

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

### **Decision Notice**

**Date: 28 June 2011**

**Public Authority:** Chief Constable of Humberside Police  
**Address:** Humberside Police Headquarters  
Priory Police Station  
Priory Road  
Hull  
HU5 5SF

### **Summary**

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The complainant asked Humberside Police to provide him with any plans it held of the new Divisional Headquarters and Custody Suite on Clough Road, Hull. Humberside Police refused the request on the basis of section 21 of the Act because the relevant information was available on Hull City Council's Planning portal. The complainant asked for an internal review of this decision because the portal did not provide him with access to the internal floor plans of the new custody suite. Humberside Police refused to provide him with these floor plans on the basis of sections 31(1)(a) to (c) of the Act. The complainant subsequently contacted the Commissioner in order to complain about the decision to withhold this information. The Commissioner has considered the circumstances of this case and has concluded that all of the requested information constitutes environmental information as defined by the EIR and therefore the request should have been dealt with under that access regime rather than under the Act. The Commissioner therefore requires Humberside Police to consider whether the internal floor plan of the new custody suite should be disclosed under the EIR, and if not, to issue a refusal notice compliant with regulation 14 of the EIR.

### **The Commissioner's Role**

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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 Commissioner. In effect, the enforcement provisions of Part 4 of the Act are imported into the EIR.

## The Request

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3. The complainant submitted the following request to Humberside Police (the Police) on 6 February 2011:

'I would like to request any plans (including floor plans, elevations, design layouts, etc.) of the new Divisional Headquarters and Custody Suite on Clough Road, Hull (<http://www.humberside.police.uk/new-divisional-hq>). Where possible, could these be provided by email in an electronic format.'

4. The Police responded on 28 February 2011 and explained that the information that has been requested was exempt from disclosure on the basis of section 21 of the Act because it was accessible via the Hull City Council Planning portal. The Police provided a website link to this portal and the reference number needed to access the relevant information.
5. The complainant contacted the Police on 1 March 2011 and asked for an internal review of this decision to be undertaken. His specific point of complaint was that plans available via the planning portal did not include the internal layout of the new custody suite.
6. The Police responded on 10 March 2011 and explained that it believed that the internal layout of the custody suite was exempt from disclosure on the basis of sections 31(1)(a) to (c) of the Act.

## The Investigation

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### Scope of the case

7. The complainant contacted the Commissioner on 10 March 2011 in order to complain the Police's decision to withhold the information detailing the internal layout of the custody suite.

### Chronology

8. The Commissioner contacted the Police on 24 March 2011 and asked to be provided with a copy of the withheld information and details to support the application of the exemptions cited in the internal review to withhold this information.
9. The Police provided the Commissioner with submissions to support the application of sections 31(1)(a) to (c) on 30 March 2011, albeit that it did not provide a copy of the withheld information.

## Analysis

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### Substantive Procedural Matters

#### What access regime does the requested information fall into?

10. Having considered the circumstances of this case the Commissioner believes that all of the requested information can be correctly described as 'environmental information' as defined by regulation 2(1) of the EIR. The Commissioner has set out his reasoning for this decision below.

#### Regulation 2(1) – defining environmental information

11. Regulation 2(1) of the EIR defines 'environmental information' as any information in any 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 the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)'

12. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor etc in question. In other words, information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.
13. In the Commissioner's opinion all of the requested information in this case constitutes environmental information via regulation 2(1)(c) of the EIR. This is because the construction of the new Divisional Headquarters and Custody Suite on Clough Road is clearly an activity that is likely to affect the state of the elements in regulation 2(1)(a), in particular the land upon which the building is erected. Given the broad reading of the phrase 'any information...on' the Commissioner is confident that any information associated with this activity, including the internal floor plan of the new custody suite which has been withheld and the information that the complainant has been able to access via planning portal, fall within this definition of environmental information. This is because the internal floor plans are directly linked to the activity of constructing the new building, the construction of which will self evidently impact upon the land. In the particular circumstances of this case the Commissioner is prepared to reach this conclusion without sight of the withheld information itself.

## **The Decision**

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14. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act and the EIR. This is because the request for information should have been considered under the EIR rather than under the Act as all of the requested information constitutes environmental information as defined by regulation 2(1)(c).

## **Steps Required**

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15. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
16. Provide the complainant with the information that it had previously withheld – i.e. the internal floor plans of the new custody suite. If the Police consider this information to be exempt from disclosure under the EIR then it should instead issue a refusal notice which complies with the requirements of regulation 14.
17. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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18. 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**

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19. The Commissioner wishes to confirm that should the Police conclude that the internal floor plan of the custody suite is exempt from disclosure on the basis of any of the exceptions contained in the EIR, he expects the complainant to exhaust the Police's internal review procedure before he will accept a further complaint about its potential refusal to provide information under the EIR.

## Right of Appeal

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20. 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: 0300 1234504

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)

21. 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.
22. 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 28th day of June 2011**

**Signed .....**

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

## Legal Annex

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### The Freedom of Information Act 2000

#### 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."

#### Effect of Exemptions

##### Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
  - (i) subsection (1), and
  - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
  - (iii) section 41, and
  - (iv) section 44"

## Law enforcement

### Section 31(1) provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”



## **The Environmental Information Regulations 2004**

### **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);

## **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 11(3)**

The public authority shall on receipt of the representations and free of charge –

- (g) consider them and any supporting evidence produced by the applicant; and
- (h) decide if it has complied with the requirement.

### **Regulation 11(4)**

A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations.

### **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 –

- (i) any exception relied on under regulations 12(4), 12(5) or 13; and
- (j) 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.