

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

Decision Notice

Date: 31 March 2011

Public Authority: East Staffordshire Borough Council
Address: Town Hall
Burton upon Trent
DE14 2BE.

Summary

The complainant submitted a request to East Staffordshire Borough Council ('the Council') for information from environmental records held on a property in Uttoxeter. The Council asked the complainant to clarify his request. Despite receiving this clarification, the Council failed to respond to the complainant's request for information. The Commissioner finds that the Council has breached regulation 5(2) of the EIR by failing to make the requested information available within the statutory time for compliance. He does not require the Council to take any further action.

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.
5. The complainant represents a company which provides information about property and land issues.

The Request

6. On 15 September 2010 the complainant requested to inspect the Local Land Charges Register and records containing the information necessary to complete a CON29R form.

The complainant requested this information in relation to a specific known property.

7. On 20 September 2010, the Council emailed the complainant and informed him he could inspect the Local Land Charges Register. The Council advised the complainant it would contact him when this was ready. On 24 September 2010, the Council wrote to the complainant and asked that he clarify which CON29R queries he wished to answer.
8. On 27 September 2010 the complainant emailed the Council and confirmed he wished to inspect information relevant to CON29R queries 1.1(a)-(h), 1.2, 2(a)-(d), 3.1, 3.2, 3.3, 3.4(a)-(f), 3.5, 3.6(a)-(l), 3.7(a)-(f), 3.8, 3.9(a)-(n), 3.10(a)-(b), 3.11, 3.12(a)-(c), and 3.13. These are all of the queries listed on the CON29R form.
9. On 28 October 2010 the complainant emailed the Council to chase up a response to his request.

10. Following the intervention of the Commissioner, the Council responded to the complainant on 4 February 2011. The Council confirmed that it would make the requested information available for inspection at its offices.

The Investigation

Scope of the case

11. On 1 November 2010, the complainant contacted the Commissioner to complain about the Council's compliance with the provisions of the EIR.
12. The complainant has confirmed that he is satisfied with the information provided by the Council. His complaint focuses on the time taken to respond to his request.

Chronology

13. On 3 December 2010 the Commissioner wrote to the Council and asked that a response was sent to the complainant within 10 working days. The Council acknowledged this email on the same day.
14. On 21 December 2010, as the complainant had received no response, the Commissioner wrote to the Council and again asked that the Council issued a response to the complainant within 10 working days. The Commissioner also drew the Council's attention to the previous decision notices issued by the Commissioner regarding access to property search information under the EIR. As yet neither the complainant nor the Commissioner had received any response from the Council.

Analysis

Substantive Procedural Matters

Regulation 2

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

16. The Commissioner considers that the information requested falls within regulation 2(1)(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 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

17. Regulation 5(1) provides that a public authority that holds environmental information shall make it available on request. Regulation 5(2) provides that this should be done within 20 working days.
18. The complainant's original request for information was made on 15 September 2010. He then clarified this, at the Council's request, on 27 September 2010. The Council responded to the complainant on 4 February 2011. This is 86 working days after the complainant submitted his clarified request. Consequently, the Commissioner finds that the Council has breached regulation 5(2).

The Decision

19. The Commissioner's decision is that East Staffordshire Borough Council did not deal with the request for information in accordance with the EIR. The Council breached regulation 5(2) by failing to make the requested information available within the statutory time for compliance.

Right of Appeal

20. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 31st day of March 2011

Signed

**Gerrard Tracey
Principal Policy Adviser FOI**

**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.

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 14 - Refusal to disclose information

Regulation 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.

Regulation 14(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.

Regulation 14(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).

Regulation 14(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.

Regulation 14(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.