

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 12 March 2015

**Public Authority:** Thanet District Council

**Address:** PO Box 9  
Cecil Street  
Margate  
Kent  
CT9 1XZ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Thanet District Council (the Council) about a Contaminated Land Register. He specifically requested the information be provided in CD or DVD format. The Council provided some of the information in DVD/CD format whilst the remainder of the information was not provided in the requested format. The complainant was given options in relation to accessing the remainder of the information.
2. The Commissioner's decision is that the Council has provided what information it can in CD/DVD format and was correct to refuse to provide the remainder of the information in CD/DVD format.
3. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

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4. On 25 April 2014, the complainant wrote to the Council and requested information in the following terms:

*""Question 1.*

*Does the Local Authority have a set policy, which is documented, for the inspection of incidents which may lead to a potential pollution of*

*any environment including but limited to watercourses and ground water. If so, please could I have a copy of these documents in either electronic (CD or DVD) or paper form.*

*Question 2.*

*As per the Guidelines on Contaminated Land Statutory published under Part 2A of the Environmental Protection Act 1990 by the Secretary of State:*

- (1) Does the Local Authority inspect its area as is required from time to time for the purpose of identifying contaminated land and of enabling the authority to decide? If yes, is there a record of all the areas inspected and if so please could I have a copy of these records in either electronic (CD or DVD) or paper form.*
  - (2) Has the Local Authority conducted and completed inspections of land (including but not limited to soil, subsurface Hydrology and surface waters) to assess the risk of pollutants on the potential harm to human health, local ecological systems and controlled waters? If yes and a risk assessment has been carried out, I request a copy of these Risk Assessments for the last 10 years in either electronic (CD or DVD) or paper for."*
5. The Council responded on 20 May 2014 but an error meant that the complainant did not receive it until 4 July 2014.
  6. In response to question 1, the Council provided a link and explained that the Local Authority may employ powers under the Environmental Damage Regulations for the inspection and remedy of specific pollution incidents to land. Damage to watercourses and groundwater would, the Council explained, be dealt with separately by the Environment Agency. It provided a further link to the relevant legislation.
  7. With regard to question 2, The Council explained that the Environmental Protection Act 1990 places a duty upon local authorities to inspect their areas in order to identify contaminated land. The Council has compiled an in house database of sites that may have been subject to former industrial use and have undertaken a risk prioritisation. The complainant was invited to view the mapped information from the database at the Council offices as the license was held by another company and not available in the requested format. He was also offered the option of receiving mapped data for any particular address at a cost of £60.
  8. The Council reiterated a previous position with regard to planning applications and contaminated land – that redevelopment of existing sites is the principal mechanism for detailed inspection – i.e. receipt of risk assessment reports for particular sites. The Council provided a link where planning applications received since 2002 could be found.

9. The complainant requested an internal review on 5 August 2014. He drew attention to the fact that his request had specifically asked for the information on CD or DVD or paper form. He stated further that both of his original questions were questions which required the Council to confirm or deny whether it is compliant with the relevant legislation.
10. On 15 August 2014, the Council sent the complainant a DVD containing the information to which the previously provided links referred. An accompanying letter reiterated the points about its database which was available to view at the Council offices.
11. The complaint to the Commissioner is made only in respect of question 2 of the request dated 25 April 2014.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 8 September 2014 to complain about the way his request for information had been handled. He included an eight page letter setting out his concerns in relation to this request and other requests he had made on the same subject. With specific regard to this complaint he asserted that question 2 had not been answered and this he took to mean that that the Council does not inspect its area as required. The Commissioner considers the scope of the request is to determine if the information is publicly available and easily accessible or if it is reasonable for the Council to make the information available in another form or format.

### **Reasons for decision**

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#### Is the information environmental information?

13. The Commissioner must first determine whether the requested information should be handled under the Freedom of Information Act (FOIA) or the Environmental information Regulations (EIR).
14. Regulation 2 provides the definition of environmental information for the purposes of the Regulations. It defines environmental information as:

*“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.”*

15. The complainant requested information about the register of land contamination and risk assessments relating to contamination. The Commissioner believes that any information relating to land contamination would be environmental information by virtue of regulation 2(1)(a) because it is information about the state of the elements of the environment.
16. The duty to make available environmental information is set out in regulation 5 of the EIR.
17. Form and format of information is covered by Regulation 6 of the EIR.

### **Regulation 6(1)(b) – form and format of information**

18. Regulation 6(1) states:

*“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*

19. In response to question 2(2) of the request, the Council has stated that redevelopment of existing sites is the principal mechanism for detailed inspection where risk assessment reports are received. These reports are held on planning applications and the Council provided a link to these applications dating back to 2002. It is possible that other reports exist where redevelopment has not taken place. An example would be where the site was being cleaned up and the party concerned with the

operation chose to work with the Council. Such reports could not be provided on DVD or CD due to size but can be viewed at the Council offices. The Council is unaware how many such reports there might be but does not consider that they represent a significant number. The Council has explained that it has compiled an in house database of sites that may have been subject to former industrial use and which have undertaken a risk prioritisation. The Council has clarified to the Commissioner that all of the information held on the planning portal is also available on the database.

