

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

Decision notice

Date: 15 January 2013

Public Authority: Guildford Borough Council

Address: Millmead House
Millmead
Guildford
Surrey
GU2 4BB

Decision (including any steps ordered)

1. The complainant has requested information from Guildford Borough Council (the council) from environmental records held on a specific property. The complainant specified that he wished to inspect the information in a similar format to that inspected by council searchers, but if this was not possible, in any reasonable format that is easily accessible. The council provided some information and stated that if other information was held, it was publically available and therefore it considered that it was reasonable for it to make this information available in a format other than inspection under regulation 6(1)(b). The complainant was also concerned that the information the council had provided access to, was not accurate in accordance with regulation 5(4).
2. The Commissioner's decision is that the council correctly relied upon regulation 6(1)(b) as it was reasonable for it to make information available in a format other than inspection. He also finds that the council has complied with regulation 5(4). However, the Commissioner finds that the council has breached regulation 5(2) of the EIR as it failed to make the requested information available on request within the statutory time for compliance.
3. The Commissioner does not require the council to take any steps.

Background

4. Section 3 of the Local Land Charges Act 1975 compels all local authorities to generate, maintain and update a Local Land Charges Register and to provide local searches. In order to obtain information from a local search, an application for an Official Search must be submitted to the relevant Local Authority on form LLC1. This is usually accompanied by form CON29R. Information relevant to form LLC1 is found on the Local Land Charges Register.
5. The CON29R form is comprised of two parts. Part 1 contains a list of standard enquiries about a property. Optional enquiries are contained in Part 2.
6. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority.
7. The complainant represents a company which provides information about property and land issues.

Request and response

8. On 10 January 2012, the complainant wrote to the council and made the following request for information taken from the questions in the CON29R form:

"Please accept this request for the following information in relation to the property known as:

1. *NGALA (FORMERLY BEAVERS), FOREST ROAD, EAST HORSLEY KT24 5DT*

Access is requested to records containing the information necessary to answer questions:

1. **3.7 - Outstanding Notices** - *Do any statutory notices which relate to the following matters subsist in relation to the property other than those revealed in a response to any other enquiry in this form?*

- a. building works;*
- b. environment;*
- c. health and safety;*
- d. housing;*
- e. public health*

2. 3.8 – **Contravention of Building Regulations** Has a local authority authorised in relation to the property any proceedings for the contravention of an provision contained in Building Regulations?

3. 3.9 - **Notices, Orders, Directions and Proceedings under Planning Acts** Do any of the following subsist in relation to the property, or has any local authority decided to issue, serve, make or commence any of the following:

- a. enforcement notice
- b. stop notice
- c. listed building enforcement notice
- d. breach of condition notice
- e. planning contravention notice
- f. other notice relating to breach of planning control
- g. listed building repairs notice
- h. in the case of a listed building deliberately allowed to fall into Planning disrepair, a compulsory purchase order with a direction for minimum compensation
- i. building preservation notice
- j. direction restricting permitted development
- k. order revoking or modifying a planning permission
- l. order requiring discontinuance of use or removal of building Planning works
- m. tree preservation order
- n. proceedings to enforce a planning agreement or planning contribution?

4. 3.10b - **Conservation Areas** Do the following apply in relation to the property:

- a. the making of the area a Conservation Area before 31 August 1974?
- b. an unimplemented resolution to designate the area a Conservation Area?

5. 3.11 - **Compulsory Purchase** Has any enforceable order or decision been made to compulsorily purchase or acquire the property?

6. 3.12 - **Contaminated Land** Do any of the following apply (including any relating to land adjacent to or adjoining the property which has been identified as contaminated land because it is in such a condition that harm or pollution of controlled waters might be caused on the property):

- a. a contaminated land notice
- b. in relation to a register maintained under section 78R of the Environmental Protection Act 1990 (i) a decision to make an entry; or(ii) an entry; or
- c. consultation with the owner or occupier of the property conducted under section 78G(3) of the Environmental Protection Act 1990 before the service of a remediation notice?

