

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

Decision Notice

Date: 19 August 2010

Public Authority: Test Valley Borough Council
Address: Beech Hurst
Weyhill Road
Andover
Hampshire
SP10 3AJ

Summary

The complainant submitted a request to Test Valley Borough Council ('the Council') for information from environmental records held on a property in Andover. The complainant specified that he wished to view the records in person. The Council initially stated that the information would only be provided if the complainant paid a fee. However, during the course of the investigation, the Council decided to allow the complainant to inspect the requested information free of charge. The Commissioner's decision is that the Council failed to comply with regulation 5(2) as it failed to make the requested information available within 20 working days. In addition, the Council breached regulation 11(4) by failing to conduct an internal review within 40 working days. The Commissioner notes that the Council has now decided to comply with the complainant's request and so he requires no steps to be taken.

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 (LLCA) compels all local authorities to generate, maintain and update a Local Land Charges Register. Under the LLCA applicants can obtain an 'Official Search' of the register by submitting form LLC1 to the relevant Local Authority. 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.
5. The complainant represents a company which provides information about property and land issues.

The Request

6. On 5 February 2010 the complainant requested access, free of charge, to the Local Land Charges Register and to records containing the information necessary to answer questions 1.1(f) – (h), 1.2, 2(a)-(d), 3.1, 3.2, 3.3(a)-(b), 3.4 (a)-(f), 3.5, 3.6(a)-(i), 3.7(a)-(f), 3.8, 3.9 (a) – (n), 3.10(a)-(b), 3.11, 3.12(a)-(c) and 3.13 of the CON29R form.¹

The complainant requested this information in relation to a specific named property, and specified that he wished to inspect these records in person.

7. The Council responded to this request on 12 March 2010 and stated that a charge of £22 would be levied to allow the complainant to conduct a personal search of the Local Land Charges Register. The Council emphasised that this charge was calculated in accordance with the Local Land Charges Rules 1977 (as amended). The Council also informed the complainant it was considering "a number of issues relating to the provision of information contained in the CON29R". The

¹ Annex A details the nature of the information relevant to each CON29R enquiry.

Council advised the complainant that CON29R information would be made available upon provision of a fee calculated under the [Local Authorities \(England\) \(Charges for Property Searches\) Regulations 2008](#) ('the CPSR')

8. On 15 March 2010, the complainant submitted a written request for an internal review of this decision to the Council.
9. On 23 April 2010, the Council wrote to the complainant and stated that his request for internal review "did not fall within the remit of the corporate complaints procedure". The complainant was advised to contact the Commissioner if he was unhappy with the way his request for information had been handled.
10. After the intervention of the Commissioner, the Council provided the complainant with a copy of its internal review on 12 July 2010. This stated that the complainant could inspect the requested information free of charge.

The Investigation

Scope of the case

11. On 20 May 2010, the complainant contacted the Commissioner to complain about the Council's decision to refuse access to the requested information. During the course of the investigation, the Council decided that it would allow the complainant to inspect the requested information free of charge.

Chronology

12. On 10 June 2010, the Commissioner wrote to the Council and asked that it reconsider its response to the complainant's request under the Environmental Information Regulations. The Commissioner also drew the Council's attention to the decision notice [FER0236058](#), and the subsequent Information Tribunal decision, [East Riding of Yorkshire Council v Information Commissioner](#) (EA/2009/0069), which had dealt with a similar request for access to building control information.
13. On 12 July 2010, the Council wrote to both the complainant and the Commissioner with its internal review outcome. This explained that it would allow the complainant to inspect the requested information.

Analysis

Substantive Procedural Matters

Regulation 2

14. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
15. 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 requested by the complainant to be environmental information.

Regulation 5

16. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of request.
17. The complainant submitted his request for information on 5 February 2010. The Council did not agree to make the requested information available to the complainant until 12 July 2010. As the information was not provided within 20 working days, the Commissioner finds that the Council breached regulation 5(2).

Regulation 11

18. Regulation 11(3) provides that a public authority must reconsider its response to a request for information upon receiving representations from an applicant. Regulation 11(4) provides that the outcome of a decision under regulation 11(3) must be communicated to the applicant as soon as possible and within 40 working days after representations were received.
19. The complainant requested an internal review on 15 March 2010. The outcome of this review was not provided until 12 July 2010. Therefore, the Commissioner finds that the Council has breached regulation 11(4).

The Decision

20. The Commissioner's decision is that Test Valley Borough Council did not deal with the request for information in accordance with the EIR. The Council has breached regulation 5(2) by failing to make information available within the statutory time for compliance. The Council has also breached regulation 11(4) as it did not provide the outcome of its internal review within 40 working days.

Steps Required

21. The Commissioner requires no steps to be taken.

Right of Appeal

22. 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 19th day of August 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

**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 –

- (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;

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 11 - Representation and reconsideration

Regulation 11(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

Regulation 11(2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

Regulation 11(3) The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

Regulation 11(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations.

