

## **Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004 Decision Notice**

**Date 17 October 2006**

**Public Authority:** Brighton & Hove City Council  
**Address:** Kings House  
Grand Avenue  
Hove  
BN3 2LS

### **Summary**

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The complainant requested information concerning refuse collection and complained that the response to his request was inadequate and was not provided within 20 working days. The Commissioner agreed that a response had not been given within the timescale provided by the Act. He also found that although a good deal of information had been provided to the complainant, one part of the request had not been properly answered. Following the intervention of the Commissioner, the public authority responded to the aspect of the information request that it had previously failed to address. There is no evidence available to the Commissioner that suggests that further relevant recorded information has been withheld from the complainant. As there is no outstanding breach of The Environmental Information Regulations 2004 ("EIR"), remedial action by the public authority is not required.

### **The Commissioner's Role**

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1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

## The Request

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2. The complainant submitted a request for information to the Council on 19 June 2005. This took the form of a series of questions contained in an email to the Council. The questions are summarised as follows. (The numbers have been added by the Commissioner for ease of reference.)
- i. Would the Council recommend or permit that any wheeled bin stored on the pavement should be securely shackled in an upright position at the edge of the pavement?
  - ii. Does the Council consider that it owes a duty of care to residents when requiring that those residents transport wheeled bins to and from a roadside refuse collection point?
  - iii. In my particular case, given that I already re-use or recycle wherever practical, what benefits accrue, and to whom, as a consequence of the Council requiring me to use a wheeled bin?
  - iv. May I ask how that increase in efficiency [*of the refuse collection service*] was achieved, and how it was measured?
  - v. What did RNIB say about the storage of wheeled bins on the pavement, and did they have any comment to pass on the colour of those bins?
  - vi. How much pollution do the refuse trucks that hoist wheeled bins cause, in comparison to those that do not?
  - vii. Has the Council considered introducing a policy of keeping its refuse collection vehicles away from arterial routes between 08:00 and 09:00?
  - viii. How should the prudent householder deal with a modestly-sized item of landfill refuse that will not fit inside a wheeled bin?
  - ix. Where is enshrined the Council's right to impose a quantum limit on the volume of refuse that it is prepared to collect?
  - x. In short, does the Council have the legal right to impose a quantum limit to its obligation to collect refuse, or does the legislation give the Council the obligation to collect only, say, 'a reasonable quantity'? In the latter case, should not 'a reasonable quantity' be reckoned in a reasonable way?
  - xi. Does the Council have plans to introduce a scheme for the recycling of garden waste?
  - xii. If the Council is faced with a straight choice between either a wheeled bin being used or refuse being reused or recycled wherever possible, for which will it opt?

3. The public authority responded to this request on 29 September 2005. This response addressed each of the questions above, apart from vi.
4. The complainant contacted the public authority again on 9 October 2005, 16 October 2005 and 6 November 2005, raising issues about the public authority's response to his information request.
5. The public authority reviewed its handling of the request and responded to the complainant on 7 November 2005. This response provided some further clarification of the responses provided to the complainant in the public authority's letter of 29 September 2005.

## The Investigation

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### Scope of the case

6. On 3 December 2005 the complainant contacted the Commissioner to complain about the way in which the public authority handled his request for information. The complainant specifically asked the Commissioner to consider the delay in the public authority's initial response to his information request and whether all information falling within the scope of the request held by the public authority had been provided to him.

### Chronology

7. The Commissioner contacted the public authority by letter dated 7 June 2006. In this letter, the Commissioner raised the complaint with the public authority and asked that it respond clarifying whether its position was that all relevant information had been provided to the complainant. This letter also stated that it appeared from the documentation available to the Commissioner at that time that the information request had been responded to well outside 20 working days of receipt.
8. The public authority responded by letter dated 29 June 2006. In this letter, the public authority confirmed that in its view all relevant information held had been provided to the complainant. The public authority questioned whether a number of the complainant's questions should be considered valid requests for information for the purposes of the EIR.
9. The Commissioner contacted the complainant by letter dated 4 July 2006. In this letter, the Commissioner informed the complainant that in the public authority's view all relevant information had been provided to him. The Commissioner asked that the complainant be as specific as possible about what information he believed had been withheld from him. To this end, the complainant was asked to specify which of his questions he did not believe had been fully addressed.
10. In this letter, the Commissioner stated that the public authority had failed to respond to the complainant's request within 20 working days, but that it was unlikely that formal action would be taken solely in connection with that breach.