I request that the data be made available for my inspection in a similar format as inspected by council searchers; preferably in electronic form, but if not it may be in any reasonable format that is easily accessible. Please note that as required by EIR Para 5(2) information should be provided as soon as possible and no later than 20 working days after the date of receipt."

9. The council responded on 16 February 2012. It stated that it held some information which would answer some of the questions posed which it offered the complainant the opportunity to view. It also stated that it did not hold any further information with the exception of information which was publically available and easily accessible.
10. The complainant requested an internal review on 20 February 2012. The council provided the outcome of the internal review on 10 April 2012. It upheld its original position that other than the information which it had specifically identified, any further information it held was publically available and reasonably accessible either on the council's website or at the council's offices. It further stated that it could not allow access to the council's live computer systems and records in the same way as the council's search compilers have access, as to do so would allow access to unrelated and confidential personal information. However, it offered to provide hard copies of the relevant files for the complainant to inspect.

Scope of the case

11. The complainant contacted the Commissioner on 24 April 2012 to complain about the way his request for information had been handled. He complained that parts of the council's response were "*so vague as to be almost useless*", particularly with regard to the council directing him to other locations where the requested information is publically available. He also complained that the information available online was not accurate.
12. During the course of the Commissioner's investigation, the council provided a more comprehensive response detailing which information could be found from which publically available sources, such as the Landcharges Register held at the council's planning reception and the online Enforcement Register. The council also sought to rely on regulation 12(4)(b) for the first time in relation to allowing access to the council's live records systems. However, the council later clarified that this was only in relation to allowing access to the council's live systems and that it accepted that regulation 12(4)(b) did not apply in respect of the information which was publically available either online or in hard

copy form at the council's offices. As such, it acknowledged that it was not withholding any information under regulation 12(4)(b) as it was available in another form.

13. The Commissioner therefore considers the scope of the investigation to be to determine whether the council has made available all the information it holds falling within the scope of the request. In particular, he will consider whether the council's identification of information which is publically available is in accordance with regulation 6 and whether it complies with regulation 5(4).

Reasons for decision

Regulation 2

14. Regulation 2(1)(c) provides that any information on "*measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities*" that will affect or are likely to affect the elements of the environment as set out in regulations 2(1)(a) and (b) will be environmental information. The complainant has requested information relevant to the CON29R form which contains a number of enquiries about the status of a property and any policies or decisions likely to affect it. The Commissioner therefore considers that the requested information is environmental as defined by regulation 2(1)(c).

Regulation 6 – Form and format of information

15. Regulation 6(1) of the EIR states that:

"Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

(a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publicly available and easily accessible to the applicant in another form or format."

16. In interpreting regulation 6 the Commissioner has considered Article 3(4) of Directive 2003/4/EC from which the EIRs are transposed. Article 3(4) states that "*where an applicant requests a public authority to make environmental information available in a specific form or format (including in the form of copies)*" a public authority shall make the information available unless it is already publicly available in another

form or format or it is reasonable to make it available in another form or format.

17. The complainant stated that he wished to view the information in the form accessed by the council's search compilers. He went on to state that if this was not possible "*in any reasonable format that is easily accessible*". The Council explained that the requested information is held on a live computer system which is used by its search compilers to respond to CON29R forms. The live computer systems are not made accessible to the public because they contain personal information, information provided in confidence, information subject to copyright and legally privileged information.
18. The Commissioner accepts that in the particular circumstances of this case, it is reasonable for the council to provide the information in a form other than that accessed by the council's search compilers, as it is already publicly available and easily accessible to the complainant in accordance with regulation 6(1)(b).
19. In its initial response, the council advised that planning application information could be viewed either on the website or at the council's planning offices. It stated that the questions posed could be answered in the Environment & Planning pages, Conservation, Conservation Areas and Conservation Area Maps areas of the website. However, the council was not specific about which areas of the website would hold answers to which questions. During the course of the investigation the Commissioner directed the council to provide the complainant with a more detailed list of which questions could be answered by which specific publically available information.
20. The council therefore provided the complainant with specific online links to information relevant to each question, and with the contact details of the relevant offices where the information is only available for inspection. The Commissioner therefore considers that the council has made the information publically available and easily accessible.
21. The complainant has argued that the information which the council considers is publically available and easily accessible does not answer his questions and therefore that the council has not complied with his request. As an example he has cited the online building control records which the council referred him to in response to question 3.8. He contends that this information does not show whether the council has authorised any proceedings in respect of building regulation contravention. The Commissioner has viewed the information in question, and whilst he accepts that it does not show that there have been any such proceedings in relation to the property in question, he

