

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

Decision Notice

Date: 20 July 2011

Public Authority: Milton Keynes City Council
Address: Civic Offices
1 Saxon Gate East
Milton Keynes
MK9 3HQ

Summary

The complainant believed that his Council tenancy included a parking space on the road outside his house and requested information about the legal status of the roadside adjacent to the property. The Council had previously provided copies of correspondence, plans and legal agreements which showed that the land had been designated as public highway since the estate's construction. The complainant did not consider that these documents proved that the road was a public highway. The Commissioner concluded that the Council did not hold any further information covered by the request.

The Commissioner's Role

1. 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.

Background

2. The complainant has been engaged in a dispute with the Council since 2003 over parking rights in respect of the road next to his rented Council bungalow. He believes that his tenancy originally included a dedicated

parking space on the road outside the property, and that the impounding of his untaxed car by the DVLA when parked there was unlawful. The Council counters that no such rights have ever existed, and that the road has formed part of the public highway since the estate's construction.

3. Prior to reporting the matter to the Commissioner, the complainant asked the Council for proof that the land outside his bungalow is legally classed as part of the public highway. The Council supplied him with certified copies of the road adoption plans for the estate and a road adoption agreement dated 29 November 1976, between Milton Keynes Development Corporation and Buckinghamshire County Council, stating that the roads on the estate were to be adopted as part of the public highway. The complainant does not accept that these items prove that the road outside his bungalow has formed part of the public highway since the estate's construction and continues to press for information that shows there has been a change in its status from private parking bay to public highway.

The Request

4. The complainant wrote to the Council on 8 July 2010 asking for the following:

"I want to see legal documents NOT some bluddy M/K drawing legal documents stating when parking bays were deallocated from bungalows and when they were legally reallocated as public high or as your mob keep changing their minds council own land giving DVLA rights to remove untaxed cars..."

5. He made reference to freedom of information twice in the letter and commented:

"I want legal documentation (not your crappy drawing) which I am entitled to see."

6. The Council responded on 27 July 2010. Its letter made no reference to the Freedom of Information Act or the EIR. It stated that the plans that had previously been supplied to the complainant constituted a legal document, having been certified as the approved plans attached to a legal agreement for the adoption of the public highway.
7. It provided the complainant with an extract of map data from its digital mapping system. The areas coloured blue denoted that the land formed part of the public highway, and this included the area outside the complainant's bungalow. The Council explained that while this was a

higher quality plan than had previously been provided to him, the information contained in it came from the original adoption plans, which had already been supplied to the complainant.

8. The Council commented that the DVLA and the Courts had received exactly the same information as the complainant had been sent. It invited the complainant to submit an appeal under its Complaints Procedure Stage 2 if he wished to escalate the matter, and advised him of his right to complain to his local councillor.

9. The complainant wrote again to the Council on 16 August 2010, asking for the following:

"I want legal documentation which allowed you to deallocate parking bays from bungalows. The legal documentation allowing you to reallocate parking bays as public highway".

10. He stated that this was the third time of asking for the information. Commenting on the information which had previously been supplied to him in response to similar requests, he stated:

"And as for your Agreement it in no way imply's infer's that parking bays were ever meant to be included in said adoption of certain land's and as for your drawing it's all over the place and in no way can be relied on as a legal reference."

11. The Council responded on 6 September 2010 in a letter headed *"Freedom of Information Act 2000 - Information Request"*, advising that it did not hold the requested information and recommending that the complainant instead approach The Housing Communities Agency. It advised the complainant of his right to complain to the Information Commissioner.

12. The complainant wrote to the Council on 9 September 2010 expressing dissatisfaction with its response. He dismissed the Council's claim that it did not hold the requested information as lies, but went on to refer to the requested information as *"...information which I know and you know don't exist..."*, and stated, *"...I know no such documentation exist..."*.

13. The Council responded on 16 September 2010 repeating that it did not hold the information,

"...due to the fact there is no such information because the parking areas were adopted in the normal way and we have no record of them being allocated to the bungalows".

14. The Council notified the complainant of his right to submit an appeal under Stage 3 of its complaint procedure and to complain to the Information Commissioner.
15. However, on 17 September 2010 one of the Council's solicitors wrote to the complainant, asking:

"In order that we may be able to further consider your Request for Information, we would be grateful if you could provide further clarification of the location of the parking bays referred to in your letter. Do you have a plan that you are able to provide?"

