

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

Decision Notice

Date: 31 January 2011

Public Authority: Northumberland County Council
Address: County Hall
Morpeth
NE61 2EF

Summary

The complainant submitted a request for information about properties that had been advertised for employment uses, or were the subject of applications for a change of use under various Council policies. The Council initially attempted to levy a charge for this information. Subsequently, the Council provided the complainant with some information but informed him that if he wished to collate additional information, he could do so himself using publicly available documents. The Council has informed the Commissioner that it would be "too costly" to comply with the complainant's request but has not applied an exception to the requested information. The Commissioner considers that the Council has not responded fully to the complainant's request by simply directing him to public records. The Commissioner found that the information requested would, if held, be environmental information and should have been considered under the Environmental Information Regulations 2004 (EIR). The Commissioner requires the public authority to either provide the information or issue a valid refusal notice that complies with regulation 14 of the EIR within 35 days of the date 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. Northumberland County Council was created in its present form on 1 April 2009. The former Tynedale District Council, Alnwick District Council and Castle Morpeth, as well as the previous Northumberland County Council, were amalgamated into one public authority. The Development Management function of the new authority structure is built around 3 geographical area teams (West, North and South East), together with a "functional" central team that deals with larger strategic planning matters.
3. The Council is currently developing a county-wide Local Development Framework. However this is not complete yet and so the Council continues to use the 'saved' development plan for each of the former district areas. Policies BE11 and BE12 are policies within the 'Tynedale Local Plan'. Policy H6 is the Tynedale Local Development Framework Core Strategy. Policies H19 and H20 are policies relevant to the 'Castle Morpeth District Local Plan', and policies H12 and ED6 are relevant to the 'Alnwick District Council Area'. Some of these policies relate to proposals for the conversion of existing buildings in the open countryside to both residential and other permitted alternative uses, and set out the criteria for assessment. Other policies set out the criteria against which applications for change of use of buildings will be considered.

The Request

4. On 22 October 2009, the complainant submitted a request to the Council for:

"information regarding Planning Applications for various types of schemes covered under various Policies for both former district Councils and under NCC since the 1st April"

The complainant specified the policies he wished to receive information about for each district:

"Tynedale District Council / West Region

- Under Policies BE11 / BE12 a list of properties advertised for employment uses.
- Under Policy BE11 / BE12 a list of properties where applications were submitted for Change of Use to residential use following advertising period.
- Under Policy BE11 a list of properties where applications were made for Change of Use to employment uses.
- Under Policy H6 of the LDF a list of properties advertised for employment uses.
- Under Policy H6 of the LDF a list of properties where applications were submitted for Change of Use to residential use.
- Under Policy BE11/BE12/H6 a list of properties where offers were considered to be reasonable following reference to "independent professional advice".

Castle Morpeth / West Region / North Region / East Region etc

- Under Policies H19 / H20 a list of properties advertised for employment uses.
- Under Policy H19 / H20 a list of properties where applications for Change of Use were submitted for residential use following the advertising period.

Alnwick District Council /North Region / East Region etc

- Under Policy H12 a list of properties where Applications were made for Change of Use to residential use.
- Under Policy ED6 a list of properties where Applications were made for Change of Use to employment uses.

5. The Council acknowledged this request on 23 October 2009.
6. On 15 November 2009, the complainant emailed the Council to enquire if there had been any progress in dealing with his request.
7. On 1 December 2009, the Council emailed the complainant to explain that a charge of £31.50 would be levied for providing information relevant to each policy. The Council advised that payment would be required before any information was provided.
8. On 1 December 2009 the complainant emailed the Council and asked if these charges were set out in a Council policy. The complainant asked that if this was the case, the Council provide a hard copy or link to an electronic version of this policy. He also asked if separate charges