considers that this does provide the council's answer to the question in that the records show that there have been no such proceedings.

22. The complainant has made further similar points relating to other sources the council has directed him to as he maintains that the information provided does not answer his questions. The Commissioner has had regard to these and considers that where the complainant has been unable to find the information, such as whether there have been any compulsory purchases or contaminated land orders, that confirms the answer to the question is 'no'.
23. The Commissioner is mindful that the EIR does not compel public authorities to create information to answer questions, but rather that the public authority is obliged to provide the information that is held which answers the question. In cases such as this where the questions require yes or no answers, the Commissioner considers that where the public authority directs the requester to a source of information which would hold relevant information if the answer to the question was yes, then conversely, if that source does not hold any information in relation to the question, then the answer is no, and the public authority has complied with the request.
24. The Commissioner considers that the key point is that the requested information is publicly available and the council has explained to the complainant how he can access it. The Commissioner therefore considers that regulation 6(1)(b) of the EIR applies and the public authority is not required to make the information available in the form and format requested.

Regulation 5 – duty to make information available on request

25. Regulation 5(1) provides that environmental information shall be made available upon request. Regulation 5(2) provides that this information should be made available within 20 working days following receipt of the request.
26. The complainant made his request on 10 January 2012 but did not receive a response from the council until 16 February 2012, which is outside the 20 working day time frame prescribed in regulation 5(2).
27. Regulation 5(4) provides that information that is compiled by or on behalf of a public authority is kept 'up to date, accurate and comparable, so far as the public authority reasonably believes'.
28. The Commissioner has interpreted Regulation 5(4) looking carefully at its context and wording.

29. In the Commissioner's view, the obligation can only be said to apply to factual data collected or measured by the public authority in order to inform its activities (for examples statistics and scientific data). The Commissioner does not believe that it applies to information that records deliberations, opinions, policies and decisions.
30. Furthermore, the obligations in 5(4) only apply where the public authority is collecting information to use on an ongoing basis. The Commissioner believes it imposes no obligation to rectify information the public authority no longer needs to compile for its own business purposes.
31. In this case, the complainant has explained that his concerns about the accuracy of the publically available information that the council has directed him to stems from the disclaimers which accompany the information. The council's 'Maps Online' facility to which a link was provided in answer to question 3.8, contains the following statement:

"Whilst every effort is made to ensure the accuracy of the data, which is supplied in good faith, the Council will not accept any liability in respect of any loss, damage or injury (financial, contractual or otherwise) sustained as a result or allegedly as a result of reliance thereon."
32. The Commissioner would only consider a breach of regulation 5(4) where it is clear that the public authority did not reasonably believe that the information was accurate. The disclaimer confirms that the council has supplied the information in good faith. The Commissioner considers that this should be interpreted to mean that the council reasonably believes the information to be accurate. As such, it is the Commissioner's position that a disclaimer of this nature simply serves to cover the circumstances where a search does return information which subsequently transpires to be inaccurate.
33. In any case, specific information relating to the complainant's questions has been identified by the council and there is nothing to suggest that this particular information is itself inaccurate. The Commissioner therefore finds that the council has complied with regulation 5(4).

Right of appeal

34. 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

35. 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.
36. 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

**Gerrard Tracey
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