16. The complainant continued to correspond with the Council but, although he repeated his claim that his tenancy included an allocated parking space adjacent to the bungalow, he failed to provide the clarification requested by the Council.

The Investigation

Scope of the case

17. The complainant contacted the Commissioner on 6 August 2010 to complain about the way his request for information had been handled. He had not, at this point, exhausted the Council's internal complaints procedures and the Commissioner waited for him to do this before commencing his investigation.
18. The complainant specified that he wanted the Council to supply legal documentation on its powers to reclassify the parking bays as public highway and documentation on when the parking bays were de-allocated from the bungalows. He clarified that he was not interested in receiving copies of drawings or agreements in response to his request as he did not consider these to be legal documents.
19. 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

20. The Commissioner wrote to the Council on 4 December 2010, informing it of the complaint. The Council responded on 20 December 2010, enclosing copies of some of its correspondence with the complainant and an internal email exchange regarding the adoption of public highways.
21. The Commissioner wrote to the Council on 15 February 2011, asking it whether the information supplied with its letter of 20 December 2010

constituted the totality of what it held about the adoption of the land as a public highway. He queried whether the Council held any policy documents discussing the procedures for adopting parking areas and whether there had been any correspondence with the DVLA regarding the status of the land adjacent to the complainant's house. He advised the Council that if it maintained no other information was held it would need to be able to demonstrate that it had established, on the balance of probabilities, that no further information was held. He also questioned whether the Council had considered whether the request fell within the scope of the EIR rather than the Freedom of Information Act 2000.

22. The Council responded on 17 March 2011. It confirmed that it held copies of plans and an adoption agreement which contained information about the adoption of the road as a public highway, copies of which it supplied to the Commissioner. It explained that these had been supplied to the complainant in 2003 and 2004. The complainant had indicated in his latest requests that he did not want to receive them again.
23. The Council stated that it did not hold any policy documents dealing with the adoption of parking areas and had no record of any correspondence with the DVLA concerning the adoption of the land outside of the complainant's house. It explained that it would not expect to hold correspondence with the DVLA on this; when the DVLA identifies an untaxed vehicle it will simply telephone the relevant local authority to establish whether the land it is parked on is part of the public highway, before deciding on what action to take.
24. The Council maintained that it held no further information covered by the request. It set out the searches it had conducted and its reasons for thinking that it held no more information. It also set out its reasons for believing that the request did not fall within the scope of the EIR.
25. The Commissioner wrote on 4 April 2011 asking the Council to clarify whether at any time in its history the area outside the complainant's bungalow had been allocated as a parking space for the tenant of the bungalow. He also noted that in one of the exchanges with the complainant, supplied to him by the Council, the date 23 February 1982 was given as the date on which the land was adopted as part of the public highway, and asked where the Council had extracted this date from if it held no further information on the matter.
26. On 14 April 2011 the Council replied, advising that the complainant's bungalow was part of a communal block, accessed by a footpath. It stated that there had never been a parking space allocated to the complainant's bungalow. It also provided a copy of the letter referred to above, confirming the adoption of the estate roads as part of the public highway, on 23 February 1982.

27. On 16 May 2011 the Commissioner wrote to the Council, asking it to explain to the complainant that the land next to his bungalow had never been allocated as a parking space for his bungalow, and provide a copy of the letter of 23 February 1982 showing that the estate roads were adopted as public highway on that date. He asked the Council to do this and to send him a copy of what it sent to the complainant.
28. The Council disclosed this information to the complainant on 23 May 2011.

Analysis

Substantive Procedural Matters

Regulation 2

29. The Commissioner noted that the Council dealt with the request under the Freedom of Information Act 2000. He asked the Council if it had considered whether the EIR applied. The Council responded:

"The information relates to the status of a small piece of land. The use of the land is not changing and is not subject to any proposals, development, processes that could have an environmental impact. The issue is thus whether the land has Highway rights over it or not and is not caught by the EIR."

30. It would appear that the Council's view can be summarised as being that, because the status and use of the land is fixed and unchanging, the EIR do not apply in respect of the information.
31. However, Regulation 2(1)(c) provides that "any information" on the following will be environmental:

"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".

