

**Freedom of Information Act 2000 (Section 50)
and
The Environmental Information Regulations 2004.**

Decision Notice

Date: 17 December 2009

Public Authority: Knowsley Metropolitan Borough Council
Address: PO Box 21
Archway Road
Knowsley
L36 9 YU

Summary

The complainant submitted a request to Knowsley Metropolitan Borough Council for information from environmental records held on a property in Liverpool. The complainant specified that he wished to view the records in person. The Council agreed to provide the information requested but only on the provision of a fee based on the property search regulations. The Commissioner's decision is that the Council failed to comply with regulations 5(1) and 6(1) as it failed to make the requested information available for inspection on request. The Commissioner requires the Council to make the requested information available for the complainant to inspect within 35 days of this notice.

The Commissioner's Role

1. The Environmental Information Regulations (The Regulations) 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 Regulations 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 Regulations.

Background

2. Section 3 of the Local Land Charges Act 1975 compels all local authorities to generate, maintain and update a Local Land Charges Register and to provide local searches. In order to obtain information from a local search, an application for an Official Search must be submitted to the relevant Local Authority on form LLC1. This is usually accompanied by form CON29R.

3. The CON29R form is comprised of two parts. Part 1 contains a list of standard enquiries about a property. Optional enquiries are contained in Part 2.
4. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority. Property search reports are a compulsory component of a Home Information Pack (HIP), which is required for most residential properties that are put on the open market.
5. The complainant represents a company which provides information about property and land issues.

The Request

6. On 27 August 2009 the complainant requested the following information:

“The records held by land charges, highways, building control, stop and enforcement notices and the contaminated land register relating to the property known as 3 Yarcombe Close, Liverpool L26 7AE”

The complainant specified that he wished to inspect these records in person.

7. Knowsley MBC responded to the complainant on 3 September 2009. The Council stated that it would impose a charge for the inspection provision.
8. In this correspondence, the Council accepted that information from the contaminated land register was environmental. However, the Council could not confirm whether it viewed the rest of the information requested as environmental.
9. The Council also stated that it did not accept that the EIR compelled it to allow the complainant to inspect the information free of charge. It considered the information publicly available and easily accessible through a local land charges search. The Council therefore considered that there was no duty to make information available for inspection under regulation 6(1)(b). The Council reiterated that it would impose a charge for making the information available.

The Investigation

Scope of the case

10. On 24 September 2009, the complainant contacted the Commissioner to complain about Knowsley Metropolitan Borough Council's compliance with the provisions of the EIR. The complainant stated that he believed the information requested was environmental, and he should be entitled to inspect it free of charge under regulation 8(2).

Analysis

Substantive Procedural Matters

11. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
12. The Commissioner considers that the information requested falls within regulation 2(1)(c): “measures (including administrative measure), 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 these elements”. Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore considers the information in paragraph 6 to be environmental information.

Procedural Requirements

Regulation 5, Regulation 6 and Regulation 8

13. Regulation 5(1) provides that environmental information shall be made available upon request. Regulation 6(1) provides that where an applicant requests the information in a particular form or format the public authority is, subject to certain qualifications, obliged to comply with that preference. Regulation 8 provides that a public authority can make a reasonable charge for providing information. However, regulation 8 also specifies two situations where the information must be made available free of charge.
14. The Council accepts that information relating to the Contaminated Land Register is environmental and can be accessed free of charge.
15. With the exception of information relating to the Contaminated Land Register, the Council does not accept that regulation 6 compels it to make the information requested available for inspection.
16. It is the Commissioner’s view that although regulation 6(1) may appear primarily to be concerned with the form or format information is provided in, it should be interpreted broadly and does provide a right to request the inspection of environmental information. Analysis of the Directive and the implementation guide to the Aarhus Convention (the Convention to Access to Information, Public Participation in Decision-Making and Access to Justice on Environmental Matters from which the Directive derives) lend support to this:
 - Article 3(5) of the Directive introduces the requirements for arrangements to be made which ensures that the right of accessing information “can be exercised effectively, such as... establishment and maintenance of facilities for the examination of the information required”

- Recital 15 of the Directive refers to arrangements to “guarantee that the information is effectively and easily accessible”.
 - The Implementation Guide to the Aarhus Convention specifically states that a public authority “must allow” an applicant to examine the original documentation subject to the two caveats which are repeated in regulation 6(1)(a) and (b). Regulation 6(1)(b) provides that a public authority need not comply with an applicant’s request for the information to be made available in a particular form or format where “the information is already publicly available and easily accessible to the applicant in another form or format”.
17. The Commissioner believes it is clear from the interpretative aids quoted above that the Directive anticipated the EIR would provide the right to inspect environmental information and this supports his broad interpretation of regulation 6.
18. Having established that regulation 6 provides a right to inspect environmental information, it is necessary to consider whether either of the two qualifications to this right are relevant in this situation. Regulation 6(1)(a) provides that a public authority is not required to comply with an applicant’s request to receive information in a particular form or format if it is reasonable for the public authority to make the information available in another form or format. The Commissioner would not accept that it is reasonable for a public authority to prevent the inspection of information merely to justify imposing a charge for making information available in other formats. The Commissioner is of the opinion that not making information available for inspection is contrary to the general policy principles of the EIR, i.e. making environmental information as easily accessible as possible.
19. Regulation 6(1)(b) provides that a public authority is not obliged to provide information in a particular form or format requested by an applicant if the information is already publicly available and easily accessible to the applicant in another form or format. In response to the request in question, the Council stated that it maintained the position it had set out in previous correspondence with the complainant. In a letter to the complainant of 24 April 2009, the Council affirmed that the information requested was available and accessible through a local land charges search or a personal search of the Council’s public registers.
20. It was the Council’s opinion that the fact a fee was payable for these methods of accessing the information did not mean the information was any less available. In the Commissioner’s view, however, the criteria of information being publicly available and easily accessible is not satisfied when an applicant is required to pay a fee. This is because charging acts as a barrier to the information being easily accessible in contrast to, for example, publication on a website or in a public library free of charge. The Commissioner would therefore consider that the exception contained in regulation 6(1)(b) is not relevant in this case.
21. Since neither of the exceptions to the Council’s obligation to provide information in the form and format requested can be satisfied, the Commissioner concludes that the complainant has a right to inspect the information he has requested

