

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 13 March 2012

**Public Authority:** Wigan Metropolitan Borough Council  
**Address:** Town Hall  
Library Street  
Wigan  
WN1 1YN

**Decision (including any steps ordered)**

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1. The complainant requested access to view information on site regarding an agreement for a named property and subsequently requested a copy of the information he had viewed.
2. The Information Commissioner's decision is that Wigan Metropolitan Borough Council (WMBC) breached regulation 8(3) of the Environmental Information Regulations 2004 (EIR) by imposing an unreasonable charge for the provision of environmental information.
3. The Information Commissioner also found that WMBC breached regulations 11(3) and 11(4) by failing to consider the representations put forward by the complainant within the statutory timescale laid down by the EIR.
4. The Information Commissioner does not require WMBC to take any remedial steps.

**Request and response**

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5. On 11 April 2011, after viewing the agreement information on site, the complainant made a verbal request to WMBC for a copy of the information.
6. WMBC responded on 14 April 2011. It provided the requested information for a charge of £10.00.

7. The complainant requested an internal review on 14 April 2011. To date, WMBC has not undertaken a review of its handling of the request.

## Scope of the case

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8. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He made the point that WMBC had no legitimate reason for the amount charged for the requested information.

## Reasons for decision

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### Regulation 8 - Charging

9. Regulation 8 sets out the charges a public authority is entitled to make for providing environmental information. Regulation 8(3) provides that a public authority may charge for environmental information available on request, as long as it does not exceed an amount which the public authority is satisfied is "reasonable".
10. The Information Commissioner does not accept that the charges levied in this case - £10.00 for 14 sheets of photocopying - is a reasonable amount. The Information Tribunal in *Markinson v the Information Commissioner* [EA/2005/0014] found that, whilst a public authority is entitled to levy a reasonable charge for providing information under regulation 8(3), it can only take into account relevant considerations, such as the cost of paper for photocopying, or of postage. It cannot take into account factors such as, for example, the cost of staff time in maintaining, identifying, locating or retrieving from storage the information in question.
11. During his investigation into this case, the Information Commissioner asked WMBC to provide its arguments in support of the charge it had levied. WMBC failed to respond to the Information Commissioner and therefore has not supplied any details as to why it considered the £10.00 charge to be reasonable.
12. The Information Commissioner also investigated whether the charging scheme was published or made available on WMBC's website. No specific details of relevant costs could be found; however, information within the publication scheme stated that WMBC would charge for photocopying, printing and postage and packaging when making environmental information available.

13. The Information Commissioner considers that WMBC has probably attempted to levy charges for activities that cannot be factored into the calculation of a "reasonable amount". The £10.00 charge levied for providing a copy of the requested information which amounted to 14 sheets of paper is not considered reasonable under the terms of the EIR. The Information Commissioner therefore finds that WMBC has breached regulation 8(3).
14. The Information Commissioner does not have the power to order a refund in this case and it is for the complainant to take any further steps to recover any fees he has paid. However, in view of his decision in this case, the Information Commissioner recommends that WMBC considers refunding any fees paid either in full or to the value of the excess amount charged.

### **Regulation 11 – Representations and reconsideration**

15. Regulation 11(1) of the EIR provides that an applicant may make representations to a public authority, if he or she considers that the authority has failed to comply with the requirements of the EIR in relation to his/her request.
16. Regulation 11(3) requires the public authority to consider the complainant's representations, along with any supporting evidence provided by the complainant, and to decide whether it has complied with the requirements of the EIR.
17. Finally, regulation 11(4) requires that the public authority notify the applicant of its decision in relation to the applicant's representations no later than 40 working days after receipt of those representations.
18. The Information Commissioner considers that the complainant in this case did provide a clear indication to WMBC that he was not satisfied with its decision to charge £10.00 for the requested information.
19. The Information Commissioner is concerned that WMBC has not provided any explanation as to its failure to conduct an internal review. The Information Commissioner considers that regulation 11 of the EIR provides a clear statutory right for an applicant to have his or her request reconsidered by the public authority in question. This in turn provides the authority with an opportunity to rectify any procedural or handling issues, as well as an opportunity to explain to the complainant how his or her request was handled.
20. As WMBC did not conduct an internal review, adequate or otherwise, the Information Commissioner must find that WMBC failed to comply with regulation 11(3) of the EIR. Consequently, in failing to provide the complainant with notice of its internal review decision within the

appropriate time period, WMBC also failed to comply with regulation 11(4) of the EIR.

21. The Information Commissioner, when issuing a decision notice in cases such as this, would normally require a public authority to carry out an internal review as part of the steps contained in the decision notice. In this case, however, the requested information has been provided and it is not within the Information Commissioner's remit to instruct WMBC to provide a refund to the complainant. Therefore, the Information Commissioner recognises that requiring WMBC to carry out an internal review at this stage would not resolve the issue. The Information Commissioner would however remind WMBC of its statutory duties under the EIR and would urge the public authority to comply with regulation 11 in the future when dealing with requests and any subsequent representations.

## Right of appeal

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22. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed** .....

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