

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

Decision Notice

Date: 28 July 2009

Public Authority: Almondsbury Parish Council
Address: The Chairman
Almondsbury Parish Council
c/o 250 Gorse Cover Road
Severn Beach, Bristol
Avon
BS35 4NT

Summary

The complainant requested information from Almondsbury Parish Council (the Parish Council) concerning the movement of aviation fuel tankers from Hallen Petroleum Storage Depot and other HGVs through Hallen. The public authority responded by directing the complainant to South Gloucestershire Council as the clerk to the Parish Council could not recall any discussions on this subject. The Commissioner does not consider this an adequate response as it did not categorically confirm or deny whether information was held by the public authority. 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) and, in failing to do so the public authority has breached regulations 5(2) of the 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 Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. 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.

The Request

3. The complainant wrote to the Parish Council on 2 February 2009 stating that:

"The information required is copies of all letters, emails, minutes of meetings, filenotes, etc, in connection with the movement of aviation fuel tankers from Hallen PSD [Petroleum Storage Depot] and other hgv's through Hallen since the 1 August 2005, including all such documents detailing your involvement with Hallen Village Committee and consultation with Bristol City Council."

4. On 2 February 2009 the Parish Council responded to say:

"I think this email should be directed at South Gloucestershire Council, I have been Clerk for five years and cannot recall any discussions with the village committee or Bristol City Council regarding this subject."

5. The complainant has provided a letter sent by the Parish Council, dated 14 September 2005, to the Planning, Transportation and Strategic Environment (sic) which referred to the 'Hallen Weight Limit', suggesting that the Parish Council had held or did hold information relevant to the complainant's request. This letter was supplied to the Commissioner and, according to the complainant, was also supplied to the public authority.

6. On 3 March 2009 the complainant sent a reminder to the Parish Council pointing out that they had failed to comply with the request for information within the statutory timeframe. The complainant also enquired about the public authority's complaints procedure.

7. The Parish Council responded on the same day by email asking for the complainant's address and telephone number and enquiring whether the complainant had contacted local or district parish councillors. He was also asked for details of his "campaign". There was no response to the request for an internal review or any information given regarding the complaints procedure.

The Investigation

Scope of the case

8. The complainant contacted the Commissioner on 5 March 2009 to complain about not having received his requested information. Additionally he complained that the Parish Council had not stated that it would provide the information requested. The complainant had also received no response regarding any complaints procedure.

Chronology

9. On 23 March 2009 the Commissioner wrote to inform the Parish Council that a complaint had been received and reminding it of its statutory duty to respond within 20 working days of a request for information. The public authority was told that the case would be allocated to a case resolution officer and provided the public authority with information on refusal notices.
10. On the same date the Commissioner wrote to the complainant and informed him that the case had been allocated to a case resolution team.
11. On 30 April 2009 the Commissioner wrote to the public authority again concerning this complaint and asking for a reply.
12. On the same date the Commissioner wrote to the complainant and informed him that the case had been raised again with the public authority.
13. The Commissioner wrote to the Parish Council on 11 May 2009 both by email and post asking for a response to be provided to the complainant. The letter sent by post was signed for. No response has been received by the complainant to date.

Analysis

14. The Commissioner takes the view that the information requested, if held, would be environmental information as defined by the Environmental Information Regulations (EIR). This is because he considers that the road weight restriction which restricts the movement of fuel tankers around Hallen is a measure affecting elements of the environment listed at 2(1)(c), in that the level of traffic flow, affects the quality of the air and atmosphere and the state of the land. He considers that the information requested, if held, would qualify as information on (concerning, relating to, or about) this measure.
15. The Commissioner would remind the Parish Council of its obligation to provide a response to each part of the request for information. In this case the Parish Council appears to have ignored the request for internal communications in solely considering external communications and directing the complainant to South Gloucestershire Council.

Procedural matters

Regulation 5 (For full text see Legal Annex)

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 the request.

Regulation 14 (for full text see Legal Annex)

17. Regulation 14 'Refusal to disclose information' 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.

Regulation 12(6) (for full text see Legal Annex)

18. Regulation 12(6) states that a public authority may respond to a request by neither confirming or denying whether such information exists only where confirming or denying would adversely effect any of the interests referred to in paragraph 12(5)(a). Where this does not apply then a public authority must in all cases confirm or deny whether the requested information is held.

Regulation 12(4)(a) (exception where information not held)

19. Under the EIR, in a situation where a public authority refuses a request on the grounds that the requested information is not held, then it is required to provide a refusal notice, compliant with the provisions of regulation 14, setting out its reasons for its reliance upon 12(4)(a), the exception that a public authority may claim when it does not hold information when an applicant's request is received.

The Decision

20. The public authority has breached regulation 5(2) by failing to provide a response compliant with regulation 5 or regulation 14 of the EIR within twenty working days of the receipt of the request.

Steps Required

21. As the Commissioner has determined that the information requested, if held, would be environmental information he now requires the Parish Council to either provide the information or issue a valid refusal notice that complies with regulation 14 of the EIR. Unless the exception from the duty to confirm or deny under 12(5)(a) is claimed then any refusal notice should explicitly confirm or deny whether the information is held.
22. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

23. 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

24. 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 28th day of July 2009

Signed

**Lisa Adshead
Senior FOI Policy Manager**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Duty to make available environmental information on request

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.

(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.

(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to a standardised procedure used.

(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

Refusal to disclose information

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.

(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.

(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).

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.

(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.