

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

**Date:** 7 May 2013

**Public Authority:** London Borough of Bexley  
**Address:** Civic Offices  
Broadway  
Bexleyheath  
Kent  
DA6 7LB

**Decision (including any steps ordered)**

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1. The complainant submitted a request to the London Borough of Bexley (the Council) for copies of planning files in relation to a particular address. The Council dealt with this request under FOIA and refused it under section 21 (information reasonably accessible via other means) on the basis that copies of the information could be viewed at its offices. It also explained to the complainant that copies of the information could be provided to him if he paid for the costs of copying the relevant documents. The Commissioner has concluded that the Council should have dealt with the request under the EIR. Under regulation 8 of the EIR public authorities can charge requestors a 'reasonable' amount to be provided with the information they have requested. The complainant asked the Commissioner to consider whether the Council's fee was a reasonable one. The Commissioner is satisfied that it is.

**Request and response**

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2. The complainant submitted the following request to the Council on 1 December 2011:

*'This is a Freedom of Information request for full copies of all the planning files that relate to the above mentioned property [redacted address, Kent]. I am aware of there being at least two: one relating to Planning Application 10/01832/FUL and the other relating to Planning Application 11/01245/FUL, but I do, in fact, require copies of all the*

*planning files held by the Council in respect of the above property [redacted address, Kent]’.*

3. The Council responded on 22 December 2011 and explained that the request was being refused on the basis of section 21 of FOIA as the requested information was reasonably accessible via other means, namely viewing the planning files at the Council’s offices.
4. The complainant visited the Council’s offices on 10 January 2012 but was informed that he could not have copies of the relevant planning files unless he paid for them. The complainant also explained that during a telephone call with the Council on 11 January 2012 he was informed that the cost of providing copies would be £82.00 and in a further telephone call on 16 January 2012 he was informed that the cost would in fact be £53.00. He also explained that in a further telephone call of 18 January 2012 he was informed that the cost of supplying the documents would actually be £35.00.
5. The complainant contacted the Council on 24 January 2012 and asked it to conduct an internal review of its handling of his request. He argued that he was entitled to receive a copy of the information he had requested under FOIA without having to pay any charges.
6. The Council informed the complainant of the outcome of the internal review on 23 February 2012. The Council explained that the planning files remained available for inspection at the Council’s offices and that copies of the files could be provided to him if he paid £35.00. The response explained that this charge was needed to cover the costs associated with making copies of the requested information.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 29 August 2012 in order to complain about the Council’s handling of his request. The complainant argued that the Council was not entitled to charge him for providing copies of the planning files he had requested.
8. The Commissioner contacted the complainant on 7 September 2012 and explained that under both FOIA and the EIR public authorities could charge requesters a ‘reasonable’ amount to cover the cost of actually providing information, e.g. photocopying and postage costs. The Commissioner explained that whether a charge of £35.00 was a reasonable one would depend upon on factors such as the volume of information to be copied and the paper size that needed to be copied. The Commissioner invited the complainant to withdraw his complaint if, in light of this advice, he considered the charge of £35.00 to be a reasonable one.

9. The complainant contacted the Commissioner again on 29 November 2012. He explained that as the Council had not explained how the charge of £35.00 had been arrived at he did not know whether or not this was a reasonable charge. Furthermore, the complainant explained that he was dissatisfied with the fact that the Council initially tried to charge him £82.00 for copies of the requested information and this was only reduced to £35.00 when he complained about the level of the higher charge.
10. In considering public authorities' responses to requests the Commissioner focuses on a public authority's final response to a request and this is usually set out in the internal review response. Therefore in the circumstances of this case the Commissioner has simply made a decision as to whether the charge of £35.00 is a reasonable one as this was the level of charge that was set out in the internal review rather than making a decision as to whether the previous charges of £82.00 and £53.00 were reasonable.
11. Nevertheless, the Commissioner has commented on the higher charges which the Council sought to apply in the Other Matters section of this notice.

