

Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 December 2012

Public Authority: Cornwall Council
Address: County Hall
Treyew Road
Truro
TR1 3AY

Decision (including any steps ordered)

1. The complainant submitted ten linked requests for information about all planning obligations entered into by Cornwall Council (the "Council") under Section 106 of the Town and Country Planning Act 1990 and Section 278 of the Highways Act 1980 for the Newquay area. The Council refused to provide this information because it considered the request to be manifestly unreasonable on the grounds of cost (Regulation 12(4)(b) of the EIR). It later withdrew this and provided information within the scope of nine of the requests. It reintroduced reliance on Regulation 12(4)(b) in relation to one of the requests and argued that it had disclosed all the information it held in relation to the other requests.
2. The Commissioner's decision is that the Council is entitled to rely on Regulation 12(4)(b) in relation to one of the requests and that it has provided all the information it holds in relation to the other requests. However, in failing to provide the information within 20 working days it has contravened the requirements of Regulation 5 of the EIR. Furthermore, in failing to conduct an internal review within 40 working days, it contravened the requirements of Regulation 11 of the EIR. No steps are required.

Request and response

Background

3. A 'section 106 agreement' is a Planning Obligation authorised by Section 106 of the Town and Country Planning Act 1990 (as amended). It is a legal agreement between the Local Planning Authority and the applicant or developer, and any other parties with an interest in the land in question. These agreements are a way of delivering or addressing matters that are necessary to make a development acceptable to planning authorities. Section 106 agreements require the owner of the land to take specific actions in order to make an otherwise unacceptable development acceptable. These actions might include the construction of local facilities, designating a proportion of the proposed development as 'affordable housing', or an order to make payments which are used to improve services and infrastructure in the local community.
4. Similarly, a 'section 278 agreement' is an agreement made under section 278 of the Highways Act 1980 which allows developers to enter into a legal agreement with a Council to pay for or to make alterations or improvements to the public highway.

Request

5. On 7 April 2011, the complainant, acting on behalf of a local forum which promotes regeneration of the Newquay area, wrote to the Council and requested information in the following terms (the Commissioner has added numbering for ease of future reference):

"Newquay Regeneration Forum Limited requests the following information in respect of all planning obligations (to be taken as also including unilateral undertakings) entered into by Cornwall Council (and thus also its predecessors in title) under Section 106 of the Town and Country Planning Act 1990 and Section 278 of the Highways Act 1980 in connection with each and every planning decision recorded in Part II of its Planning Register that falls within the boundaries of all Newquay electoral wards of Cornwall Council and all of the electoral wards adjoining them as at the 31st March 2011:

[1] *The specific identification of each individual planning decision by reference, site location and date of permission – as well as also, if known, the most up to date Land Registry reference relevant.*

[2] *The specific nature(s) of the planning obligation(s) entered into (whether they are for affordable housing, recreational facilities or whatever).*

[3] *Whether the contribution be in kind (either on-site or on another site) and/or in the form of a financial contribution?*

[4] *Whether any planning obligation(s) has/have been modified or discharged and the date of that event?*

[5] *The composition of the complete obligation(s) and/or total amount(s) of financial contribution(s) to be provided under the terms of the decision(s)*

[6] *What specific event(s) and/or date(s) occasion the provision(s) and/or payment(s) of each contribution (of whatever nature), whether in whole or in part?*

[7] *What amounts have been received in respect of each specific planning obligation's financial contribution or part thereof?*

[8] *What amounts have been paid out or deemed to have been paid out (if, for example, the satisfaction is in kind) in fulfilling each specific planning obligation or part thereof?*

[9] *The net balance of funds held in respect of each specific planning obligation or part thereof.*

[10] *What amounts (if any) are outstanding in respect of each specific planning obligation or part thereof?*

For the avoidance of any doubt in dealing with this request for information, the most logical and common sense interpretations possible should be placed upon the same in order to secure the most comprehensive and logical outcomes required as regards the full, complete and transparent provision of information in the Public Interest.

