

## Freedom of Information Act 2000 Environmental Information Regulations 2004

### Decision Notice

Date: 27 July 2009

**Public Authority:** East Riding of Yorkshire Council  
**Address:** County Hall  
Cross Street  
Beverley  
North Humberside  
HU17 9BA

### Summary

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The complainant made a request to inspect the building control and traffic schemes information within 200 metres of a named address. The Council agreed to provide the information requested but only on the provision of a fee based on the property search regulations. The Council argued that it was allowed to charge for the information under regulation 8(1) as the information was not in a public register and could not be inspected without further collation by the Council. The Commissioner has investigated and found that the request is a request to inspect environmental information but that the Council cannot charge for the information by virtue of regulation 8(2)(b). The Council must make the information available for inspection in accordance with regulation 5(1) within 35 calendar days of this notice.

### The Commissioner's Role

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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

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2. Local authorities have traditionally made charges for providing property search information, but there has been a lack of consistency in this area. The Local Authorities (England) (Charges for Property Searches) Regulations 2008 (CPSR) were introduced in order to provide a framework within which local authorities could make charges for property searches services, specifically for granting access to property records held by the local authority and for answering queries about a property. In essence they permit charging to be made on a cost recovery basis. The information requested was part of the property searches being conducted by the complainant.
3. Property search reports are a compulsory component of a Home Information Pack (HIP) which is required for most residential properties that are put on the open market. They are compiled from information provided by a local authority in response to various standard enquiries. The enquiries that require answering for the purposes of a HIP, in most cases, relate to those questions contained in the standard CON29 local search enquiry forms.

## The Request

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4. The complainant made the following request for information to East Riding of Yorkshire Council (the Council) on 16 January 2009:

*“I would like to make arrangements to inspect the Building Control / Traffic Schemes abutting / Highway Schemes within 200m records in situ as soon as possible for the following land and buildings:*

*[named property]”*
5. The Council responded on 30 January 2009. The Council originally dealt with the request under the Freedom of Information Act 2000 (the Act). The Council informed the complainant that the information requested is part of the Local Land Charges Search service and is currently available in the CON29R on payment of an appropriate fee. In light of this the Council stated that the information was exempt by virtue of section 21 of the Act as the information is reasonably accessible to the complainant otherwise than under the Act. The Council further stated that it did not consider the information to be environmental information.
6. The complainant responded on 3 February 2009 stating that it believed the information requested is environmental information and clarifying with the Council that the information sought is that contained within Sections 1.1(f) to (h) and section 3.4 and 3.6 of the form CON29R. In light of this the complainant requested an internal review of the Council decision to withhold the information under section 21 of the Act.

7. The Council responded on 13 February 2009 explaining that it disagreed that the information requested was environmental.

## The Investigation

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### Scope of the case

8. On 17 February 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - The information requested is environmental information
  - They should be allowed to inspect the information free of charge in accordance with regulation 8(2)
9. The Commissioner's investigation has focused on determining if the information requested is environmental information falling within the scope of the EIR and if so if that information should be made available for inspection free of charge.

### Chronology

10. The Council wrote to the Commissioner on 26 March 2009 stating that it now considered the information should be made available to the complainant under the EIR. However, it stated that it does not consider the information should be made available for inspection free of charge under 8(2) and in accordance with regulation 8(1) intends therefore to charge to make the information available. The Council stated that the reason for this is that the information is not contained within a public register or list and is not in a form which enables it to be inspected within further collation within the Council or at a single place where it can be made available.
11. On 30 March 2009 the complainant wrote to the Commissioner stating that he had received the above letter from the Council. The complainant stated that whilst he accepted that the information was environmental he did not accept that under regulation 8(1) the Council were entitled to charge for inspection of the information.
12. The Commissioner telephoned the public authority on 19 May 2009 to request a copy of the withheld information.
13. The Commissioner telephoned the Council and the complainant on 27 May 2009 to clarify which elements of the information contained within the CON29R form the information requested relates. Both the Council and the complainant agreed that the requested information relates to questions 1.1(f) - (h) and 3.4 and 3.6 on the CON29R form.
14. The Commissioner further telephoned the Council on 2 June 2009 to enquire what records had been inspected to obtain the answers to the relevant questions

on the CON29R form. The Council explained that a database was searched which lists each property and details if there is relevant information such as building regulations. In addition it had inspected electronic maps to determine whether or not there are road or traffic schemes near to the property.