## **Reasons for decision**

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### **The relevant legislation under which the request should be considered**

12. Although the Council handled this request under FOIA, the Commissioner believes that the request should in fact have been considered under the EIR. The EIR provide an access regime to information which the EIR defines as 'environmental information'.
13. Regulation 2(1) of the EIR define environmental information as, among other matters, information 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;'* and

*'(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;'*

14. The requested information clearly relates to planning applications at a particular address. In the Commissioner's opinion the requested information therefore falls within the definition of regulation 2(1)(c) as 'information on' a plan likely to affect the elements of the landscape defined in regulation 2(1)(a).

### **Regulation 8 - charging**

15. Regulation 8(1) of the EIR states that a public authority may charge for making environmental information available, albeit that there are two important qualifications to this:

- Regulation 8(2) specifies that no charge can be made for accessing public registers or lists of environmental information or for examining the information requested at the place which the authority makes available for that purpose.
- Regulation 8(3) states that a charge may not exceed an amount that the public authority is satisfied is a reasonable amount.

16. Although Regulation 8(3) does not offer any assistance as to what is meant by the word reasonable, the Directive, upon which the EIR are based, provides some guidance namely that "as a general rule, charges may not exceed actual costs of producing the material in question."

17. In the leading case to date on charging for environmental information, the Information Tribunal indicated that this will comprise the costs of producing copies of the information requested.<sup>1</sup> The Tribunal concluded that:

- An authority must satisfy itself that a charge is reasonable. It must do this by only taking into account relevant considerations and ignoring any irrelevant ones.
- For example, the cost of paper and printing is a relevant factor and can be included in the charge. In particular, the Tribunal concluded that the guide price of 10 pence per A4 sheet that needed to be photocopied was a reasonable one. However, the cost of staff time in identifying, locating and retrieving the information is an irrelevant factor and cannot be included. As these staff costs must be disregarded when the information is inspected by the applicant (in

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<sup>1</sup> David Markinson v Information Commissioner (EA/2005/0014)

accordance with Regulation 8(2)(b)), it is unreasonable to include them when calculating the cost of copying the same information.

18. The Commissioner asked the Council how it had calculated the cost of £35.00. The Council explained that the following charges had been used:

- Copying A4 sheets – 10 pence per page
- Copying A3 sheets – 20 pence per page
- Copying A1 sheets – 80 pence per page

19. The actual calculation was made up as follows:

- 302 A4 pages x 10p = £30.20
- 8 A3 pages x 20p = £1.60
- 6 A1 pages x 80p = £4.80
- Total = £36.60 (which was rounded down to £35.00).

20. In the Commissioner's opinion, the charges used by the Council are in-line with the charges that the Tribunal accepted as reasonable in the case referenced above. Therefore, in light of the number of pages which the Council needed to copy to fulfil the request, the Commissioner is satisfied that the charge of £35.00 is a reasonable one.

## **Other matters**

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21. For the reasons explained in the notice above, the Commissioner has only made a decision as to whether the charge of £35.00 was a reasonable one, and not whether the charges of £82.00 and £53.00 were reasonable ones. Nevertheless, the Commissioner asked the Council to clarify why these higher charges were initially considered to apply.

22. In response, the Council explained that its Planning Department receives a number of requests for copies of planning documents from a variety of sources such as surveyors and architects as well as members of the public. Where a request is received outside of FOIA for copies of planning documents, the Council explained that the charges applied include 'overheads'. The Council went on to explain that in the particular circumstances of this case, when it became clear that the complainant had submitted his request under FOIA the charge of £82.00 was amended to £35.00 to take into account the figures set out in the decision notice. The Council explained that it did not have any record of the complainant being charged £53.00.

23. The Commissioner wishes to emphasise that in his opinion any written request for recorded information constitutes an information request for

the purposes of FOIA and the EIR. A requestor does not have to specify that they are seeking information under either access regime in order for the request to be valid. This means that when a public authority has to answer a request for environmental information it should deal with it within the terms of the EIR.

24. However, if a public authority wants to offer a 'value-added' service, and charge for that on a different basis, then it is at liberty to do so, provided that all requesters can still receive environmental information under the terms of the EIR.
25. In light of the initial higher charge that the complainant was asked to meet in this case, the Commissioner recommends that when dealing with similar requests in the future the Council establishes at the outset whether a requester wants to be provided with the information under the EIR or whether they are prepared to meet any higher charges for any 'value added' service.

## Right of appeal

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26. 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)

27. 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.
28. 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**  
**Principal Policy Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**