(The subject matter of this Information Access Request has been a matter of considerable public concern for quite some time. It

has not, therefore, been prompted by the lead story in the Newquay edition of the Cornish Guardian of the 6th April 2011 and, it would appear, the totally different type of Freedom of Information Act request referred to therein, which seems to deal more with the headline figures. Indeed, our own request had been scheduled to be forwarded to you today for several months; irrespective of this current interest and for the particular reasons disclosed below.)

It is to be hoped that all of this information is readily and constantly available to the Council by way of the execution of its routine procedures as required by the Code of Practice on Local Authority Accounting in the United Kingdom and as witnessed through oversight exercised by the Audit Commission and its successors in title, whether or not it is usually generally available to the public.

Even so, this request has been timed so that it fits in with need for the Council to prepare its financial statements for the year ended 31st March 2011 and, consequently, will not therefore involve it in any unnecessary additional work. It is also to be hoped, however, that this exact same information will in future come to be made available by the Council, of its own volition, twice in every year - as at both the 30th September and the 31st March. By expressing what, we trust, is this reasonable and responsible approach to these matters and requesting such voluntary disclosure by the Council in the future, we seek to discount the need for any applications of exemptions to any necessary subsequent Information Access Requests on the grounds of their being repeated and/or vexatious."

6. There followed a protracted exchange of correspondence between the parties. This included the following:
 - 23 June 2011 – A refusal notice from the Council sent under the FOIA (citing section 12 (Appropriate Limit)) as the basis for refusal.
 - 8 August 2011 – A request to the Council from the complainant asking it to conduct an internal review of the way the request had been handled.
 - 9 August 2011 – A refusal notice under the EIR which asked the complainant to narrow his request.

7. During the exchange of correspondence, the Council asked the complainant to narrow the geographical area caught by the scope of the requests, or the time frame for the requests. It explained that in its original form the request was manifestly unreasonable on the grounds of cost.
8. In the course of this exchange, the complainant made a number of modifications to the request. Each time (and contrary to the repeated assertions of the public authority that he had not) he narrowed the geographical area caught by the scope of the request. This culminated in a final modification of 3 December 2011 as follows:

"The geographical area [in question is] covered by the parishes of Newquay, Crantock, Colan and Mawgan-in-Pydar, together with that for the parish of St Newlyn East north of a line drawn east to west halfway between Trerice and St Newlyn East itself and thus extending to the parish boundary with Cubert and that for the parish of Cubert north-east of a line drawn from that previous point of intersection (extending across the Crantock boundary) north-west to Pentire Point West excluding the area in the Parish of Mawgan-in-Pydar that lies north of a line drawn from Mawgan Porth to Talskiddy."

It should be noted that during the correspondence the Council told the complainant that it held relevant information by parish and not by electoral division as specified in his original request.

9. On 2 February 2012, the Council provided the outcome of its internal review. It refused to provide this information citing Regulation 12(4)(b) (Manifestly unreasonable) as its basis for doing so. This followed two separate telephone calls from the Commissioner (over a month apart) urging the Council to complete its internal review. The complainant wrote to the Commissioner on the same day (2 February 2012) raising concerns about this response. He had already been in correspondence with the Commissioner since 12 December 2012 concerning the Council's delayed response.

Scope of the case

10. There then followed an exchange of correspondence between the Commissioner and the complainant. The Commissioner sought to clarify the relevant geographical detail. He did so by consulting the Council's website and comparing electoral division boundaries and parish boundaries as described in the complainant's requests of 7 April 2011 and his request of 3 December 2011.¹ He sent the complainant the results of this comparison exercise in the form of two maps created using the Council's website. The complainant confirmed that these two maps accurately represented the two geographical areas in question.
11. The Commissioner wrote to the Council on 10 July 2012 asking for arguments in support of its reliance on Regulation 12(4)(b) for all the requests. He put it to the Council that the complainant had narrowed the geographical area to which the requests related as recommended by the Council. He supplied the Council with the two maps referred to above. He asked the Council to explain why the requests of 3 December 2011 did not narrow the geographical area to an acceptable degree. These maps showed that the geographical area described in 3 December 2011 is clearly smaller than the geographical area described in 7 April 2011.
12. There followed a further exchange of correspondence between the Commissioner and the public authority and the Commissioner and the complainant. During this exchange, the Council appeared to withdraw reliance on regulation 12(4)(b) in relation to all 10 requests. It made a further disclosure of information within the scope of the requests in the form of a spreadsheet (sent on 12 September 2012) which set out information about section 106 agreements and a .pdf file which set out information about section 278 agreements. This second set of information was sent by the Council on 7 November 2012 following a prompt from the Commissioner for it to do so.
13. The Council argued that it held information relevant to Request 6 within documents in hard copy format only (section 106 agreements). It explained that extracting the relevant information from the documents was too costly and that, in its view, Request 6 was manifestly unreasonable.

