

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

30 June 2008

**Public Authority:** London Borough of Camden  
**Address:** Organisation Department  
Corporate ICT  
3-5 Cressy Road  
Hampstead  
London  
NW3 2ND

### Summary Decision

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The complainant requested the Council to release a list of its investigation files relating to reported planning infringements in the borough prior to any enforcement action being authorised for the three month period preceding his request. The council refused the complainant's request citing regulations 13 and 12(5)(b) of the EIR. The Commissioner has considered the requested information and the Council's application of these exceptions. In respect of those investigations where the alleged planning breach relates to properties owned by individuals and sole traders, the Commissioner has concluded that this information is exempt from disclosure under regulation 13 of the EIR. For those remaining cases where the alleged planning infringement relates to a company, the Commissioner has considered the Council's application of regulation 12(5)(b) and concluded that this exception is not engaged. The Commissioner has therefore ordered the Council to release this information to the complainant within 35 days of this Notice.

### The Commissioner's Role

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1. The Environmental Information Regulations (the "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 contacted the Council on 28 September 2006 to request that it supply a list of enforcement notices issued in the last three months. The complainant also requested that the Council provide a list of its investigation files over this period relating to reported planning infringements in the borough prior to any enforcement action being authorised. Specifically the complainant requested the following information:
  - The date the file was opened
  - The address of the property to which the file relates
  - A brief description of the reported infringement
  - Whether the breach has been remedied
3. The Council responded on 4 October 2006 and released a table of the requested information for those cases where an Enforcement Notice had been issued for the period 1 July 2006 to 27 September 2006.
4. The complainant contacted the Council further on 5 October 2006. He acknowledged receipt of the report that was disclosed detailing the cases where an Enforcement Notice had been issued. However, the complainant informed the Council that it had not responded to his information request fully. He stated that he also requested the information for investigations conducted during this period into alleged planning infringements prior to any enforcement action being taken.
5. The Council issued a further response on 6 October 2006 citing reasons for non disclosure under both the Act and the EIR. In terms of the Act, the Council confirmed that the requested information was exempt under sections 30 and 31 (the full text of these sections of the Act and any further sections referred to under the Act or EIR in this Notice can be found in the Legal Annex section towards the end of this Notice) of the Act. Under the EIR, the Council advised that the requested information was exempt from disclosure under regulations 12(5)(b) and 12(5)(d).
6. The complainant wrote to the Council on 9 and 23 October 2006 to request an internal review into its decision to withhold the requested information.
7. The Council responded on 15 November 2006 outlining the outcome of the internal review process. It stated that it had reconsidered the complainant's request and was of the view that the requested information was environmental information and therefore any exemptions previously referred to under the Act were no longer relevant. The Council also confirmed that it was no longer of the opinion that regulation 12(5)(d) of the EIR applied to the requested information. It confirmed that it was now willing to release the requested information for those investigations undertaken into alleged planning breaches where no enforcement action had been authorised, with two exceptions. Firstly, the Council stated that it would not disclose any of the requested information for investigations into the following alleged breaches:

- contravening a Tree Preservation Order,
- display of advertisements without consent, and
- unauthorised works to a listed building.

It explained that this was because such investigations were into potential activities of a criminal nature. Secondly, it refused to release the full postal address of the properties concerned. The Council stated that it considered such information was exempt from disclosure under regulation 13 of the EIR.

8. The further information described in paragraph 7 was released to the complainant on 5 December 2006 in the form of a report. The information was provided for the preceding three months and therefore for the period 1 September 2006 to 30 November 2006.
9. As the complainant remained dissatisfied, he contacted the Commissioner on 2 January 2007 to request that he formally consider the Council's decision to withhold information. He confirmed that he had received all information he required except the full address of the properties concerned. He explained that he felt the information supplied without the full address was too generic to be of any value and disagreed that this information could be withheld under regulation 13 of the EIR.