15. The Commissioner telephoned the Council on 8 July 2009 to clarify the Council's position. The Council confirmed that it does not believe the EIR give the complainants a right to inspect the requested information. It therefore proposes to search the information itself, obtain the answers to the questions on the CON29R form and provide those answers in hard copy. The Council contends that it can charge the complainants for providing a hard copy of these answers under regulation 8 as it does not accept that either of the conditions under which information has to be provided free of charge are satisfied.

### Findings of fact

16. Both the Council and the complainant agree that the information request relates to question 1.1(f) – (h), 3.4 and 3.6 of the CON29R form. These are:

#### 1.1 Planning and Building Decisions and Pending Applications

Which of the following in relation to the property have been issued or refused or (where applicable) are the subject of pending applications:-

- (f) building regulations approval
- (g) a building regulations completion certificate
- (h) any building regulations certificate or notice issued in respect of work carried out under a competent person self-certification scheme

#### 3.4 Nearby Road Schemes

Is the property (or will it be) within 200 metres of any of the following:

- (a) the centre line of a new trunk road or special road specified in order, draft order or scheme
- (b) the centre line of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway.
- (c) the outer limits of construction work for a proposed alteration or improvement to an existing road, involving (i) construction of a roundabout (other than a mini roundabout); (ii) widening by construction of one or more additional traffic lanes
- (d) the outer limits of (i) construction of a new road to be built by a local authority; (ii) an approved alteration or improvement to an existing road involving construction of a subway, underpass, flyover, elevated road or dual carriageway; or (iii) construction of a roundabout (other than a mini roundabout) or widening by construction of one or more additional traffic lanes.
- (e) the centre line of the proposed route of a new road under proposals for public consultation

(f) the outer limits of (i) construction of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway; (ii) construction of a roundabout (other than a mini roundabout); or (iii) widening by construction of one or more additional traffic lanes, under proposals published for public consultation.

### 3.6 Traffic Schemes

Has a local authority approved but not yet implemented any of the following for the roads and footpaths which abut the boundaries of the property:

- (a) permanent stopping up or diversion
- (b) waiting or loading restrictions
- (c) one way driving
- (d) prohibition of driving
- (e) pedestrianisation
- (f) vehicle width or weight restriction
- (g) traffic calming works including road humps
- (i) minor road widening or improvement
- (j) pedestrian crossings
- (k) cycle tracks
- (l) bridge building

## Analysis

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### Substantive Procedural Matters

17. The Commissioner has first considered whether the request made by the complainant is a request to inspect environmental information as defined by the EIR.
18. The Commissioner considers that the information which requires inspection in order to obtain the relevant answers to the questions (as detailed in paragraph 16) above falls within the 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 measure designed to protect those elements”. The Council has explained that to provide the requested information it would need to search within its property database to ascertain if the properties nearby have any of the relevant permissions / applications. In addition it would need to examine maps detailing road and traffic schemes to determine whether any of the planned road schemes or traffic schemes were within 200m of the property. The Commissioner considers that in order to obtain the answers to the questions detailed in paragraph 16 it is necessary to inspect environmental information as outlined by the Council. The information which is inspected is clearly a measure

or plan on an activity (i.e. road scheme or building plan) affecting or likely to affect one or some of the elements referred to in regulation 2(1)(a).