¹ <http://mapping.cornwall.gov.uk/website/ccmap/>

14. It supplied arguments to the Commissioner in support of this. It also argued that it did not hold certain information within the scope of the other requests but had supplied everything that it did hold bar that which was excluded by virtue of regulation 12(4)(b).
15. There then followed a further attempt at informal resolution of the complaint which was ultimately unsuccessful. The Council first offered to supply copies of the section 106 agreements to the complainant subject to a payment of a fee. It would first redact small amounts of certain commercially sensitive information that it said fell outside the scope of the complainant's requests. The complainant would then have the opportunity to extract the relevant information himself from the remainder. The Commissioner explained to the Council that it could not charge a fee under the EIR for copies of the agreements because the complainant had only requested some information from the documents and not all the information contained in those documents (leaving aside the question of whether any of the redactions would be in accordance with the EIR). In other words, the Council could not charge for information that did not form part of the request.
16. The Council then offered to supply copies of the documents which contained information relevant to Request 6 free of charge. The complainant did not take up this offer.
17. There was a further exchange of correspondence to establish the outstanding elements of the complaint. Once these had been established, the Commissioner sought further arguments from the public authority regarding its assertions that certain information was not held or that it had disclosed all the information it held within the scope of the requests. These enquiries took into account of submissions made by the complainant.
18. The following were identified as the outstanding issues in the complaint:
 - The Council's use of Regulation 12(4)(b) in respect of Request 6
 - The Council had not supplied all the information it held respect of Requests 1, 3, 4, 8, 9 and 10.
 - The Council had failed to provide a proper internal review
 - The Council's overall delays in handling the requests

19. The complainant also criticised the extent to which the Council made the requested information available proactively and argued that this was contrary to its obligations under Regulation 4 of the EIR. He drew attention to his remarks in the final paragraph of his request and asked that the Commissioner consider this as part of his complaint.
20. In the Commissioner's view, the extent to which information is made available proactively by a public authority is not a matter which falls for his consideration under Regulation 18 of the EIR. Regulation 18, in effect, imports the Commissioner's complaint handling obligations under FOIA Section 50 so that those obligations are also engaged in respect of the EIR. The Commissioner will therefore not address this matter as part of his decision in this case.
21. The complainant also argued that the Council had sought to charge fees inappropriately during the handling of the requests. The issue of fees fell away during the course of correspondence between the parties and was reactivated during the course of the Commissioner's investigation. However, it fell away again during the Commissioner's investigation. For this reason, the Commissioner does not propose to investigate this point further. However, more comment about this is set out in Other Matters below.

Reasons for decision

Regulation 2 – Environmental information

22. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR. The Commissioner considers that the information requested falls within regulation 2(1)(c): information on:

"measures (including administrative measure), 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 these elements"

Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore considers the information requested by the complainant to be environmental information, because the information relates to agreements about conditions placed on planning applications.