20. The Council was unable to provide information from the database on CD/DVD format as the licence was not held by the Council. However, the Council invited the complainant to its offices to view the data. The Council also explained that the complainant could receive the mapped data for a particular address at a cost of £60. The issue of charging will be addressed in the 'other matters' section of this notice.
21. In its submission to the Commissioner, the Council set out the fact that in offering alternatives to the complainant it took into consideration, as far as possible, his specific circumstances. The Council noted that the complainant had not communicated any particular circumstances which would make access to the Council offices unavailable to him.
22. The complainant has asserted that in order to retrieve the information he would have to go through 11,000 planning applications. Whilst the Commissioner accepts that the amount of applications is voluminous this in itself would not make requested information any less accessible.
23. However, the Commissioner has considered how the information is available via the link provided to the planning site. The options available for search are; date range, postcode, application number or street name. There is no option to search by specific report or risk assessment.
24. The complainant has not requested planning information; he has requested information about land contamination. If it was the case that the complainant could search the planning portal by filtering the search to show only applications where a risk assessment had taken place then that information may be considered more easily accessible. As it stands, the inability to search for the information in more specific terms means that it is not easily accessible. The Council has advised that it would have to go through the same process as the complainant in order to access the information requested.
25. However, the Commissioner notes that the Council has put forward other options, in lieu of providing the information on DVD/CD format, to allow the complainant access to the requested information.

26. The Council has clarified that the reports held on the database are voluminous and that exactly what information is required from the reports will determine the amount of time required to view them.
27. The complainant has asserted that previous experience of a visit to the Council offices means that he will not return there and he asserts that the Council would be aware of this when suggesting that he attend to view the reports.
28. It is not for the Commissioner to comment on the relationship between complainant and public authority; his remit is only to consider whether the public authority has complied with the EIR.
29. The Council has provided the complainant with some of the information in the form/format he has requested. The remainder, it asserts, due to volume or licence issues cannot be provided in a DVD/CD but is available for inspection. However, the Council notes that upon inspection, the complainant should consider identifying specific areas he requires information about or the process will require him to search every entry on the database. The Council asserts that it breaks the information down by area and that there are 21 areas available to search.
30. The Commissioner accepts that the Council has offered alternatives to the complainant but asserts that those options do not necessarily render the information any more easily accessible. He accepts that the information is available via the planning portal but does not accept that it is easily accessible. He does not accept that the information is easily accessible via the mapped data option as this requires specific address details and that is not what the complainant has asked for in his request. The option of attending the Council offices to view the information provides an alternative to the provision of the information on a DVD or CD format but it appears that in the context of this specific request, the information is not easily accessible to either the complainant or the public authority with both having to take the same steps to retrieve the information.
31. In conclusion, the question for the Commissioner is whether the information which has not been provided via DVD or CD is publicly available and easily accessible or whether it is reasonable to provide it in another format. In all of the circumstances he accepts that the information can be accessed by visiting the council offices but that it will be no more easily accessible there. It is the volume and nature of the requested information which presents the difficulty and as the Commissioner has explained at paragraph 22, the volume itself cannot be considered in terms of the information being accessible. The option not to visit the Council offices is a choice which the complainant has

exercised. This choice can have no impact on the decision set out in this notice. The Commissioner accepts that it was reasonable to make the information available in this manner rather than on CD/DVD as requested.

32. At the time of writing this notice the Council has confirmed that the option to visit the Council offices remains open to the complainant.

## **Other matters**

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33. The Commissioner notes that the Council did not, in any of its correspondence with the complainant, outline the fact that the request was being handled under the EIR. He would ask that in future correspondence with individuals requesting information, the Council sets out the appropriate legislation under which the request is being considered.
34. In considering options with regard to requests for information, the Commissioner would ask the Council to bear in mind the specific terms of any request in order that options are realistic in terms of providing access to the actual information requested.
35. With regard to the general issue of charging, the Commissioner would like to draw attention to EIR regulation 8. Regulation 8 only permits charging for making the information available, for example the photocopying of documents. Whilst the Council may seek to charge for producing the requested information (eg copying and providing it) it should not seek, under the EIRs, to levy any other charge (such as the cost of retrieving it).
36. The charge of £60 for mapped data in respect of a specific address is set out as a standard fee for information research. It appears that the Council has had no regard for the fact that the request is a request for information in accordance with EIRs not an information research request. In this case this aspect is largely irrelevant as the complainant has not requested information about a specific address but the Commissioner asks that the Council familiarise itself with EIR section 8 should it seek to levy charges in any future cases.

## Right of appeal

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37. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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 .....**

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