### **Regulation 5, Regulation 6 and Regulation 8**

19. The complainant has made a request to inspect certain information from which he can obtain the answers to questions on the CON29R form. Although the answers to these questions will often be a simple 'yes' or 'no' the Commissioner's view is that in most cases environmental information is being examined so that the answers can be obtained, as is indicated in paragraph 18 above.
20. Regulation 5(1) provides that environmental information shall be made available upon request. In broad terms regulation 6(1) provides that where an applicant requests the information in a particular form or format the public authority is, subject to certain qualifications, obliged to comply with that preference. Regulation 8 provides that a public authority can make a reasonable charge for complying with a request but then specifies two particular situations where the information has to be made available free of charge.
21. The Council has accepted that the information is environmental. However it does not accept that regulation 6 obliges it to make the information available for inspection. It therefore proposes to search the information itself, obtain the answers to the questions on the CON29R form and provide those answers in hard copy. The Council contends that it can charge the complainants for providing a hard copy of these answers under regulation 8 as it does not accept that either of the conditions under which information has to be provided free of charge are satisfied.
22. The first issue that has to be addressed therefore is whether regulation 6 does provide a right to inspect information. It is the Commissioner's view that although regulation 6(1) may appear to be primarily concerned with the particular physical form or format in which the information is provided, it should be interpreted broadly and does provide a right to request the inspection of environmental information. Analysis of the Directive and the Implementation Guide to the Aarhus Convention (the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice on Environmental matters from which the Directive derives) lend support to this:
  - Article 3(5) of the Directive introduces the requirement for arrangements to be made which ensure that the right of accessing information "can be exercised effectively, such as ... establishment & maintenance" of facilities for the examination of the information required"
  - Recital 15 of the Directive refers to arrangements to "guarantee that the information is effectively and easily accessible."
  - The Implementation Guide to the Aarhus Convention specifically states that a public authority "must allow" an applicant to examine the original documentation subject to the two caveats which are replicated in 6(1)(a) and (b). Regulation 6(1)(b) provides that a public authority need not comply with an applicant's request for the

information to be made available in a particular form or format where “the information is already publicly available and easily accessible to the applicant in another form or format”

23. The Commissioner believes it is clear from the interpretive aids quoted above that the Directive anticipated the EIR would provide a right to inspect environmental information and this supports his broad interpretation of regulation 6.
24. Having established that regulation 6 does provide a right to inspect environmental information it is then necessary to consider whether either of the qualifications to this right are relevant to this situation. Regulation 6(1)(a) provides that a public authority is not required to comply with an applicant's stated preference as to form or format where it is reasonable to make the information available in another form or format. The public authority has not provided any grounds for claiming it is reasonable to make the information available in the format it intends to, i.e. hard copy. However for the avoidance of doubt the Commissioner would not accept that it is reasonable for a public authority to avoid allowing the inspection of information merely to justify charging for making information available in hard copy. It is also the Commissioner's view that refusing to make information available for inspection would be counter to the general policy principles of the EIR, i.e. making environmental information as easily accessible as possible. Therefore there needs to be good grounds for a public authority making the information available in a different form or format than that requested.
25. Regulation 6(1)(b) provides that a public authority does not have to comply with the applicant's preferred form or format where the information is already publicly available and easily accessible to the applicant in another form or format. In the Commissioner's view this criteria is not satisfied where an applicant is required to submit a CON29R form and pay the requisite fee. This is because the charging as embodied in the CPSR acts as a barrier to the information being easily accessible in contrast to, for example, publication on a website or in a public library free of charge.
26. Since neither of the qualifications to the complainants right to state the form and format in which the information is made available can be satisfied the Commissioner's concludes that the complainants do have a right to inspect the information they have requested access to. The next question is whether the Council can charge the complainants for inspecting the information. The Commissioner's view on whether public authorities can charge for allowing information to be inspected is set out below.
27. Regulation 8 provides a general right for public authorities to charge for making environmental information available. However that right is subject to a number of conditions. The relevant conditions in this case are contained in regulation 8(2).
28. In broad terms regulation 8(2)(a) states that public authority can not charge an applicant for access to any public registers or lists of environmental information and 8(2)(b) states that a public authority shall not charge for allowing an applicant to examine the information requested at a place which the public authority makes available for that examination.

