

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

Decision Notice

Date: 29 June 2011

Public Authority: The Royal Borough of Kensington and Chelsea
Address: The Town Hall
Horton Street
London
W8 7NX

Summary

The complainant submitted a request to the Royal Borough of Kensington and Chelsea ('the Council') for information from environmental records held on a property in London. The complainant specified that he wished to receive this information electronically. The Council provided the requested information in hard copy format. The Commissioner has investigated and concluded that the Council breached regulation 5(2) as it failed to make the requested information available as soon as possible. The Council also breached regulation 6(1) by failing to comply with the complainant's request to make information available in a particular format. The Council also breached regulation 6(2)(c) by failing to advise the complainant of the enforcement and appeal provisions of the Act. The Commissioner requires the Council to make the requested information available to the complainant electronically within 35 days 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. Section 3 of the Local Land Charges Act 1975 compels all local authorities to generate, maintain and update a Local Land Charges Register. 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 27 August 2010 the complainant emailed the Council to request
"copies of any Land Charges Register entries (Parts 1 through to 12 in an LLC1)...together with entries in relation to Building Regulations (Question 1.1(f) (g) and (h) in the old standard CON29R".¹

The complainant requested this information in relation to a specific named property, and specified that he wished to receive the requested information electronically. The complainant offered to pay a fee of five pounds to receive this information.

7. The Commissioner contacted the Council on 18 October 2010 to enquire why it had not responded to the request. The Council stated that it had no record of receiving the request. The Commissioner forwarded a copy of the complainant's request to the Council and asked that it responded within 20 working days.
8. Following the intervention of the Commissioner, the Council responded to the complainant via postal mail on 10 November 2010. A letter sent

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

to the complainant under separate cover on 11 November 2010 provided the requested information.

The Investigation

Scope of the case

9. On 15 September 2010, the complainant contacted the Commissioner to complain about the Council's failure to respond to his request. On 15 November 2010, after receiving the Council's response, the complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The complainant has confirmed to the Commissioner that his complaint is about two issues. The first is the Council's failure to provide information electronically, and the second is the time taken to respond to the request.

Chronology

11. On 23 November 2010 the Commissioner emailed the Council to ask that it responded to some queries about the way it had handled the request.
12. On 6 December 2010 the Council responded to these queries.

Analysis

Substantive Procedural Matters

Regulation 2

13. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
14. 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. The Council also accepts that the requested information is environmental.

Regulation 5

15. 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 request.
16. The complainant submitted his request for information on 27 August 2010. The Council confirmed that it did not receive this request until 18 October 2010 when the Commissioner forwarded the request. The Council responded to the request on 11 November 2010. This is 18 working days after the date of receipt of the request.
17. The complainant however contends that the Council did not provide this information "as soon as possible".
18. The Council explains that it has recently experienced a high volume of requests for personal and full searches and it has tried to schedule these so that it can respond within the statutory time scales whilst meeting its other responsibilities. It states that searches are dealt with in order of receipt, except in an "emergency situation". However, the Council states that where applicants pay a fee, it guarantees that it "will provide Personal Search information within five working days".
19. The Commissioner notes that the Council has not provided any evidence to demonstrate that it dealt with this request as soon as possible. He also notes that the Council states that it is able to make "personal search information" available within five working days if a fee is paid. The Council does not argue that the information provided as a result of this chargeable procedure differs from the information provided to the complainant, nor that the revenue from these searches funds any dedicated staffing resource. As the Council is able to provide the requested information more quickly where a fee is paid, despite using the same procedures, the Commissioner concludes that the information requested by the complainant was not provided as soon as possible. Consequently, the Commissioner finds that the Council has breached regulation 5(2).

Regulation 6

Regulation 6(1)

20. Regulation 6(1) provides an applicant with the right to request that information be made available in a particular form or format. A public authority should comply with this preference unless one of two exceptions applies. These exceptions are at regulations 6(1)(a) and 6(1)(b).
21. The Commissioner considers that an electronic format constitutes a valid 'form or format' under regulation 6(1). The complainant's original request specified that he would like the requested information to be made available electronically. The Council however provided the requested information in hard copy. It has confirmed to the Commissioner that it considers that regulations 6(1)(a) and 6(1)(b) both apply. The Commissioner has considered the Council's submissions in relation to this below.

