

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

**Decision Notice**

**Date: 2 December 2010**

**Public Authority:** London Borough of Bromley Council  
**Address:** Civic Centre  
Stockwell Close  
Bromley  
BR1 3UH

**Summary**

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The complainant submitted a request to the London Borough of Bromley Council ('the Council') to inspect information from environmental records held on a property in Orpington. The Council stated that it would provide the requested information but only upon provision of a fee. During the course of the Commissioner's investigation, the Council agreed to provide the requested information for inspection free of charge. The Commissioner finds that the Council breached regulation 5(2) by failing to make the requested information that it held available within the statutory time for compliance. He 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 complainant 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 of a personal search trade association

## **The Request**

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7. On 18 February 2010 the complainant wrote to the Council to request to inspect the Local Land Charges Register and the information necessary to complete a CON29R form. The complainant requested this information in relation to a specific property.
8. The complainant received no response and requested an internal review on 22 April 2010.
9. On 23 July 2010 the Council wrote to the complainant and explained that it would only make the requested information available in line with its existing chargeable procedures. The Council stated that it believed that the requested information attracted copyright but did not explicitly apply the exception at regulation 12(5)(c).

## The Investigation

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### Scope of the case

10. On 22 July 2010, the complainant contacted the Commissioner to submit a complaint about the way his request for information had been handled.

### Chronology

11. On 27 July 2010, the Commissioner wrote to the Council to explain that a complaint had been received. He drew the Council's attention to the decision notice [FER0236058](#), and the subsequent Information Tribunal decision, [East Riding of Yorkshire Council v Information Commissioner \(EA/2009/0069\)](#), which had dealt with a similar request for access to building control information. The Commissioner set out his previously established position on access to property search information under the EIR and asked that the Council reconsider the complainant's request in light of this.
12. On 30 July the Commissioner wrote to the Council to draw its attention to the new [Local Land Charges \(Amendment\) Rules 2010](#), which revoke the fee for inspection of the Local Land Charges Register.
13. On 24 August 2010 the Council emailed the Commissioner to explain that it would make the requested information available for inspection free of charge.
14. On 15 September 2010 the Council emailed the complainant to explain that the requested information was available free of charge and to explain how this could be accessed.

## 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 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.

## **Regulation 5**

17. 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.
18. The complainant submitted his request for information on 18 February 2010. The Council did not inform the complainant that the requested information could be accessed free of charge until 15 September 2010, and therefore the Commissioner finds a breach of regulation 5(2) as the Council failed to make information available within the statutory time for compliance.

## **The Decision**

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19. The Commissioner's decision is that the London Borough of Bromley Council has breached regulation 5(2) of the EIR by failing to provide the requested information within the statutory time for compliance.

## **Steps Required**

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20. The Commissioner requires no steps to be taken.

## Right of Appeal

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21. 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](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 2<sup>nd</sup> day of December 2010**

**Signed .....**

**Gerrard Tracey  
Principal Policy Advisor**

**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 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.