access to. The Commissioner's view on whether public authorities can impose charges for allowing applicants to inspect environmental information is set out below.

22. Regulation 8 provides a general right for public authorities to charge for making information available. However, that right is subject to a number of conditions. The relevant conditions in this case are contained in regulation 8(2).
23. Regulation 8(2)(a) states that a public authority shall not make any charge for allowing an applicant to access any public registers of lists of environmental information, and regulation 8(2)(b) states that a public authority shall not make any charge for allowing an applicant to examine the information requested at a place which the authority makes available. The Commissioner is therefore of the opinion that the complainant is entitled to exercise his right to inspect information free of charge.

The Decision

24. The Commissioner's decision is that Knowsley Metropolitan Borough Council did not deal with the request for information in accordance with the EIR. The Council has breached the requirements of regulations 5(1) and 6(1) of the EIR as it failed to make the requested information available for inspection on request.

Steps Required

25. The Commissioner requires that the Council make the requested information available for the complainant to inspect.
26. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Right of Appeal

27. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 December 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“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

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- (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);

“historical record” has the same meaning as in section 62(1) of the Act;

“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

“responsible authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“Scottish public authority” means –

(a) a body referred to in section 80(2) of the Act; and

(b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

“transferred public record” has the same meaning as in section 15(4) of the Act; and

“working day” has the same meaning as in section 10(6) of the Act.

Regulation 2(2) Subject to paragraph (3), “public authority” means –

(a) government departments;

(b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding –

(i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or

(ii) any person designated by Order under section 5 of the Act;

(c) any other body or other person, that carries out functions of public administration; or

(d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –

(i) has public responsibilities relating to the environment;

(ii) exercises functions of a public nature relating to the environment; or

(iii) provides public services relating to the environment.

Regulation 2(3) Except as provided by regulation 12(10) a Scottish public authority is not a “public authority” for the purpose of these Regulations.

Regulation 2(4) The following expressions have the same meaning in these Regulations as they have in the Data Protection Act 1998(b), namely –

(a) “data” except that for the purposes of regulation 12(3) and regulation 13 a public authority referred to in the definition of data in paragraph (e) of section 1(1) of that Act means a public authority within the meaning of these Regulations;

(b) “the data protection principles”;

(c) “data subject”; and

(d) “personal data”.

Regulation 2(5) Except as provided by this regulation, expressions in these Regulations which appear in the Directive have the same meaning in these Regulations as they have in the Directive.

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2) 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.

Regulation 5(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

Regulation 5(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

Regulation 5(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.

Regulation 5(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

Regulation 6 - Form and format of information

Regulation 6(1) 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.

Regulation 6(2) If the information is not made available in the form or format requested, the public authority shall –

- (a) explain the reason for its decision as soon as possible and not later than 20 working days after the date of receipt of the request for the information;

- (b) provide the explanation in writing if the applicant requests; and
- (c) inform the applicant of the provisions of regulation 11 and the enforcement and appeal provisions of the Act applied by regulation 18.

Regulation 8 - Charging

Regulation 8(1) Subject to paragraphs (2) to (8), where the public authority makes environmental information available in accordance with regulation 5(1) the authority may charge the applicant for making the information available.

Regulation 8(2) A public authority shall not make any charge for allowing an applicant –

- (a) to access any public registers or lists of environmental information held by the public authority; or
- (b) to examine the information requested at the place which the public authority makes available for the examination.

Regulation 8(3) A charge under paragraph (1) shall not exceed an amount on which the public authority is satisfied is a reasonable amount.

Regulation 8(4) A public authority has notified an applicant under paragraph (4) that advance payment is required, the public authority is not required –

- (a) to make available the information requested; or
- (b) to comply with regulations 6 to 14,

unless the charge is paid no later than 60 working days after the date on which it gave the notification.

Regulation 8(6) The period beginning with the day on which the notification of a requirement for an advance payment is made and ending on the day on which that payment is received by the public authority is to be disregarded for the purpose of determining the period of 20 working days referred to in the provisions in paragraph (7), including any extension to those periods under regulation 7(1).

Regulation 8(7) The provisions referred to in paragraph (6) are –

- (a) regulation 5(2);
- (b) regulation 6(2)(a); and
- (c) regulation 14(2).

Regulation 8(8) A public authority shall publish and make available to applicants –

- (a) a schedule of its charges; and
- (b) information on the circumstances in which a charge may be made or waived.