Regulation 6(1)(a)

22. Regulation 6(1)(a) provides an exception to a public authority's duty to comply with a request to make information available in a particular format when "it is reasonable for it to make the information available in another form or format".
23. The Council argues that it is reasonable for it to make information in hard copy format because much of the "back office information" has not been digitised and is "manually maintained". It further argues that some of the requested information is old and consequently does not scan or photocopy well.
24. The Commissioner however notes that in this case, the Council provided the complainant with photocopies of the requested information via post, which indicates that it was of sufficient quality to be copied electronically.
25. The Council also states that some of the requested information contains personal data, and that disclosure of this might breach the Data Protection Act. It also adds that it has no redaction software which would allow this information to be removed. However the Commissioner notes that the information is primarily held in hard copy format and would need to be scanned in order to be sent electronically. It would therefore be reasonable to redact any personal data before information is scanned. The Commissioner further notes that the Council sent the complainant copies of the information via post; if any

information needed to be redacted the Council would have needed to do so before doing this in any case.

26. The Council further argues that there is “no demand” for information to be provided via electronic means. However, the complainant has specified that he wishes to receive the requested information in this format.
27. The Commissioner concludes that the Council has not demonstrated that it is reasonable for it to provide hard rather than electronic copies of the requested information to the complainant.

Regulation 6(1)(b)

28. Regulation 6(1)(b) provides an exception to the duty to comply with a request to make information available in a particular format when it is “already publicly available and easily accessible to the applicant in another form or format”.
29. The Council argues that the requested information is made available in hard copy format at its offices, or copies can be sent via post or DX. It therefore argues that regulation 6(1)(b) applies, as the complainant could access the requested information via these means.
30. However, the Commissioner interprets regulation 6(1)(b) to mean that the requested information would need to be already publicly accessible at the time of the request, for example available on a website. In decision notice [FS50242937](#), the Commissioner found that the requested information was “publicly accessible and easily available” under regulation 6(1)(b) as it was already available online as a downloadable document. In this case, the complainant would need to make a fresh request to receive the requested information via hard copy in order to access it in this format. The Commissioner does not consider this would constitute the information being “publicly accessible and easily available”.
31. The Commissioner therefore concludes that the Council has applied regulation 6(1)(b) incorrectly.
32. As the Council has provided insufficient evidence to demonstrate that regulation 6(1)(a) or 6(1)(b) apply, the Commissioner finds that the Council has breached regulation 6(1) by failing to provide the requested information in the format requested by the complainant.

Regulation 6(2)

Regulation 6(2)(c)

33. Regulation 6(2)(c) provides that if information is not made available in the form or format requested, the public authority shall –
“inform the applicant of the provisions of regulation 11 and the enforcement and appeal provisions of the Act applied by regulation 18”
34. In its response to the complainant of 10 and 11 November, enforcement and appeal provisions were not explained to the applicant and so the Commissioner finds that the Council has breached regulation 6(2)(c).

The Decision

35. The Commissioner’s decision is that the Royal Borough of Kensington and Chelsea did not deal with the request for information in accordance with the EIR. The Council has breached regulation 5(2) by failing to make the information available as soon as possible. The Council has breached regulation 6(1) as it failed to comply with the complainant’s request to make the information available in a particular format. It also breached regulation 6(2)(c) by failing to advise the complainant of the enforcement and appeal provisions of the Act.

Steps Required

36. The Commissioner requires that the Council make the requested information available to the complainant electronically.
37. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Right of Appeal

38. 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 29th day of June 2011

Signed

**Gerrard Tracey
Principal Policy Adviser**

**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 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 8 - Charging

Regulation 8(1) Subject to paragraphs (2) to (8), where the public authority makes environmental information available in accordance with regulation 5(1) the authority may charge the applicant for making the information available.

Regulation 8(2) A public authority shall not make any charge for allowing an applicant –

- (a) to access any public registers or lists of environmental information held by the public authority; or
- (b) to examine the information requested at the place which the public authority makes available for the examination.