Regulation 12(4)(b) – Manifestly unreasonable

23. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information if the request is manifestly unreasonable. There is no definition of 'manifestly unreasonable' under the EIR, but the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable.
24. In this case, the Council considers that Request 6 is manifestly unreasonable' due to the time and cost of complying with the request. It has argued that complying with the request would place an unreasonable burden on its resources in terms of expense.
25. Unlike the FOIA, the EIR do not have a provision where a request can be refused if the estimated cost of compliance would exceed a particular cost limit. Under the EIR, however, the Commissioner considers that if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable, regulation 12(4)(b) will be engaged.
26. As noted above, this was a request for information of the following description:

"What specific event(s) and/or date(s) occasion the provision(s) and/or payment(s) of each contribution (of whatever nature), whether in whole or in part?"
27. The Council argued that it would take 28 hours, 47 min to extract the information described in this request. It said that relevant information was contained in *" 157 Section 106 files that would need to be reviewed in order to extract the information required"*.
28. The Council said that it had taken a random sample of 10 files out of the 157 and had worked through these to obtain the information. It said that it took 110 minutes to gather the data from those files, resulting in approximately 11 minutes work per

file. It said that, by its calculations, 157 (files) multiplied by 11 (minutes) equals 28 hours 47 minutes. The Commissioner is satisfied that this is a reasonable estimate of the time it would take to check the manual files in question for the information described in Request 6.

29. In reaching a decision as to whether the request is manifestly unreasonable in this case, the Commissioner has taken into account the following factors:
- The appropriate limit in the FOIA is 18 hours. If a public authority estimates that to comply with a request made under the FOIA will exceed this limit it is not obliged to comply.
 - While there is no equivalent limit in the EIR, the Commissioner considers that the Council's estimate of the time and cost of complying with request is so far in excess of the appropriate limit set out in the Act, as to make the request clearly unreasonable.
30. The Commissioner is therefore satisfied that based on the arguments provided above, the cost of complying with Request 6 is manifestly unreasonable and that regulation 12(4)(b) of the EIR is engaged.

Public interest test

31. Regulation 12(4)(b) is a qualified exception and therefore subject to the public interest test at regulation 12(1)(b) which states that information can only be withheld if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest test in disclosure.

Public interest test factors in favour of disclosure

32. The complainant has argued that there is insufficient transparency on this subject, at least in respect of what the Council publishes about it. The Commissioner recognises that the complainant has legitimate concerns about the development of the area and that disclosure would serve this interest.

Public interest test factors in favour of maintaining the exception

33. The public authority has drawn attention to the costs to itself that would be incurred by working through each of the contracts to provide the information described in the request. It has argued it has not received many requests for this information. It has also explained that it proposes, in future, to make information contained in the relevant contracts more easily accessible on line but that the request in this case covers a period where the only records held are manual ones.
34. The Commissioner would disagree with the Council's position reached on the basis that it has not received many requests for this information. He notes that the complainant is acting on behalf of a number of concerned parties in his area. Rather than making the requests as separate individuals, they are acting in concert to find out information on a topic that is of particular importance to them and to the local economy. The Commissioner recognises that this adds weight to the public interest in disclosure.

Balance of public interest test arguments

35. The Commissioner fully acknowledges the inherent public interest in transparency and accountability of public authorities in relation to decision making and expenditure. The Commissioner also recognises the strong public interest in transparency and accountability in relation to section 106 and section 278 agreements
36. However, he is also sympathetic to the arguments around the time and costs that would be required in order to comply with the request. Whilst the Commissioner recognises that the FOIA appropriate limit is not a barrier to the disclosure of information under the EIR, he considers that the appropriate limit is a useful benchmark for assessing the costs involved in responding to requests for information and he is mindful that the estimate provided in this case significantly exceeds the appropriate limit.
37. The Commissioner considers that there is a strong public interest in the Council being able to carry out its core functions without the disruption that would be caused by the cost of compliance as public authorities need to be able to carry out their wider

obligations fully and effectively so that the needs of the communities they serve are met.

38. The Commissioner considers the public interest in this case to be finely balanced. The information in question relates to improvements in the local area which are naturally of interest to the local community, particularly local businesses. Local businesses must be able to react in good time to changes that might affect the flow of trade at their premises, such as the building of new housing developments or other civic works in their area. Similarly, local entrepreneurs may be able to spot future business opportunities arising from such developments. The free flow of relevant local environmental information can play a key part in this, particularly where the prevailing economic conditions are difficult. The complainant has drawn attention to coverage in the local media which suggests that there is a keen interest in this subject.
39. However, the Commissioner has concluded that there is a greater public interest in favour of maintaining the exception given the work that the Council would be required to undertake to satisfy the request.

