

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

**Decision Notice**

**Date: 4 November 2010**

**Public Authority:** London Borough of Harrow  
**Address:** Civic Centre  
PO Box 57  
Station Road  
Harrow  
HA1 2XF

**Summary**

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The complainant submitted a request to the London Borough of Harrow Council ('the Council') for information from environmental records held on a property in Middlesex. The Council refused to provide the information in the complainant's preferred format of inspection, and stated that a charge would be levied to cover the costs of compiling the information into an alternative format. During the course of the Commissioner's investigation, the Council confirmed that it did not in fact hold any information relevant to the complainant's request. The Commissioner has found that the Council has breached regulation 14(2) in failing to issue a refusal notice within the statutory time for compliance, and regulation 14(3)(a) in failing to cite the specific exception it relied upon in not disclosing the information requested. It has also breached regulation 14(5)(a) by failing to inform the complainant of his right to request an internal review and regulation 14(5)(b) by failing to inform the complainant of the appeal and enforcement provisions of the Act. The Commissioner does not require the Council to take any further action.

**The Commissioner's Role**

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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

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2. Section 3 of the Local Land Charges Act 1975 (LLCA) compels all local authorities to generate, maintain and update a Local Land Charges Register. Under the LLCA applicants can obtain an 'Official Search' of the register by submitting form LLC1 to the relevant Local Authority. 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 requestor represents a company which provides information about property and land issues.
6. The complainant acts on behalf of the original requestor in his capacity as a representative a personal search trade association.

## The Request

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7. On 23 March 2010 the complainant submitted the following request for information to the Council:

"...please may we request the records in situ for the following address...I only need records back to 1985 also I only require the applicant number, description and if the application was completed".

The complainant requested this information in relation to a specific named property. The email submitting the request read "EIR request to inspect building control records" in the subject line.

8. The Council responded on 31 March 2010 and stated that it was impractical to provide the information to the complainant in the

requested format. Therefore, the Council would provide the requested information in a compiled report and impose a charge for this.

9. On 1 April 2010, the complainant submitted a request for an internal review of the way his request had been handled to the Council. In particular, the complainant contended that his request had not been dealt with as promptly as possible.
10. On 16 April 2010, the Council provided its internal review outcome to the complainant. This upheld the way the Council had handled the request and pointed out that a response had been sent within the statutory time for compliance.

## **The Investigation**

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### **Scope of the case**

11. On 9 June 2010, the complainant contacted the Commissioner to submit a complaint about the way his request for information had been handled.
12. During the course of the investigation, the Council confirmed that it held no information that fell within the scope of the request. The complainant does not dispute this and fully accepts that this is the case so the Commissioner has not considered this point further. The Decision Notice instead focuses on the whether the Council has complied with its procedural responsibilities in responding to the complainant's request.

### **Chronology**

13. On 20 July 2010, the Commissioner wrote to the Council to explain that a complaint had been received. He asked the Council several questions about how it had dealt with the complainant's request.
14. The Council acknowledged this email on 30 July 2010 and provided a substantive response on 10 September 2010. This stated that the requested information was not held.

## Analysis

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### Substantive Procedural Matters

#### Regulation 2

15. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
16. The Commissioner considers that the information requested falls within regulation 2(1)(c): “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.

#### Regulation 14

17. Regulation 14(2) provides that any refusal notice shall be issued as soon as possible and no later than 20 working days after the date of receipt of the request.
18. The complainant’s original request was submitted on 23 March 2010. The Council responded to this request on 31 March 2010. However, the Council confirmed to the Commissioner on 10 September 2010 that no information was in fact held. The Council failed to inform the complainant of this and so the Commissioner finds a breach of regulation 14(2).
19. Regulation 14(3)(a) provides that:

“The refusal shall specify the reasons not to disclose the information requested, including –

any exception relied on under regulations 12(4), 12(5) or 13”
20. On 10 September 2010, the Council confirmed that it did not hold any information relevant to the complainant’s request.

21. Where information is not held, the Council should confirm this to the complainant, citing the exception at regulation 12(4)(a), which provides that:

“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”

22. The Council failed to inform the complainant that this information was not held, and so the Commissioner finds a breach of regulation 14(3)(a) as it failed to apply the appropriate exception at regulation 12(4)(a).

23. Regulation 14(3)(b) provides that a refusal notice should specify:

“the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b)...”

24. All exceptions under the EIR are subject to a public interest test. However, the Commissioner recognises that in practice, a public authority cannot conduct a public interest test in relation to information that it does not hold. Consequently, he does not find a breach of regulation 14(3)(b).

25. Regulation 14(5)(a) provides that a refusal notice should inform the complainant of his right to make representations for review to the public authority under regulation 11. The Council failed to do this and so the Commissioner finds a breach of regulation 14(5)(a).

26. Regulation 14(5)(b) provides that a refusal notice should inform the applicant of the enforcement and appeal provisions of the Act applied by regulation 18. The Council failed to do this and so the Commissioner finds a breach of regulation 14(5)(b).

## **The Decision**

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27. The Commissioner’s decision is that the London Borough of Harrow has breached regulation 14(2) in failing to issue a refusal notice within the statutory time for compliance, regulation 14(3)(a) in failing to cite the specific exception it relied upon in not disclosing the information

requested, and regulation 14(5)(a) by failing to inform the complainant of his right to request an internal review. It also breached regulation 14(5)(b) by failing to inform the complainant of the appeal and enforcement provisions of the Act.

## **Steps Required**

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28. The Commissioner requires no steps to be taken.

## Right of Appeal

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29. 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 sent.

**Dated the 4<sup>th</sup> day of November 2010**

**Signed .....**

**Gerrard Tracey  
Principal Policy Adviser**

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

## Legal Annex

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### **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 12 - Exceptions to the duty to disclose environmental information**

**Regulation 12(1)** Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5);  
and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

**Regulation 12(2)** A public authority shall apply a presumption in favour of disclosure.

**Regulation 12(3)** To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

**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 –

- (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.