This breach was no longer outstanding as the public authority had responded to the information request, albeit outside the 20 working days period.

11. The complainant responded by letter dated 9 July 2006. In this letter, the complainant specified a number of questions that he had addressed to the public authority to which he did not believe he had received an adequate response.
12. Following review of the documentation available to the Commissioner, it appeared that part vi of the complainant's request outlined above had not been addressed by the public authority. The Commissioner contacted the public authority by letter dated 12 July 2006 to ask that it respond to this question.
13. The public authority responded on 10 August 2006, providing a copy of an e mail of the same date sent to the complainant, which provided an answer to part vi of the information request above. This response stated that no information falling within the scope of this request was held by the public authority, but also stated that the difference between the emissions produced by the different types of refuse trucks is negligible. The Commissioner asked the Council to clarify whether recorded information is held about the emissions produced by refuse trucks. The Council clarified that no such recorded information is held and that the response stating that the difference in emissions is negligible was based on an assumption made by the public authority.
14. In a subsequent exchange of correspondence between the Commissioner and the complainant, the complainant maintained that his questions had not been responded to in full. The complainant referred to questions asked in both his information request of 19 June 2005 and in various other pieces of correspondence that he had exchanged with the public authority.
15. In response to the complainant's concerns, the Commissioner attempted to clarify what the EIR required of the public authority and what assistance the Information Commissioner could offer. The complainant was advised that the EIR does not include any requirement for a public authority to hold certain information nor does the EIR include any requirement in respect of the quality of the information held by a public authority. Therefore, the Commissioner explained that he is not able to consider whether a public authority should hold certain information nor any issue in respect of the quality of the information a public authority does hold.

### **Findings of fact**

16. The public authority did not respond to the information request within 20 working days of receipt.
17. In the public authority's view the information request was responded to in full and recorded information has not been withheld from the complainant.
18. The complainant maintains that information has been withheld from him and that the public authority's responses were inadequate.

## Analysis

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19. On the basis of the evidence available to the Commissioner, each aspect of the information request, apart from vi, was addressed by the public authority.
20. Following the intervention of the Commissioner, the public authority provided a response to the complainant that addressed part vi of the information request.
21. Although the public authority failed to address all aspects of the information request initially, remedial action has since been taken, as described above, and the public authority has now addressed each aspect of the information request.
22. There is no evidence available to the Commissioner that suggests that the public authority has withheld any further relevant recorded information from the complainant. The Commissioner, therefore, accepts the representations of the public authority that all information falling within the scope of the complainant's request has been provided.
23. The Commissioner considered whether all the information requested would constitute environmental information subject to the EIR. It was noted that the majority of the information requested is clearly environmental information and that whichever regime was applied, this would not affect the outcome of this decision. This complaint has, therefore, been considered under the EIR.

## The Decision

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24. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the EIR.
25. Firstly, the public authority did not respond in accordance with Regulation 5(1) in that it failed to respond to part vi of the information request.
26. Regulation 5(1) states that:

“...a public authority that holds environmental information shall make it available on request.”
27. Secondly, the public authority breached Regulation 5(2) in that it failed to respond to the information request within 20 working days of receipt.
28. Regulation 5(2) states that:

“Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.”

## Steps Required

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29. The breach of Regulation 5(2) does not necessitate further action. The breach of Regulation 5(1) was resolved following the intervention of the Commissioner.
30. The Commissioner requires no steps to be taken.

## Right of Appeal

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31. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 17th day of October 2006**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**