Regulation 12(4)(b): Conclusion

40. In light of the above, the Commissioner has concluded that the public interest in maintaining the exception at regulation 12(4)(b) outweighs the public interest in disclosure. He has given particular weight to the fact that responding to Request 6 would create an unwarranted burden on the Council's resources contrary to the public interest.

Regulation 5 – Time for compliance

41. Regulation 5(1) states that, subject to certain exceptions, a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
42. After a considerable delay and following the intervention of the Information Commissioner, the public authority provided a spreadsheet of information related to section 106 agreements and a document containing information related to section 278

agreements. This second document was only provided after the Commissioner reminded the public authority that it had promised to provide it but had failed to do so. The Commissioner is satisfied that this information was within the scope of the request.

43. In failing to provide the spreadsheet containing section 106 agreement information and the document containing information about section 278 agreements within 20 working days, the Council contravened the requirements of regulation 5(2).

Did the Council provide all the information held?

44. Once he had received the information, the complainant argued that the Council had failed to provide all the information it holds within the scope of some of his requests. Following the First-tier Tribunal's decision in *Charman vs Information Commissioner and the Olympic Delivery Authority* (EA/2011/0210), the Commissioner included consideration of this further complaint within the same case.²
45. When a public authority claims further information is not held beyond that which has been disclosed, the Commissioner will decide whether this is the case on the balance of probabilities. He will reach a decision based on the adequacy of the public authority's search for the information and any other reasons explaining why the information is not held, such as there being no business need to record it.
46. The complainant argued that the Council had failed to provide all the information it holds relating to section 106 agreements that are described in his requests 1, 3, 4, 8, 9 and 10. Once he had received the section 278 agreement information, the complainant did not raise specific concerns about the extent of that disclosure. The Commissioner has therefore focussed on whether the Council provided all the information it holds that is described in 1, 3, 4, 8, 9 and 10 as it relates to section 106 agreement information.

²

<http://www.informationtribunal.gov.uk/DBFiles/Decision/i738/20120427%20Ruling%20EA20110210.pdf>

Request 1

47. As noted above, this was a request for information of the following description:

"The specific identification of each individual planning decision by reference, site location and date of permission – as well as also, if known, the most up to date Land Registry reference relevant."

48. The Council provided information in response to this request. However it asserted that it did not hold Land Registry reference numbers and the complainant disputed this citing an extract from the Council's website in support of his position:

"Planning obligations are registered as local land charges and will be revealed in any local land charges search until such time as they may have been discharged by way of formal application to the Council, in which case the local land charges entry may be removed from the Register. Consequently, if land is subject to a planning obligation which has not been (or is not being) complied with, it may become difficult to dispose of the land given that obligations pass to successors in title."³

49. In response to the Commissioner's queries, the Council explained that its website was referring to the Local Land Charge Register. This is information that it does hold. However, this was not the same as the register which is maintained by the Land Registry, a wholly separate organisation. This appears to be supported by the Land Registry's website.⁴

50. The Commissioner is satisfied that the Council does not hold Land Registry information that is described in Request 1.

Request 3

51. As noted above, this request was for information of the following description:

"Whether the contribution be in kind (either on-site or on another site) and/or in the form of a financial contribution?"

³ <http://www.cornwall.gov.uk/default.aspx?page=17740>

⁴ <http://www.landregistry.gov.uk/public/faqs/what-information-can-i-get-from-land-registry> (see list headed "Unfortunately we are unable to provide you with")

52. The Council asserted that it did not hold any information about "in kind" payments but acknowledged that it had not made this clear to the complainant. The complainant disputed this and drew attention to certain information on the spreadsheet containing section 106 agreement information. The spreadsheet contained information showing details where, for example, affordable housing had formed part of the agreement. In some cases, the extent of this agreement was expressed in monetary terms, in other cases, this was expressed as a number of units that were to be built or as a percentage of the overall contract.
53. The complainant sought to argue that these appeared to be "in kind" payments. He appeared to suggest that this provided grounds to believe that there were such payments, the details of which had yet to be provided.
54. The public authority explained

"The Spreadsheet reflects the financial contributions paid for development sites that the Council has received or is due."