- would be made for linked policies, and enquired about the timescales for receiving the information.
9. On 2 December 2009, the Council emailed the complainant to acknowledge these queries and inform him that they had been forwarded to the relevant member of staff.
 10. On 2 December 2009, the complainant emailed the Council to enquire whether it had a policy on timescales for responses under FOI. The Council responded on the same day and explained that the Council had no policy, as the appropriate timescale was set out in the Act. The Council informed the complainant that the Act allowed that responses must be provided "not later than the 20th working day following the date of receipt, other than in exceptional circumstances".
 11. On 2 December 2009, the complainant emailed to ask what "exceptional circumstances" related to his case. He also noted that he had received no response, but "simply a request for money with no justification".
 12. On 3 December 2009, the Council emailed the complainant to apologise for the "extremely late" response to his request.
 13. On 3 December 2009, the complainant emailed the Council to ask that his queries about a fee being charged for the requested information were answered as soon as possible.
 14. On 9 December 2009, the complainant emailed the Council to enquire when he might receive a response to his queries about payment. The Council acknowledged this email on 9 December 2009 and advised that the relevant member of staff had been reminded of the enquiry.
 15. On 15 December 2009, the complainant emailed the Council to ask that a response was provided to his queries about payment. The Council acknowledged this email on 16 December 2009 and advised that it had been forwarded to the relevant member of staff.
 16. On 24 December 2009, the Council sent the complainant a further response to his request for information. The Council explained that some of the policies in question had not been "saved", and that for the Tynedale district, it could not provide information in relation to policies BE11/BE12. It also explained that it could not respond to requests for information on policies in the Alnwick area. The Council further stated that:

"You assume in your FOI request that this is information we are monitoring and is readily available but because the policies are no longer extant this is not necessarily the case. I will check when the monitoring officer in the Planning Strategy team is back after Christmas as to how we might be able to pull this information together.

It is possible that I could ask all my DM teams if they could run a simplified search of applications to convert rural buildings since April to either residential or employment and the outcome of this. Once we have the list we may be able to distinguish those where the property was advertised"

17. On 28 December 2009, the complainant emailed the Council to remind it that requests made under the Freedom of Information Act ('the Act') should be responded to in 20 working days. He also disputed that some of the requested information was not held. The complainant asked that the Council to respond to his request in the week commencing 4 January 2010, after the Christmas break. He also stated that as no further information had been provided regarding payment, he assumed that this was not required.
18. On 9 January 2010, the complainant emailed the Council to inform it that he would submit a complaint to the Information Commissioner's Office if he did not receive a response by 13 January 2010.
19. On 10 January 2010, the Council emailed the complainant to explain that it had created a spreadsheet of information regarding conversion of buildings to employment and residential use, and it hoped that this would be complete later the same week.
20. On 23 January, the Council provided the complainant with "information regarding the conversion of rural buildings since April 2009 in the former Tynedale, Castle Morpeth and Alnwick districts". The Council advised the complainant that further information was contained in publicly available case files and the complainant was free to inspect this information himself.
21. On 24 January 2010, the complainant emailed the Council to state that the requested information had not been provided and therefore he had submitted a complaint to the Commissioner.
22. Following the intervention of the Commissioner, the Council provided an internal review outcome to the complainant on 19 February 2010. This provided a brief history of the Council's handling of request and acknowledged that a response was provided outside of the 20 working

day limit. However, the Council explained that it felt that the requested information had been provided, except for information contained on publicly accessible files. The Council also confirmed that in light of its delayed response, it had decided not to pursue its request for a fee of £31.50 per policy to provide information.

The Investigation

Scope of the case

23. On 23 January 2010, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant explained that all of the requested information had not been disclosed to him. In addition, the complainant believed that the Council are legally obliged to monitor the relevant policies and as such, information should be readily accessible. He therefore does not accept that he should be obliged to collate this information himself by making a search of public files.
24. The complainant's request relates to his request of 22 October 2009 for properties subject to certain policies, rather than his request of 1 December 2009 for copies of the Council's charging policies.

Chronology

25. On 5 February 2010, the Commissioner wrote to the Council to inform it that a complaint had been received. The Commissioner asked the Council to confirm whether it had responded to the complainant, and if this was the case, to conduct an internal review.
26. The Council provided a copy of its internal review outcome to the complainant and the Commissioner on 19 February 2010. The complainant confirmed to the Commissioner that he was dissatisfied with the outcome of this review. In particular, the complainant did not accept that the Council did not collate the requested information and that he should be compelled to make a personal search of public files.
27. On 6 April 2010 the Commissioner telephoned the Council and asked it to explain what the policies detailed in the complainant's request referred to. The Council explained that due to staffing changes, it was currently unable to answer these questions but that it would respond to the Commissioner once it had reviewed the requests in question.

