to it, such as the information requested in parts 3 and 8, falls within regulation 2(1)(c).
29. The Commissioner therefore concludes that information falling within the scope of parts 3 and 8 of the request would constitute environmental information as defined by regulation 2(1)(c). The Commissioner considers the requested information in this case to be environmental as it relates to information on a measure (the EIR) which would be likely to affect the elements of the environment.

Regulation 5 and Regulation 14

30. Regulation 5(1) provides that a public authority that holds environmental information shall make it available on request. 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) and 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.

Section 1 – is further information held by the Council?

31. The Commissioner has determined that parts 1, 2, 4 and 5 of the request were correctly considered by the Council under the Act. The Commissioner has therefore gone on to consider whether, in line with

section 1 of the Act, further information is held by the Council in respect of each of these four parts of the request.

32. In the Commissioner's view, the normal standard of proof to apply in determining whether a public authority holds any requested information is the civil standard of the balance of probabilities.
33. This is in line with the approach taken by the Information Tribunal in the case of *Bromley & others v the Environment Agency* (EA/2006/0072), in which it stated:

"...we must consider whether the Information Commissioner's decision that the Environment Agency did not hold any information covered by the original request, beyond that already provided, was correct. In the process we may review any finding of fact on which his decision is based. The standard of proof to be applied in that process is the normal civil standard, namely, the balance of probabilities..."

because

"...there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records"

Parts 1 and 2 of the request

34. Parts 1 and 2 of the request were for the following:

"On the 27 July 2010 DEFRA advised your Chief Executive of the need to bring the potential refund (for unlawfully charging personal searchers for EI information) to the attention of those who had been wrongly charged. Can you please produce the written report to show how this has been addressed by the Council

On the 16 July 2009 the LGA sought legal guidance on whether there was an entitlement to Charges fir [sic] EU being refunded. Please advise the date this advise was actioned by the Council and provide a copy of the written record of the decision".

35. The Council's response to these two parts of the request was that no information was held in respect of either. Within his request for an internal review, the complainant queried this, making accusations of maladministration if the Council had not retained a written record of these actions. Within its internal review response, the Council upheld its decision that no written report was held in respect of part 1 of the request. In respect of part 2 of the request, the Council explained that it had no role in the LGA's decision to seek legal advice.

36. During the Commissioner's investigation, the Council explained that no information was held in respect of parts 1 and 2 of the request due to the fact that no such action had been taken by the Council, since it was awaiting LGA guidance before taking any action.
37. From the information and correspondence that the Commissioner has seen on this matter, it is clear that the LGA sought the legal advice in question, and therefore the Commissioner considers that it is reasonable that no detailed information is held by the Council on these matters. Further, it is reasonable that the Council is awaiting LGA guidance before taking any further steps in relation to the issues at hand.
38. The Commissioner considers that due to the timing of the request and the status of the issues at hand, it is reasonable that this individual local authority does not hold the information requested in parts 1 and 2 of the complainant's request, since matters were being addressed by the LGA. The Council has explained that it had no role in the matters enquired about in part 2 (and therefore no business need to hold this information) and that it is awaiting further guidance around refunds prior to taking any further steps.
39. The Commissioner has concluded that, on the balance of probabilities, the Council does not hold information falling within the scope of parts 1 or 2 of the information request.

Part 4 of the request

40. Part 4 of the complainant's request was for:

"On the 11 August 2010 the LGA reported the existence of a fighting fund. 114 authorities had shown their willingness to contribute thereto. Please show me your response to the LGA request and all papers showing how the decision to contribute (or not) was made"

41. In its initial response to the complainant, the Council provided a copy of the email that it had provided to the LGA indicating its willingness to contribute to the fund. The Council explained that the decision was a verbal agreement, and that, therefore, no information was held falling within the scope of part 4 of the request. In its internal review outcome, the Council expanded on this, explaining that the verbal agreement took place between two officers and that no minutes were recorded.
42. Having viewed the email that was provided to the complainant in response to part 4 of his request, the Commissioner considers the Council's arguments to be reasonable. The email consists of a single line, confirming the Council's agreement to be involved – it does not appear that a formal decision-making process needed to have taken place prior to this email being sent.

43. The Commissioner considers the Council's arguments to be reasonable, and is persuaded by the fact that a verbal discussion took place which led to the email being sent which has been provided to the complainant in response to his information request.
44. The Commissioner has concluded that, on the balance of probabilities, the Council does not hold any further information falling within the scope of part 4 of the information request.

Part 5 of the request

45. Part 5 of the complainant's request was for the following:

"On the 11 August 2010 the LGA reported on its survey of 156 authorities whose personal search income totalled £4.2 Million in 2009/10. Please advise me of your input into that survey".

46. The Council has explained that this was an online survey, which was a 'tick box' type survey, submitted on line. The Council confirmed that the officer who completed it did not record any information regarding its completion.
47. The Commissioner considers this to be a reasonable explanation of why the information in question is not held. He therefore concludes that, on the balance of probabilities, the Council does not hold any information falling within the scope of part 5 of the request.

The Decision

48. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the Act:
 - On the balance of probabilities, the Council did not hold the information requested by the complainant at parts 1, 2, or 5 of his request or any further information in relation to part 4.
49. However, the Commissioner has also decided that the following elements of the request were not dealt with by the Council in accordance with the Act:
 - The public authority did not apply the correct legislation when handling parts 3 and 8 of the request.

Steps Required

50. As the Commissioner has determined that the correct access regime for parts 3 and 8 of the request is the EIR he requires the Council to either provide the information requested in compliance with regulation 5(1) or issue a valid refusal notice that complies with regulation 14 of the EIR.
51. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

52. 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

53. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

54. 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.

55. 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 29th day of November 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 –

“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);

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 –

- (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.

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

Section 1(5) provides that –

"A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b)."

Section 1(6) provides that –

"In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as "the duty to confirm or deny"."