It went on to state:

"All of the developments on the spreadsheet provided are granted planning permission subject to the terms of section 106 agreements. Some developments are required to provide affordable housing which are thereafter tied in perpetuity to certain criteria be it Affordable, Intermediate or low cost social rent. Although not necessarily tied to a financial obligation to the Council the developer is required to deliver these units through the terms of the Section 106 Agreement, any cost or loss of profit is met by the developer."

55. In the Commissioner's view, there has been a misunderstanding between the parties as to the term "in kind". He considers it reasonable for a layman such as the complainant to describe, for example, numbers of units of affordable housing, to be an "in kind contribution". However, the Commissioner thinks that the use of non-monetary terms in the spreadsheet provided to the complainant is not evidence that the Council holds further information about "in-kind" payments related to section 106 agreement. This appears to be the substance of the complainant's argument that further information is held.

56. In the absence of further evidence and considering the balance of probabilities the Commissioner has concluded that the Council has provided the complainant with all the information it holds that is described in Request 3. However, in failing to provide it within 20 working days, it contravened the requirements of regulation 5(2) as described above.

Request 4

57. As noted above, this is a request for information of the following description:

"Whether any planning obligation(s) has/have been modified or discharged and the date of that event?"

58. The complainant argued that this information had not been provided in the spreadsheet supplied to him on 12 September 2012. The Council explained to the Commissioner that the term "DoM" found in Column C of the spreadsheet referred to Deeds of Modification and that the date found in Column A of the spreadsheet showed when the agreement in question was signed. The Commissioner notes that the term "DoM" appears several times in the spreadsheet.
59. In the Commissioner's view, the Council could have explained this more clearly to the complainant. However, the fact that it did not do so, does not mean it has failed to provide all the information it holds within the scope of request 4.
60. The Commissioner has concluded that, in the absence of any compelling evidence to the contrary and on the balance of probabilities, the Council did provide all the information it held within the scope of request 4 but that it failed to do so within 20 working days. This contravened the requirements of regulation 5(2) as described above.

Request 8

61. As noted above, this is a request for information of the following description:

"What amounts have been paid out or deemed to have been paid out (if, for example, the satisfaction is in kind) in fulfilling each specific planning obligation or part thereof?"

62. The complainant argued that this information was not provided on the spreadsheet supplied to him on 12 September 2012.
63. The Council explained the following to the Commissioner. The spreadsheet uses colour coding to describe the extent and status of a payment that had been agreed as part of a section 106 agreement.
- Figures in black related to an amount that was due;
 - figures in black that were also in bold text showed monies that had been paid in but not yet allocated to a scheme;
 - figures in red showed an amount that had been allocated to a scheme; and
 - figures in red that were also in bold text showed an amount that had been both paid and allocated to a scheme.
64. The scheme headings are as follows: "Public Open Space", "On-site maintenance", "Education", "Transport/Highways", "Affordable Housing", "Waste" and "Other". Some of the cells in the spreadsheet contained a mark to show that there were further explanatory notes connected to that cell. These notes could be readily accessed by hovering the cursor over the cell in question.
65. The Council said that the information described in Request 8 was therefore shown by figures in red that were also in bold text. Further information about the figure could be found by accessing the explanatory notes connected to the cell where the figure was recorded. The Council argued that this information satisfied Request 8.
66. In the Commissioner's view, the Council could have gone further in explaining this detail to the complainant. However, he agrees that the spreadsheet does contain the information described in Request 8.
67. The Commissioner has concluded that, in the absence of any compelling evidence to the contrary and on the balance of probabilities, the Council did satisfy the terms of request 8 but that it failed to do so within 20 working days. This contravened the requirements of regulation 5(2) as described above.