Regulation 11(5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of –

- (a) the failure to comply;
- (b) the action the authority has decided to take to comply with the requirement; and
- (c) the period within which that action is to be taken.

Annex A - CON29R Enquiries

- 1.1** Which of the following relating to the property have been granted, issued or refused or (where applicable) are the subject of pending applications:
- a) a planning permission
 - b) a listed building consent
 - c) a conservation area consent
 - d) a certificate of lawfulness for existing use or development
 - e) a certificate of lawfulness for proposed use or development
 - f) building regulations approval
 - g) a building regulations completion certificate
 - h) any building regulations certificate or notice issued in respect of work carried out under a competent person self-certification scheme
- 1.2** What designations of land use for the property or the area, and what specific proposals for the property are contained in any existing or proposed development plan?
- 2.** Which of the roads, footways and footpaths named in the application for this search are:
- a) highways maintainable at public expense
 - b) subject to adoption and supported by a bond or bond waiver
 - c) to be made up by a local authority who will reclaim the cost from the frontagers
 - d) to be adopted by a local authority without reclaiming the cost from the frontagers
- 3.1** Is the property included in land required for public purposes?
- 3.2** Is the property to be acquired for road works?
- 3.3** Do either of the following exist in relation to the property:
- a) An agreement to drain buildings in combination into an existing sewer by means of a private sewer, or
 - b) An agreement or consent for (i) a building or (ii) extension to a building on the property to be built over or in the vicinity of a drain, sewer or disposal main?
- 3.4** Is the property (or will it be) within 200 metres of any of the following:
- a) the centre line of a new trunk road or special road specified in any order draft order or scheme

- b) the centre line of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway
- c) the outer limits of construction works for a proposed alteration or improvement to an existing road involving (i) construction of a roundabout (other than a mini roundabout) or (ii) widening by construction of one or more additional traffic lanes
- d) the outer limits of (i) construction of a new road to be built by a local authority, (ii) an approved alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway or (iii) construction of a roundabout (other than a mini roundabout) or widening by construction of one or more additional traffic lanes
- e) the centre line of the proposed route of a new road under proposals published for public consultation
- f) the outer limits of (i) construction of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway or (ii) construction of a roundabout (other than a mini roundabout) or (iii) widening by construction of one or more additional traffic lanes under proposals published for public consultation.

3.5 Is the property (or will it be) within 200 metres of the centre line of a proposed railway, tramway, light railway or monorail?

3.6 Has a local authority approved but not yet implemented any of the following for the roads, footways and footpaths which abut the boundaries of the property:

- a) permanent stopping up or diversion
- b) waiting or loading restrictions
- c) one way driving
- d) prohibition of driving
- e) pedestrianisation
- f) vehicle width or weight restrictions
- g) traffic calming works including road humps
- h) residents parking contracts
- i) minor road widening or improvement
- j) pedestrian crossings
- k) cycle tracks
- l) bridge building

3.7 Do any statutory notices which relate to the following matters subsist in relation to the property other than those revealed in a response to any other enquiry in this Schedule:

- a) building works
 - b) environment
 - c) health and safety
 - d) housing
 - e) highways
 - f) public health
- 3.8** Has a local authority authorised in relation to the property any proceedings for the contravention of any provision contained in Building Regulations?
- 3.9** Do any of the following subsist in relation to the property or has a local authority decided to issue, serve, make or commence any of the following:
- a) an enforcement notice
 - b) a stop notice
 - c) a listed building enforcement notice
 - d) a breach of condition notice
 - e) a planning contravention notice
 - f) another notice relating to breach of planning control
 - g) a listed buildings repairs notice
 - h) in the case of listed building deliberately allowed to fall into disrepair, a compulsory purchase order with a direction for minimum compensation
 - i) a building preservation notice
 - j) a direction restricting permitted development
 - k) an order revoking or modifying planning permission
 - l) an order requiring discontinuance of use or alteration or removal of building or works
 - m) a tree preservation order
 - n) proceeding to enforce a planning agreement or planning contribution
- 3.10** Do the following apply in relation to the property:
- a) the making of the area Conservation Area before 31 August 2974
 - b) an unimplemented resolution to designate the area a Conservation Area
- 3.11** Has any enforceable order or decision been made to compulsorily purchase or acquire the property
- 3.12** Do any of the following apply (including any relating to land adjacent to or adjoining the property which has been identified as contaminated land because it is such a condition that harm or pollution of controlled waters might be caused on the property):

- a) a contaminated land notice
- b) in relation to a register maintained under section 78R of the Environmental Protection Act 1990:
 - (i) a decision to make an entry
 - (ii) an entry
- c) consultation with the owner or occupier of the property conducted under section 78G of the Environmental Protection Act 1990 before the service of a remediation notice?

3.13 Do records indicate that the property is a 'Radon Affected Area' as identified by the Health Protection Agency?