## The Investigation

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### Scope of the case

10. Although the Council refused to release the requested information for those investigations undertaken into the following alleged breaches:
  - contravening a Tree Preservation Order,
  - display of advertisements without consent, and
  - unauthorised works to a listed building

these investigations did not form part of the complaint raised by the complainant to the Commissioner. The Commissioner's investigation has therefore focused on the Council's decision not to disclose the full address of the properties where alleged breaches of planning were reported, for the period 1 September 2006 to 30 November 2006, as outlined in the report provided to the complainant on 5 December 2006.

11. The Council first responded to the complainant's information request under both the Act and the EIR. The Commissioner has therefore first considered whether the requested information is environmental information and which regime is applicable.
12. The Commissioner has reviewed the requested information and is satisfied that the complainant's information request falls within the scope of the EIR for the following reasons.

13. Section 172 of the Town and Country Planning Act 1990 gives public authorities powers to issue an Enforcement Notice where a development is carried out without planning consent or when conditions or limitations subject to planning permission are not complied with. This is considered to fall under regulation 2(1)(c) of the EIR as a measure affecting or likely to affect the elements referred to in 2(1)(a), for example the land, landscape and possibly natural sites, and designed to protect those elements. The requested information (address of each properties concerned) is information concerning that measure or legislation and is intrinsically linked to a public authority's obligation to ensure planning operates in accordance with the legislative requirements and its own policies.
14. As the Commissioner is satisfied that the request falls within the scope of the EIR, his investigation has sought to establish whether the Council handled the information request in accordance with the EIR and whether it acted appropriately by relying on regulation 13. As will become apparent later in this Notice, the Council also cited regulation 12(5)(b) of the EIR for its reasons of non disclosure during the Commissioner's investigation. The Commissioner has therefore also considered whether the requested information is exempt from disclosure under this exception of the EIR.

### **Chronology of the case**

15. The Commissioner wrote to the Council on 28 August 2007 to request a further explanation as to why it considered the requested information was exempt from disclosure under regulation 13 of the EIR. The Commissioner reminded the Council that regulation 13 is designed to protect the personal data of third parties where disclosure of that personal data would breach the Data Protection Act 1998 ('the DPA'). He advised the Council that the DPA only applies to individuals and therefore it was his view that regulation 13 would only apply to those cases where the alleged planning infringement relates to residential properties owned by a private individual or, in the case of business premises, sole traders.
16. The Council responded on 24 September 2007. It confirmed that it remained of the view that the requested information was exempt from disclosure under regulation 13 of the EIR, where it relates to individuals or businesses that are owned by individuals. For those investigations where the alleged breach of planning relates to a company, the Council confirmed that it now wished to rely on regulation 12(5)(b) of the EIR.
17. The Commissioner wrote to the Council on 2 October 2007 to request a more detailed explanation as to why regulation 12(5)(b) applied to some of the requested information.
18. The Council responded further on 16 October 2007. It stated that it was of the view that investigations undertaken into alleged planning breaches prior to any enforcement action being taken fell within the scope of this exception. It confirmed that it was of the opinion that disclosure would have an adverse affect on the council's ability to conduct such investigations in the future and that the public interest was served by maintaining the exception.

## Analysis

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### Regulation 13

19. The Commissioner will first consider the Council's application of regulation 13 to the requested information.
20. Regulation 13(2) of the EIR states that a public authority shall not disclose personal data of which the applicant is not the data subject to a member of the public if disclosure would contravene any of the data protection principles outlined in the Data Protection Act 1998 ('the DPA'). For this exception to apply the requested information must fall within the definition of personal data. If it is established that the requested information is personal data, it is then necessary to consider whether disclosure would breach any of the data protection principles.

### Is the requested information personal data?

21. Personal data is defined in section 1 of the DPA as follows:

“personal data” means data which relate to a living individual who can be identified –

(a) from those data or,

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller or any other person in respect of the individual

and includes any expression of opinion about the individual and any indication of intentions of the data controller or any other person in respect of the individual”.