Request 9

68. As noted above, this is a request for information of the following description:

"The net balance of funds held in respect of each specific planning obligation or part thereof."

69. The complainant argued that this information was not provided on the spreadsheet supplied to him on 12 September 2012. The Commissioner asked the Council to explain how the spreadsheet satisfied the request by reference to a specific example.
70. The Council explained to the Commissioner that the use of red and black text (either in bold or not) indicated whether payment was still due in relation to a particular obligation or whether the obligation had been satisfied. It gave an example from the spreadsheet which showed that monies had been paid but not yet used for a Public Space scheme (these were in black, bold text). This was the net balance figure. It also gave an example which showed a figure in red, bold text for an obligation agreed in relation to an Education Scheme. Because this figure was in red and bold text, this meant that the obligation had been paid and allocated. The net balance for this planning obligation was therefore "nil" – no payment was outstanding in order to meet this agreed obligation.
71. In the Commissioner's view, the Council could have gone further in explaining this detail to the complainant. However, he agrees that the spreadsheet does contain the information described in Request 9.
72. The Commissioner has concluded that in the absence of any compelling evidence to the contrary and on the balance of probabilities the Council did satisfy the terms of request 9 but that it failed to do so within 20 working days. This contravened the requirements of regulation 5(2) as described above.

Request 10

73. As noted above, this is a request for information of the following description:

"What amounts (if any) are outstanding in respect of each specific planning obligation or part thereof?"

74. The complainant argued that this information was not provided on the spreadsheet supplied to him on 12 September 2012. The Commissioner asked the Council to explain how the spreadsheet satisfied the request by reference to a specific example.
75. The Council drew the Commissioner's attention to those figures which were in black but not in bold text. These each related to a balance due in respect of a specific planning obligation or part thereof. This is because figures given in that format relate to "amount due". The figure could be found under the heading of a particular scheme, such as "Public Space" or "Education".
76. In the Commissioner's view, the Council could have gone further in explaining this detail to the complainant. However, he agrees that the spreadsheet does contain the information described in Request 10.
77. The Commissioner has concluded that in the absence of any compelling evidence to the contrary and on the balance of probabilities, the Council did satisfy the terms of request 10 but that it failed to do so within 20 working days. This contravened the requirements of regulation 5(2) as described above.

Regulation 11

78. Regulation 11(3) provides that upon receiving representations from an applicant unhappy with a response to a request for information, the public authority should review its response. Regulation 11(4) provides that the outcome of this internal review should be communicated to the applicant within 40 working days.
79. In this case, the complainant clearly requested an internal review on 8 August 2011 asking the Council to review the way it had handled his request. The Council did not set out its final position for the complainant until 2 February 2012.
80. The Commissioner recognises that correspondence between the parties became extremely protracted as the Council asked the complainant to modify his request in terms of the geographical area covered or the timeframe covered. The complainant repeatedly modified the geographical area covered by his requests. However, other than repeating its view that the complainant needed to modify his requests, the Council did not explain why the modifications made were insufficient.

81. There also appeared to be correspondence between the complainant and at least two different sections of the Council. The Council did not explain to the complainant that a request under EIR was a request for information held by any of its departments. Had it done so, the correspondence between the parties may have been more focussed and productive. Furthermore, the Council changed its position on a number of occasions only adding to the complainant's confusion as to what this position was.
82. In failing to conduct an internal review within 40 working days of the review being requested, the Council breached regulation 11(4).

Other matters

83. During its handling of the request and during the course of the Commissioner's investigation, the Council repeatedly misdirected itself as to what fees it could charge under the Regulations. The inconsistencies did not aid prompt resolution of the information access dispute which is the subject of this Notice. The Commissioner would draw the Council's attention to his own guidance on the subject which is available from his website.⁵

⁵ http://www.ico.gov.uk/for_organisations/environmental_information/guide.aspx

Right of appeal

84. 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

85. 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.
86. 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

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