

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 24 November 2015

Public Authority: Wolverhampton City Council
Address: Civic Centre
St Peter's Square
Wolverhampton
WV1 1SH

Decision (including any steps ordered)

1. The complainant made a request to Wolverhampton City Council ("the Council") for information on property searches regarding a particular property. In response the Council informed the complainant that it was charging a fee for the information in accordance with regulation 8 of the EIR. The complainant has complained that the charge is unreasonable.
2. The Commissioner has investigated the complaint and found that the charge is reasonable and he requires no steps to be taken.

Request and response

3. The complaint relates to a request for information Ms Price made to the Council on 17 April 2015 which read as follows:

Re: 612 Parkfield Road, West Midlands WV4 6EH

Could you please provide details of any outstanding statutory notices that relate to the above property and have been issued under the following areas of legislation:

*Building works
Environment
Health and Safety
Housing
Highways (obstruction e.g. overhanging vegetation)
Public Health*

For any relevant notices could you please advise the date and reason for issue.

Please provide this information by email and note that I am not able to visit your offices.

4. The Council responded to the request on 18 May 2015 when it explained that it was applying regulation 8 of the EIR and that it was charging a fee of £250 to provide the requested information. This was based on 10 hours of staff time needed to locate, retrieve and extract the information which would be charged at the rate of £25 per hour.
5. The complainant subsequently asked the Council to carry out an internal review of its handling of the request. In doing so she argued that the fee being charged was unreasonable, and in particular the Council should have been able to comply with the request within 10 hours.
6. The Council presented the findings of its internal review on 8 June 2015 which upheld the decision to apply the £250 fee.

Scope of the case

7. On 11 June 2015 the complainant contacted the Commissioner to complain that fee charged by the Council was unreasonable.
8. During the course of the Commissioner's investigation the Council revised its estimate of the costs of complying with the request to £87.50 and it contacted the complainant to advise her of this new fee.

Reasons for decision

Regulation 8 – Charging

9. Regulation 8 of the EIR allows a public authority to charge for making environmental information available. However regulation 8(3) provides that any charge must not exceed an amount which the public authority is satisfied is reasonable. Furthermore, before a public authority is able to levy a charge under the EIR, regulation 8(8) of the EIR requires all public authorities to publish and make available to applicants a schedule of its charges and information on the circumstances in which a charge may be made or waived.

10. The Commissioner accepts that charges can involve both staff costs of locating, retrieving and extracting the requested information as well as any disbursement costs. This follows the findings of the Information Tribunal in *East Sussex County Council v Information Commissioner and Property Search Group (EA/2013/0037)* which found that the drafters of the original EU Directive 2003/4/EC (from which the EIR are derived) made a clear decision not to exclude the cost of staff time in searching for the environmental information when considering a reasonable amount for a charge. However any charge should be reasonable and an applicant should not be disadvantaged by a public authority's poor records management.
11. The complainant has asked for information regarding property searches. The term 'property searches' usually describes enquiries made to local authorities when buying a property. The answers make prospective buyers aware of issues before they complete their purchase such as legal interests in the property, rights of way over the property, and planning restrictions or proposals.
12. The information used to answer property search enquiries is held by local authorities, and the enquiry is usually made through a standard CON29 form devised by the Law Society. Most questions are answered yes or no, although some questions may need more detailed answers. Where a public authority is asked to complete a CON29 form or otherwise provide an 'official response' to property searches then the Commissioner accepts that this goes beyond just providing environmental information and therefore local authorities are free to use the Charges for Property Searches Regulations 2008 (CPSR) charging provisions. When a local authority is asked to provide access to underlying environmental information, so that a third party can answer the questions in the CON29 form themselves (as was the case here) the charging provisions in the EIR rather than the CPSR will apply.
13. In this case the Council has explained that it had asked its relevant departments to look again at the estimates it originally provided in its initial response to the complainant's request and that they had reached a revised fee of £87.50 which it said was based on 3.5 hours of staff time to locate retrieve and extract the requested information. This was charged at the rate of £25 per hour of staff time. The EIR do not specify the rate at which staff time should be calculated. Although the FOI Fees Regulations do not apply to the EIR, the Commissioner's view is that it is reasonable for public authorities to use the FOI rate of £25 per hour as a starting point.

Building and Planning	30 minutes
Environmental and Public Health	2 hours 30 minutes

Housing	15 minutes
Highways	15 minutes

TOTAL £87.50

14. The Commissioner is satisfied that an estimate of 3.5 hours of staff time is a reasonable one given the amount of information the complainant asked for and the Commissioner also notes that this estimate was arrived at by consulting the members of staff responsible for the information. This would have allowed the Council to arrive at an accurate estimate of the time involved.
15. The complainant's main objection to the Council's charge is that it is unreasonable because this exceeds what a public authority would normally charge through the usual system of property searches under the CPSR. In particular, the Council charges only £61 for a full property search which would in fact go beyond what the complainant has requested.
16. The Commissioner is aware that the amount charged by the Council for access to environmental information under the EIR differs from the amount charged by the Council under the CPSR. However, it is important to remember that they are different pieces of legislation with different charging regimes. The CPSR do not allow a public authority to charge for staff time. Therefore, if an applicant decides that they want to make a request for information under the EIR, outside of the established CPSR charging mechanism, then a public authority is entitled to charge for staff time and even where that is charged at the rate of £25 per hour it will be reasonable.
17. Finally, the Council explained that it advised the complainant of its charges on 17 April 2015. It also explained that it publishes details of its charges on its local Land charges web pages and the Commissioner notes that this advises that requests for environmental information under the EIR will be charged at the rate of £25 per hour of staff time. Therefore this part of regulation 8 has also been met.
18. For these reasons the Commissioner finds that the Council's charge for handling the complainant's request was reasonable.

Right of appeal

19. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. 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.
21. 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

Pamela Clements
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SK9 5AF