22. In this case, the requested information is the address of the property which has been reported to the Council for an alleged planning infringement and which is subject to an investigation to establish whether enforcement action is required. It is the Commissioner's view that an individual or individuals can often be identified from a postal address through sources such as the Land Registry and the electoral roll. He is therefore satisfied that the requested information falls within the category of personal data.
23. However, the Commissioner does not agree that all the requested information falls within the definition of personal data. The DPA only applies to living individuals. It is therefore the Commissioner's view that the requested information can only be considered to constitute personal data where it relates to residential properties owned or occupied by a private individual(s) or business premises which are owned by individuals for example sole traders. This exception cannot, therefore, apply to those investigations undertaken by the Council into alleged planning infringements by companies or other incorporated bodies.

Would disclosure breach the DPA?

24. As the Commissioner is satisfied that some of the requested information is personal data, he will now consider whether disclosure would contravene one of the data protection principles in the DPA.
25. The Commissioner notes that under section 188 of the Town and Country Planning Act the Council must keep a public register of all Enforcement Notices issued relating to land in its area. However, this obligation does not extend to details of investigations undertaken into complaints received about alleged infringements, and this information is not normally made public. It is therefore the Commissioner's view that it is generally established public policy in this area that details of allegations will not normally be made public and there is no statutory obligation to do so.
26. However, the Commissioner notes from correspondence received from the complainant that London Borough of Haringey openly discloses details of all Enforcement Notices issued as well as details of investigations being undertaken prior to this action being taken into alleged breaches of planning reported to the Council. While this is of interest in relation to this case, the Commissioner notes that any such policy decision would be a matter for the public authority itself and this has no bearing on the Commissioner's obligation to decide whether disclosure of the information requested in this case would breach the DPA.
27. It is the Commissioner's view that reported allegations of potential planning infringements are, at that stage, only allegations and are yet to be subject to an objective investigation into whether they are justified or unjustified. Making such allegations public could allow members of the public to impute wrongdoing to an individual who may not have committed an planning infringement at all. Allegations can be spurious, based on, for example, disputes between neighbours or rival traders and could be reported to the Council through pure malice.
28. For these reasons, the Commissioner's view is that disclosure of the requested information for those cases where the alleged infringement relates to residential properties owned or occupied by a private individual(s) or business premises owned by individuals, which the Commissioner has decided is personal data, would be unfair and therefore in breach of the first data protection principle (the full text of this principle can be found in the Legal Annex to this Notice). The information is therefore exempt under regulation 13 of the EIR.

**Regulation 12(5)(b)**

29. As regulation 13 does not apply to those cases where the alleged infringement relates to companies or other incorporated bodies, it is now necessary for the Commissioner to consider the Council's application of regulation 12(5)(b) of the EIR to this information.



30. Under this regulation a public authority can refuse to disclose information to the extent that its disclosure would adversely affect:

“the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature”.
31. The Commissioner has first considered whether the requested information falls within the scope of this exception. If it does not, this exception does not apply and it will not therefore be necessary for the Commissioner to go on to consider whether disclosure would have an adverse effect.
32. The Council confirmed that although it accepts that an investigation undertaken in to an alleged planning infringement prior to any enforcement action being taken is not an investigation of a criminal nature, it is of the view that the wording of the exception is not confined to criminal cases only. The Council considers that this exception also incorporates civil proceedings and therefore investigations of a civil nature. In addition, it stated that it is of the opinion that the term “inquiry of a disciplinary nature” is potentially a wide one and that investigations undertaken into alleged planning infringements could therefore fall within this category.
33. The Council explained that disclosure of the requested information could lead to an assumption of guilt and would adversely affect the ability of those companies concerned to receive a fair trial if the case resulted in enforcement action and the company failing to comply with a Notice. It stated that the requested information would be relied upon during enforcement proceedings and therefore disclosure would be unfair. The Council argued that disclosure would adversely affect future investigations and its ability to come to informal resolution with those concerned. It also stated that in some cases it is important to ensure the owner of a property or company which is subject to investigation is not made aware of this fact because early knowledge of any investigation would alter their behaviour.
34. The Commissioner has carefully considered the Council's arguments and has first considered whether the requested information falls within the scope of “an enquiry of criminal...nature”. It is the Commissioner's view that the failure to comply with an Enforcement Notice under the Town and Country Planning Act 1990 is a criminal offence. An investigation into the alleged failure to comply with a Notice is also an investigation of a criminal nature. However, he notes that the requested information in this case pertains to the Council's investigation prior to any enforcement action being taken and it is the Commissioner's view that, at this stage, the alleged planning infringement which is the subject of the investigation is not itself a criminal allegation.
35. The issuing of an Enforcement Notice is an administrative measure. The Commissioner has therefore concluded that the investigation undertaken by the council to establish whether there has been a planning breach and whether a Notice is required cannot be construed as “an inquiry of a criminal...nature”. Even in those cases where Notices are issued, it remains an administrative matter so long as that the individual, trader or company concerned complies with

