

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

Decision Notice

Date: 26 October 2010

Public Authority: North East Lincolnshire Borough Council
Address: Municipal Offices
Town Hall Square
Grimsby
South Humberside
DN31 1HU

Summary

The complainant submitted a request to North East Lincolnshire Borough Council ('the Council') for information from environmental records held on a property in Cleethorpes. 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 set fee. During the course of the investigation, the Council agreed that the requested information could be inspected 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 for inspection within the statutory time for compliance. The Commissioner does not require the Council to take any further action.

The Commissioner's Role

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 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. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority.
4. The complainant represents a company which provides information about property and land issues.

The Request

5. On 28 January 2010 the complainant requested access, free of charge in relation to a specific named property, to view the Local Land Charges Register and any information necessary to complete questions 1.1(f)-(h), 3.4, 3.6, and 3.9(a)-(n) of the form CON29R.¹
6. Following the intervention of the Commissioner, the Council responded to the complainant on 10 August 2010. This response stated that the complainant had submitted an 'official search' relating to the same property on 27 January 2010, and had been provided with an appointment on 1 February 2010. The Council also advised the complainant that he should contact North Lincolnshire Building Consultancy in order to obtain information relevant to questions 1.1(f)-(h) of the CON29R form.
7. On 24 September 2010, the Council wrote to the complainant to explain that it would allow him to access the requested information free of charge.

¹ Annex A details the nature of the information relevant to these CON29R enquiries.

The Investigation

Scope of the case

8. On 28 July 2010, the complainant contacted the Commissioner to complain about the Council's compliance with the EIR.

Chronology

9. On 3 August 2010 the Commissioner telephoned and wrote to the Council and asked that it respond to the complainant's request for information. He also drew the Council's attention to previous decision notices issued in similar property search complaints.
10. On 10 August 2010 the Council wrote to the Commissioner enclosing a copy of the response sent to the complaint.
11. On 12 August 2010 the complainant confirmed to the Commissioner that he wished to pursue his complaint. Although he had received the requested information for the property as a result of an 'official search', a fee was charged for the provision of this information. The complainant wished to pursue his complaint that the Council refused to allow him to inspect the requested information free of charge.
12. On 12 August 2010 the Commissioner wrote to the Council and asked that it provide a submission explaining why it did not intend to make the requested information available for inspection free of charge.
13. On 24 September 2010, the Council confirmed to the Commissioner that it would now comply with the complainant's request to inspect the requested information free of charge.

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) provides that environmental information shall be made available upon request. Regulation 5(2) provides that this information should be made available within 20 working days following receipt of the request.
17. The complainant's original request for information was made on 28 January 2010. The Council confirmed that the complainant could access the requested information on 24 September 2010. The Commissioner therefore concludes that the Council has breached regulation 5(2) by failing to make the requested information available within 20 working days following receipt of the request.

The Decision

18. The Commissioner's decision is that North East Lincolnshire Council did not deal with the request for information in accordance with the EIR. The Council has breached regulation 5(2) of the EIR as it failed to make the requested information available for inspection within the statutory time for compliance

Steps Required

19. The Commissioner does not require the Council to take any further action.

Right of Appeal

20. 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 sent.

Dated the 26th day of October 2010

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 –

- (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.