29. The Council contends that neither condition is satisfied. It argues that the information is not in a public register. The Council further state that they cannot allow the complainant to inspect the information as it is not in a form or format which enables it to be inspected without further collation, the information is also not contained within a single place and further collation would be needed to bring the information to a single location within the Council.
30. It may be that the Council has not proactively established arrangements for all the information to be inspected at one central location as envisaged by art 3(5) of the Directive which, as previously stated, provides that public authorities should ensure the right of accessing information “can be effectively exercised such as ... the establishment or maintenance of facilities for the examination of the information required.” However, the Commissioner does not accept that this provides grounds for the Council to disadvantage the complainants by allowing the Council to charge for providing hard copies. The Council could, and in the Commissioner’s opinion should, still grant the right to inspect the information at the different locations where the information is held and therefore the Commissioner believes that the condition set out in regulation 8(2)(b) is satisfied.
31. Therefore the Commissioner is satisfied that the complainants are entitled to exercise their right to inspect the information free of charge. The condition is not dependant on all the information being available in one location. If this were so applicants making requests which capture a broad range of information which was held across a range of different business areas within a public authority would be disadvantaged. The Commissioner would also comment that as it could have been anticipated that requests for this type of information would be made in the future it would have been sensible for the public authority to consider what arrangements could practically be made to facilitate the inspection of such information in one location.

## **The Decision**

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32. The Commissioner’s decision is that the public authority did not deal with the request for information in accordance with the EIR. The Council breached the requirements of regulation 5(1) as it failed to make the requested information available on request.

## **Steps Required**

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33. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Allow the complainant to inspect the information requested.



34. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

### **Failure to comply**

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35. 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

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36. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://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 27<sup>th</sup> day of July 2009**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

**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

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- (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;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

“historical record” has the same meaning as in section 62(1) of the Act;

“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

“responsible authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“Scottish public authority” means –

- (a) a body referred to in section 80(2) of the Act; and
- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

“transferred public record” has the same meaning as in section 15(4) of the Act; and

“working day” has the same meaning as in section 10(6) of the Act.

**Regulation 2(2)** Subject to paragraph (3), “public authority” means –

- (a) government departments;
- (b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding –
  - (i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or
  - (ii) any person designated by Order under section 5 of the Act;
- (c) any other body or other person, that carries out functions of public administration; or
- (d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –
  - (i) has public responsibilities relating to the environment;
  - (ii) exercises functions of a public nature relating to the environment; or
  - (iii) provides public services relating to the environment.

**Regulation 2(3)** Except as provided by regulation 12(10) a Scottish public authority is not a “public authority” for the purpose of these Regulations.

**Regulation 2(4)** The following expressions have the same meaning in these Regulations as they have in the Data Protection Act 1998(b), namely –

- (a) “data” except that for the purposes of regulation 12(3) and regulation 13 a public authority referred to in the definition of data in paragraph (e) of section 1(1) of that Act means a public authority within the meaning of these Regulations;
- (b) “the data protection principles”;
- (c) “data subject”; and

(d) “personal data”.

**Regulation 2(5)** Except as provided by this regulation, expressions in these Regulations which appear in the Directive have the same meaning in these Regulations as they have in the Directive.

## **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 5(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.

**Regulation 5(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.

**Regulation 5(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 the standardised procedure used.

**Regulation 5(6)** Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

## **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.

**Regulation 8(3)** A charge under paragraph (1) shall not exceed an amount on which the public authority is satisfied is a reasonable amount.

**Regulation 8(4)** A public authority has notified an applicant under paragraph (4) that advance payment is required, the public authority is not required –

- (a) to make available the information requested; or
- (b) to comply with regulations 6 to 14,

unless the charge is paid no later than 60 working days after the date on which it gave the notification.

**Regulation 8(6)** The period beginning with the day on which the notification of a requirement for an advance payment is made and ending on the day on which that payment is received by the public authority is to be disregarded for the purpose of determining the period of 20 working days referred to in the provisions in paragraph (7), including any extension to those periods under regulation 7(1).

**Regulation 8(7)** The provisions referred to in paragraph (6) are –

- (a) regulation 5(2);
- (b) regulation 6(2)(a); and
- (c) regulation 14(2).

**Regulation 8(8)** A public authority shall publish and make available to applicants –

- (a) a schedule of its charges; and
- (b) information on the circumstances in which a charge may be made or waived.