- the Notice or it is successfully appealed or revoked. It is only when those concerned do not comply that the possibility of a criminal offence arises.
36. As the Council is of the view that the wording of the exception is not confined to criminal cases only and may fall within the interpretation of other sections of this exception, the Commissioner has considered whether the requested information falls within the definition of “the course of justice, the ability of a person to receive a fair trial” or “an enquiry of a...disciplinary nature”.
  37. Concerning the interpretation of the “course of justice”, it is the Commissioner’s view that this section of the exception refers to legal proceedings within a court or Tribunal which have been instigated or are realistically in prospect. The Commissioner interprets the “ability of a person to receive a fair trial” in a similar way. The requested information does not in anyway relate to a trial or a case before a court or tribunal that is underway or realistically in prospect.
  38. With regards to “enquiries of a...disciplinary nature”, it is the Commissioner’s view that such enquiries are those that are carried out in relation to a person’s conduct or behaviour in an employment setting. A disciplinary enquiry would also cover investigations into a person’s professional capacity or conduct, for example, an investigation into a doctor’s fitness to practice.
  39. For the reasons explained above, the Commissioner has concluded that the requested information does not fall within the scope of this exception. As he is satisfied that exception 12(5)(b) of the EIR is not engaged in this case, there is no need for him to consider whether disclosure would have an adverse effect.

## The Decision

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40. Concerning those investigations undertaken by the Council into alleged planning infringements by individuals or sole traders prior to any enforcement action being taken, the Commissioner has concluded that the Council was correct to withhold this information under regulation 13 of the EIR. However, the Commissioner found that this exception does not apply to those investigations undertaken by the Council into alleged planning infringements by companies or other incorporated bodies.
41. In respect of those investigations into alleged planning infringements by companies or other incorporated bodies prior to any enforcement action being taken, the Commissioner has concluded that the Council was incorrect to rely on regulation 12(5)(b) of the EIR for the non disclosure of this information.



## Steps Required

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42. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act within 35 days of the receipt of this Notice:
- Disclosure of the requested information for those cases where the reported alleged planning breach relates to a company or other incorporated body for the period 1 September 2006 to 30 November 2006. For those cases where it is difficult to establish from the address whether the complaint relates to a company or sole trader, the Council should ensure that the necessary steps are undertaken to prevent any personal data from being disclosed in breach of the Data Protection Act. The same applies to any other personal data included within the description of the information hereby required to be disclosed.

## Right of Appeal

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43. 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 30<sup>th</sup> day of June 2008**

**Signed .....**

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

## Legal Annex

### **Freedom of Information Act (2000)**

#### **Section 1**

Provides that “any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

#### **Section 30(1)** provides that –

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
  - (i) whether a person should be charged with an offence, or
  - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.”

#### **Section 31(1)** provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment."

## **Environmental Information Regulation 2004**

### **Regulation 2 (1)**

In these Regulations –

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely 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;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

**Regulation 12 (5)** provides that -

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

- a) international relations, defence, national security or public safety;
- b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- c) intellectual property rights;

- d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
- e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
- f) the interests of the person who provided the information where that person –
  - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
  - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from the Regulations to disclose it; and
  - (iii) has not consented to its disclosure; or
- g) the protection of the environment to which the information relates.

### **Data Protection Act 1998**

#### **Schedule 2 condition 6(1) states-**

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”