

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

### **Decision Notice**

**Date: 20 August 2009**

**Public Authority:** West Sussex County Council  
**Address:** County Hall  
Chichester  
West Sussex  
PO19 1RQ

### **Summary**

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The complainant requested a copy of a crossover licence in relation to vehicular access at a specific address. The public authority released a blank copy of a standard licence but refused to release a copy of the original licence on the basis of the exemption contained in section 40 of the Act. Following the intervention of the Commissioner the public authority accepted that the Environmental Information Regulations 2004 were the correct regime under which to consider the request and agreed to supply all the information requested. The Commissioner found that the public authority had incorrectly applied regulation 13. He also found that the public authority was in breach of regulation 14, as it issued an inadequate refusal notice. The Commissioner is satisfied that during the course of his investigation the complainant was supplied with all the information to which they are entitled and therefore, does not require the public authority to take any further action.

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

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Parts 2 and 3 of the Environmental Information Regulations 2004. This Notice sets out his decision.
2. 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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3 On 15 April 2008 the complainant made the following request:

*"Please send a copy of your current specification and a copy of the licence for the access at ..... (specific address stated)....."*

*"Please also let me know I if the occupier has been given permission to carry out new work to extend the crossover after your inspection on 13 November 2007, and also details of the legislation, if any, which regulates the making of vehicle crossovers and the issuing of licences for vehicle crossovers"*

4. West Sussex County Council (WSCC) provided a response to the complainant on 14 May 2008 in which it refused to disclose the information requested on the basis that they needed the express permission of the applicant and that they required a £20 fee for a copy of the licence. WSCC did not mention any specific exemptions/exceptions or offer information about an internal review.

5. The complainant requested an internal review of the public authority's decision on 16 June 2008 specifying that they were requesting the information under the Freedom of Information Act 2000 (FOIA).

6. On 20 June 2008 the public authority replied and again said that they needed the permission of the applicant and a £20 fee before they could release the information.

## The Investigation

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### Scope of the case

7. On 13 July 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- WSCC had not provided the information requested
- WSCC had not responded within 20 working days
- WSCC were charging a fee of £20 which the complainant felt was grossly excessive.

8. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### Chronology

9. The Commissioner wrote to WSCC on 22 August 2008 providing them with a copy of the relevant regulations (6(3) and 6(4) of SI 2004, No. 3244) contained within the Freedom of Information and Data Protection (Appropriate Limit and

- Fees) Regulations 2004. He reminded WSCC of their duty to respond to a request within 20 working days. He asked WSCC to issue a proper refusal notice in accordance with section 17 of the Freedom of Information Act or regulation 14 of the Environmental Information Regulations as appropriate.
10. Following a further letter from the complainant to WSCC dated 23 August 2008, WSCC replied in a letter dated 28 August 2008. In that letter they admitted that his request had not been handled properly and they apologised. WSCC told the complainant that they were reviewing his request again.
  11. WSCC wrote to the complainant again on 15 September 2008. In their letter the public authority provided the complainant with a blank copy the standard form of vehicular crossover licence. They repeated that they could not provide the original copy but they did not state which exemption or exception they were relying on. WSCC apologised for the way in which they had handled the complainant's request, explaining that they had made a mistake in thinking that the request was being made outside the Freedom of Information Act 2000 or EIR.
  12. On 1 October 2008 WSCC wrote to the Commissioner. In this letter they confirmed that they had not dealt with the complainant's request correctly, explaining that it had been dealt with as normal line of business rather than under the Freedom of Information Act 2000 or EIR. WSCC enclosed copies of correspondence referred to in paragraphs 10 and 11 above. They also acknowledged that they had not advised the complainant about the internal review procedure.
  13. The Commissioner contacted WSCC by telephone on 25 March 2009 to discuss the complaint and advised them that they had not yet issued a proper refusal notice.
  14. On 27 March 2009 the Commissioner reiterated the telephone call in an email to WSCC stating that the response dated 15 September 2008 sent from WSCC to the complainant did not cite the exemptions or exceptions being applied to the request, nor did it offer the right of appeal. This email also asked WSCC to consider whether the requested information was environmental.
  15. WSCC replied to the above email on 27 March 2009, confirming that they would issue a correct refusal notice as required by the EIR.
  16. On 30 March 2009 WSCC issued a refusal notice to the complainant in which they confirmed that they had made an error in their initial responses. They confirmed that they had provided all of the requested information other than the original crossover licence to which they were still applying the exemption contained at section 40 (personal data) of the Freedom of Information Act 2000. WSCC stated that full disclosure of the licence would be in breach of the Data Protection Act 1998.
  17. An exchange of correspondence between the Commissioner, the public authority and the complainant sought to resolve matters informally. However once this proved unsuccessful the Commissioner sought a copy of the withheld information.

