

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

Decision Notice

Date: 22 November 2010

Public Authority: Christchurch Borough Council
Address: Civic Offices
Bridge Street
Christchurch
Dorset
BH23 1AZ

Summary

The complainant submitted a request to Christchurch Borough Council ('the Council') for information from environmental records held on a property in Christchurch. The complainant specified that he wished to view the records in person. The Council agreed to provide information relevant to the request upon provision of a fee but refused to comply with the request to inspect information. The Commissioner's decision is that the Council failed to comply with regulation 5(1) as it failed to make information available on request, and 5(2) as it failed to make it available within the statutory time for compliance. The Council breached regulation 6(1) by failing to comply with the complainant's request to make information available in a particular format. In addition, the Council breached regulation 6(2)(c) by failing to inform the complainant of his right to seek an internal review, and of the enforcement and appeal provisions of the Act applied by regulation 18, when refusing to provide information in a specific format. The Commissioner requires the Council to make the requested information available for the complainant to inspect 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 17 June 2010 the complainant wrote to the Council to request access, free of charge, to the land charges register and to records containing the information necessary to complete a CON29R form.¹ The complainant requested this information in relation to a specific named property, and specified that he wished to inspect these records in person.
7. The Council acknowledged this request on 18 June 2010.
8. On 8 July 2010 the Council responded to the complainant's request. This response stated that information could not be provided free of charge because current charges had a statutory and legislative basis. It also explained that the "extent of any conflict" between the EIR and the Local Land Charges Regime was unclear. The Council reiterated that payment would be required to access the requested information. It

¹ Annex A details the nature of the information relevant to each CON29R enquiry.

also explained that “access to the source data was not possible”, but the complainant could make an appointment to access compiled data.

9. The complainant requested an internal review of this decision on 12 July 2010.
10. On 11 August 2010, the Council provided its internal review to the complainant. This stated that the requested information could not be inspected except where it was held on a statutory register. The Council explained that it felt it was reasonable to provide information in another format.

The Investigation

Scope of the case

11. On 30 August 2010, the complainant contacted the Commissioner to complain about the Council’s decision to refuse access to the requested information.
12. On 5 October 2010, the Council explained that information relevant to CON29R queries 1.1(a)-(e), 1.2, 2(a), 3.3(b), 3.12(a) and 3.12(b)(ii) is held in public registers which are made available for inspection at the Council’s offices free of charge. The Council also confirmed that it now makes no charge for allowing a personal inspection of the Local Land Charges Register to be conducted. The Commissioner has therefore excluded these parts of the request from the scope of this decision notice.
13. The Council also confirmed that it did not hold information relevant to CON29R queries 2(b)-(d), 3.2, 3.3, 3.4(a)-(f), 3.5, 3.6(a)-(l), 3.7(e), 3.11 and 3.13.
14. The remaining information, specifically information relevant to CON29R queries 1.1(f)-(h), 3.1, 3.7(a)-(d), 3.7(f), 3.8, 3.9(a)-(n), 3.10, 3.12(b)(i) and 3.12(c) is not available for inspection. The Council provides answers to these questions for a charge.

Chronology

15. On 7 September 2010, the Commissioner wrote to the Council and asked that it answer questions about why it felt that it was reasonable to provide the requested information in a format other than inspection. The Commissioner also drew the Council’s attention to the decision notice [FER0236058](#), and the subsequent decision of the Information

Tribunal, [East Riding of Yorkshire Council v Information Commissioner \(EA/2009/0069\)](#) ('the Tribunal decision'), which had dealt with a similar request for access to building control information. The Council acknowledged this email on the same day and confirmed its intention to respond.

16. On 5 October 2010, the Council provided a detailed response to the Commissioner's queries.

Analysis

Substantive Procedural Matters

Regulation 2

17. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
18. 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 5

19. Regulation 5(1) provides that environmental information shall be made available upon request. Regulation 5(2) provides that this information should be made available within 20 working days following receipt of the request. The complainant's original request for information was made on 5 February 2010. The Council has not provided the complainant with the requested information that it holds. The Commissioner therefore concludes that the Council has breached regulations 5(1) by failing to make the information available on request, and regulation 5(2) by failing to make information available within 20 working days following receipt of the request.

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. It is the Commissioner's view that although regulation 6(1) may appear primarily to be concerned with the form or format information is provided in, it should be interpreted broadly and does provide a right to request the inspection of environmental information. A public authority should comply with this preference unless it is reasonable to make the information available in another format, or the information is already publicly available in another format.

Interpretation of 'inspection' under regulation 6(1)

21. In previous Decision Notices, such as [FER0288726](#) and [FER0308439](#), the Commissioner has concluded that if a public authority allowed an applicant to inspect printed or photocopied documents, this would satisfy a complainant's request to inspect the requested information. This has meant that public authorities are able to comply with regulation 6(1) as providing information in this way alleviates potential difficulties. For example, personal information can be redacted from copied documents before being provided to applicants. Providing hard copies for inspection also ensures the integrity of a public authority's electronic records, and means that members of the public do not necessarily have to be given access to back-office areas.
22. The Council however disputes that providing print-outs or photocopies complies with a request to inspect information. It argues that the Commissioner's interpretation is "straining the statutory language", and that in fact, copies of information are in a different format. The Council refers to paragraph 36 of the Tribunal decision to support its argument. The Tribunal stated that

"...regulation 6 providing detail about how access may be provided (i.e. in accordance with the requesting party's preference, unless it is reasonable to provide it in some other form) and regulation 8 setting out the circumstances when a charge may be made. We think that it is clear that, in that context, regulation 8(2) does not create a separate obligation to permit inspection, but simply provides that, where the person making the request asks for the information to be made available by inspection then, unless the public authority has the right under regulation 6 to override that preference and to make the

information available in the form of a copy, it may not make any charge" (emphasis added).