32. The Commissioner takes the view that the complainant's request for information about the legal status of the road adjacent to his house is a request for information about plans, policies and legislation in respect of the land. These are 'measures' that could affect the elements of the environment set out in regulation 2(1)(a). Therefore, it is the Commissioner's view that the request was for environmental information and should have been considered under the EIR.

Regulation 5 and regulation 12(4)(a)

Does the Council hold the requested information?

33. The Council advised the complainant in a letter dated 16 September 2010 that it did not hold the requested information because no such information existed. The Commissioner will use the civil standard of the balance of probabilities test to reach a conclusion about whether further information within the scope of the request is held.
34. The complainant's requests are framed in such a way as to include a presumption that the road outside his house had, at one time, been a designated parking space for his bungalow and that the Council must, at some point, have changed this. However, despite being asked to, he supplied no evidence to support this claim nor did he explain how or why he had come to believe this to be the case.
35. The Council states that it has no knowledge of any agreement that the complainant's bungalow should have a designated parking space on the road. It has referred to information which appears to directly contradict the complainant's claim; the road adoption plans, agreement and letter of 23 February 1982 all support its contention that the road outside the complainant's house was adopted as part of the public highway while the estate was under construction. The estate plans do not highlight any sections of the road as being allocated for use by particular properties.
36. The Council had identified the plans and the agreement as information falling within the scope of the request, but the complainant, having been provided with them several years before, had indicated that he did not wish to receive them again as he did not consider that they proved the road was part of the public highway. He continued to press for information which showed that the status of the road had changed. Consequently, the Council scoped the plans and the agreement out of its response to the complainant.
37. The Commissioner considers that the Council has provided evidence that the road has been part of the public highway since the estate was built and that its status has never changed. Set against this, the complainant has not been able to supply any information to substantiate his claim that the road adjacent to his house was allocated as his parking space. The Commissioner has therefore concluded that, on the balance of probabilities, the Council was asked by the complainant to supply information which it does not hold.

Procedural Requirements

Regulation 14(3)

38. Regulation 14(3)(a) provides that a public authority should specify the specific exception it relies upon in any refusal notice issued.
39. In its refusal notice of 6 September 2010, the Council stated that it did not hold the requested information.
40. During the course of the investigation, the Commissioner has determined that the request should have been dealt with under the EIR. For the purposes of the EIR, where a public authority does not disclose information on the grounds that no information is held, this is classed as a refusal under the exception at regulation 12(4)(a). The Council did not specify this exception in its refusal notice.
41. The Council has therefore breached regulation 14(3)(a) by failing to inform the complainant that the requested information was excepted under regulation 12(4)(a).

Regulation 5(1)

42. A public authority will have complied with regulation 5(1) (duty to make environmental information available on request) if:
 - it holds information and makes it available to the applicant; or
 - the Commissioner is satisfied that it was correct in stating that the information is not held.
43. Where a public authority is found to be holding information that it had stated that it did not hold, it will be in breach of regulation 5(1), because it failed to make information available that it held.
44. The Council informed the complainant several times that it held no further information covered by his request; however, during the Commissioner's investigation it located a copy of the letter of 23 February 1982, which the Commissioner judged was pertinent to the request. The Council therefore breached Regulation 5(1).
45. The Commissioner notes that a copy of the letter was subsequently disclosed to the complainant.

The Decision

46. The Commissioner's decision is that:

- the Council correctly applied the exception at regulation 12(4)(a) because he accepts that, on the balance of probabilities, it does not hold the requested information;
- the Council breached regulation 14(3)(a) by failing to cite the specific exceptions it relied upon in withholding the information in its refusal notice;
- the Council breached regulation 5(1) by failing to make information available that it held.

Steps Required

47. The Commissioner requires no steps to be taken.

Right of Appeal

48. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

49. 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.

50. 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 20th day of July 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Regulation 2 - Interpretation

Regulation 2(1) ...

(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;

...

(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 12 - Exceptions to the duty to disclose environmental information

Regulation 12(4)

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(a) it does not hold that information when an applicant's request is received;

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 –

- (b) any exception relied on under regulations 12(4), 12(5) or 13; and
- (c) 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).