18. On 26 May 2009 WSCC provided the Information Commissioners Office with an un-redacted copy of the crossover licence in question clearly showing the two pieces of information which had been withheld. One piece of information was a company name, the other a private address.
19. On 29 May 2009 the Commissioner searched for information in relation to the company concerned. He found that it was a registered limited company and therefore the exception applied was incorrect as it was not personal data.
20. The Commissioner telephoned WSCC on 3 June 2009 to discuss the company named on the crossover licence. WSCC agreed that this was not personal data. They confirmed that they would write to the complainant to provide this information, copying the Commissioner in on their correspondence. The address however would remain redacted. For clarity, the address did not relate to the company named on the crossover licence, but was the location of the site at which the licence was relevant.
21. On the 12 August 2009, following a telephone conversation with the Commissioner, the public authority provided a full un-redacted copy of the requested information to the complainant. This was on the basis that the work had been carried out and therefore the location of the vehicular crossover would be obvious to any member of the public and as such the information could no longer be withheld under regulation 13.

## **Analysis**

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### **Procedural matters**

### **Legislation**

22. The Commissioner is satisfied that the information held for the purposes of the vehicular crossover licence will constitute environmental information. These matters are considered to be administrative measures likely to affect the elements and factors listed in paragraphs (a) and (b) of the definition of environmental information as set out in regulation 2(1). For example, a vehicular crossover is likely to affect land, landscape, and soil as per 2(1)(a) and noise as per 2(1)(b), The Commissioner is satisfied that such licences fall within the broad definition set out in regulation 2(1)(c).

### **Regulation 14 – refusal to disclose information**

23. Under the Regulations, the authority is obliged by regulation 14 to inform the applicant within 20 working days if it is refusing to supply the information requested. It is also obliged to specify the reasons for not disclosing the information, state the regulation that applies and the matters that it considered in reaching its decision with respect to the public interest test. The authority must also tell the applicant that they can make representations (appeal the decision) to

the authority and that they ultimately have a right to complain to the Commissioner. The full texts of all relevant regulations are included in the legal annex to this notice.

24. It is not necessary for the authority to indicate that it is sending an official 'refusal notice'. It simply has to refuse the request in writing. Following the complainant's request dated 15 April 2008, the authority wrote refusing to supply the information in a letter dated 14 May 2008. This letter therefore, constitutes the authority's refusal notice, within the 20 working day time limit.
25. However, the authority failed to state clearly the exception it was relying upon, simply referring to the need for permission from the applicant and a £20 fee. It also failed to inform the complainant of the matters it took into consideration with respect to the public interest test. It also failed to inform the complainant of their rights of appeal.
26. The complainant made representations to the authority in a letter dated 16 June 2008. The authority responded to this in a letter dated 20 June 2008. The response was therefore, sent within the 40 working days allowed under regulation 11. The authority's response however, re-iterated the authority's response of 14 May 2008. The authority did not inform the complainant of their right to contact the Commissioner. The authority's confusion and its consequential failure to inform the complainant of their rights at the appropriate time, contributed to making the complainant's request a lengthier and more inconvenient process than was necessary under the Act.

## The Decision

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27. The Commissioner's decision is that the public authority did not deal with the following elements of the request in accordance with the requirements of the Act:
28. WSCC incorrectly withheld the personal information of a third party under regulation 13.
29. Initially, WSCC did not identify the correct access regime; consequently, this led to further breaches of the legislation.
30. WSCC issued an inadequate refusal notice. The refusal notice did not specify the exception being relied upon, did not detail the public interest test considerations, and did not inform the complainant of their appeal rights. These are all requirements under both the Regulations and the Act. WSCC therefore, did not comply with regulation 14.

## Steps Required

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31. As the information to which the complainant is entitled has now been supplied by the authority, the Commissioner requires no steps to be taken.

## Other matters

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32. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
33. The Commissioner reminds the WSCC of its duties under Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004, issued by Defra under regulation 16. The Code sets out the authority's obligations in respect of both the refusal of the request (section XI of the Code, relating to paragraph's 13 -16 of this notice) and the failure to conduct an appropriate internal review (section XII of the Code, relating to paragraphs 25-26 of this notice).
34. WSCC should also reemphasise to its staff the importance of identifying the correct access regime for information requests.
35. The Commissioner would also point out to WSCC that guidance is available on the ICO website to assist in handling information requests under both the Act and the Regulations and the ICO's Good Practice Team would be happy to provide more detailed advice if requested.

## Right of Appeal

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36. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://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 20<sup>th</sup> day of August 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

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



## Legal annex

### Regulation 13 – personal data

Regulation 13 states:

*'(1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.*

*(2) The first condition is -*

*(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene -*

*(i) any of the data protection principles; or*

*(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and*

*(b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998[7] (which relate to manual data held by public authorities) were disregarded.*

*(3) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of that Act and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.*

*(4) In determining whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.*

*(5) For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that -*

*(a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded; or*

*(b) by virtue of any provision of Part IV of the Data Protection Act 1998,*



*the information is exempt from section 7(1)(a) of that Act.*

#### **Regulation 14 - Refusal to disclose information**

- 14. -** (1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.
- (2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.
- (3) The refusal shall specify the reasons not to disclose the information requested, including -
- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
  - (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).
- (4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.
- (5) The refusal shall inform the applicant -
- (a) that he may make representations to the public authority under regulation 11; and
  - (b) of the enforcement and appeal provisions of the Act applied by regulation 18.