28. On 6 April 2010, the Commissioner wrote to the Council setting out the chronology and details of the complainant's request. The Commissioner asked the Council to explain what the policies detailed in the complainant's request referred to. The Commissioner asked that the Council explain how the information in the spreadsheet disclosed to the complainant related to his original request, and also to clarify the meaning of some terms used in the correspondence with the complainant. The Commissioner also explained that it appeared that the requested information was environmental in nature and should have been considered under the provisions of the Environmental Information Regulations (EIR) rather than the Act.
29. On 14 June 2010, the Commissioner emailed the Council to ask that it provided a response to the above queries as soon as possible.
30. On 15 June 2010, the Council provided a detailed response to the Commissioner's queries of 6 April 2010.
31. On 16 June 2010, the Commissioner emailed the Council to ask if its position was that the requested information was not held, or whether it wished to apply an exception to the requested information.
32. The Council acknowledged this email on 16 June 2010 but stated that the relevant member of staff was not available until 5 July 2010.
33. On 20 July 2010, the Commissioner emailed the Council to ask that it respond to his email of 16 June 2010.
34. On 5 August 2010, the Commissioner again emailed the Council to ask that it respond to his email of 16 June 2010.
35. On 19 August 2010, the Commissioner wrote to the Council to explain that unless the Council responded to the Commissioner's email of 16 June 2010, he would consider issuing an Information Notice compelling the Council to provide a response.
36. On 19 August 2010, the Council responded to the Commissioner and explained that whilst the requested information was held, it would be too costly to provide the requested information to the complainant. However, the Council explained that should the complainant wish to conduct a search for the requested information himself, it was available on publicly accessible files.
37. On 24 August 2010, the Commissioner emailed the Council to explain that the Council needed to either disclose the requested information, or explain why it was withheld. As the Council had stated in its email of

19 August 2010 that it would be too costly to comply with the request, the Commissioner drew the Council's attention to the exception at regulation 12(4)(b) and asked if it wished to apply this exception to the requested information. The Commissioner asked that if this was the case, the Council conduct a public interest test. The Commissioner also asked that the Council provide answers to questions about how it had estimated the cost of complying with the request. The Commissioner also drew the Council's attention to regulation 6(1)(b) and asked if it felt this applied to the request. The Council had previously explained to the Commissioner that it would provide further information in relation to an associated complaint from the complainant by 15 September 2010. The Commissioner asked that information in relation to this complaint was provided by the same date.

38. The Commissioner has received no further response from the Council.

Analysis

Regulation 2

39. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
40. The Commissioner considers that the information requested falls within regulation 2(1)(c), as it is information on: "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, because the information provides information about the intended use of various properties. The way these properties are used, for example for employment or residential purposes is likely to have an effect on the factors and elements referred to in regulations 2(1)(a) and (b).

Regulation 5 and Regulation 14

41. Regulation 5(1) provides that a public authority that holds environmental information shall make it available on request.

42. Regulation 14 states that if a request for environmental information is refused, this refusal should be made in writing in no later than 20 working days after the date of the request. The refusal must specify any exception being relied upon under regulations 12(4), 12(5) or 13; and the matters considered in reaching a decision with respect to the public interest under regulation 12(1)(b). The refusal should also inform the applicant of how to make representations against the public authority's handling of the request and of the applicable enforcement and appeal provisions.
43. The Council has confirmed to the complainant and the Commissioner that it holds the requested information. The Council is aware that the information should have been considered for disclosure under the EIR, and of the exceptions to disclosure it provides.
44. The complainant has requested that the Council provides him with a list of properties subject to various policies. The Council has stated that this information is publicly available and the complainant should compile a list of properties himself if he wishes to access this information. However, the complainant's specific request is for a list of properties that have been advertised or the subject of application under each policy. This information would need to be collated from public records and is not held in a list that the complainant could go to inspect. The Commissioner therefore considers that by directing the complainant to public records the Council has not properly addressed his request.
45. 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 the request. Regulation 14(2) provides that where a request is refused, a refusal notice should be provided within the same timeframe. The complainant's original request for information was made on 22 October 2009. As yet the Council has issued no response and has consequently failed to consider the request for information in accordance with the EIR

The Decision

46. The Commissioner's decision is that Northumberland County Council has failed to deal with the complainant's request in accordance with the EIR.

Steps Required

47. As the Commissioner has determined the requested information is environmental in nature, he requires the Council to consider the information under the provisions of the EIR. The Council should either provide the information or issue a refusal notice compliant with regulation 14 of the EIR.
48. The Council must take the steps required within 35 calendar days of this notice.

Failure to comply

49. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

50. 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 January 2011

Signed

Andrew White
Group Manager – Complaints Resolution

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 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.