23. The Council also cites to article 3(4) of the Directive to support its view that copies constitute a separate form or format:

"Where an applicant requests a public authority to make environmental information available in a specific form or format (including in the form of copies)..." (emphasis added)

24. The Council also refers to the [guidance issued by DEFRA on the EIR](#). It states that this clearly indicates that inspection refers to an applicant "inspecting original documents or viewing a register or list".
25. The Commissioner considers the Tribunal's comments at paragraph 22 above, make it absolutely clear that unless a public authority has the right under regulation 6 to override the complainant's right to request inspection in situ then it must adhere to that request. The Commissioner does not accept that a request to inspect information can only be satisfied by allowing an applicant to examine the information in its original form.
26. In this case, the applicant has asked for the requested information to be made available by allowing him to inspect it. The Council has a duty to consider whether it can give effect to that preference. As detailed below, the Council has argued that it is not possible to allow the applicant to inspect information in its original format. The Commissioner's view is a public authority in this position should consider if the information can be made available for inspection via any other means.

Regulation 6(1)(a)

27. Regulation 6(1)(a) provides that a public authority will not have to comply with a complainant's request to receive information in a particular format where it is reasonable to provide information in another format. In this case, the Council argues that it would be reasonable to make the information available in a format other than inspection. The Commissioner has considered these arguments below.
28. The Council has first provided arguments based on the premise that it would be reasonable to refuse to provide inspection of information in the format in which they are currently held – i.e. on the Council's computerised records system.

29. The Council argues that the layout of its offices is not conducive to allowing inspection. There is a central public reception where applicants can inspect public registers. Other offices are spread over four floors and are accessible through security doors. A complainant who wished to inspect original source information would need to make appointments with at least two members of staff and be escorted to a member of staff's computer terminal. The member of staff would need to log into the computer on their own profile and identify the correct information for the complainant to access, as the computer system used is not intuitive. The requested information is also likely to contain personal data or information provided in confidence by complainants.
30. The Council also states that whilst a large number of planning and building control records have been scanned and linked to its PACS IT system, not all of these images are linked to the PACS system but are held within the Council's wider network. The Council argues that a member of staff will have to accompany the complainant at all times in order to ensure the security of its wider computer network.
31. Although the Council does not accept that providing copies of information held on computer systems complies with a request to inspect information under regulation 6(1), it has also provided arguments about why it would be unreasonable to allow the complainant to inspect the requested information via this method.
32. The Council argues that locating the original documents, redacting information, and photocopying would create a disruption to its work patterns. It also states that the provision of printed or photocopied documents is a waste of resources and has a negative environmental impact.
33. The Council argues that irrespective of whether original records or copies are provided, inspection would be "highly disruptive" of its working patterns. The Council estimates that it would take up to 30 minutes of staff time to comply with the complainant's request, and that this would negatively impact upon its ability to comply with its other roles and responsibilities.
34. The Council also argues that its decision to argue that it is reasonable to provide information in a format other than inspection should be seen in the context of "the significant demands and pressures upon public finances". The Council receives annual funding of £3.7m from Council tax payments. It is required to find savings of £250,000 in this budget.
35. As set out above, it is the Commissioner's opinion that a request to inspect would be satisfied by the provision of redacted copies of

information. In any case, however, he notes the Council's estimate that to comply with the request by allowing the applicant to access the information in its original source would take around 30 minutes of staff time. The Commissioner does not consider that this is an unreasonable amount of time for staff to spend on complying with a request made under the EIR.

36. Whilst the Commissioner recognises the regard the Council must give to the need to conserve public finances, the Council has not explained how providing information in a format other than inspection would have an impact upon its finances. The Commissioner accepts that the Council needs to comply with its statutory responsibilities. However, he also notes that the Council is compelled to comply with its responsibilities under EIR. The Council currently charges a fee of £65 for providing answers to CON29R questions via post, and £51 for providing the same information electronically. It also offers a service where CON29R queries are answered and compiled into one document which is then provided for inspection. This service costs £18. Whilst the Commissioner appreciates that these activities provide a revenue stream for the Council, he does not accept that the loss of any such income can be taken into account when considering whether it is reasonable to make information available in a form other than inspection.
37. The Commissioner does not accept that the Council has demonstrated that it is reasonable to provide information in a format other than inspection. The Commissioner reiterates that he considers that the Council will have complied with the complainant's preference to inspect the requested information if print-outs or photocopied documents are made available for inspection. However, even where information is to be inspected in its original source, he does not find that the Council has provided sufficient argument to demonstrate that it would be reasonable to provide the information in a form other than inspection. The Council has estimated that it would take around 30 minutes to give effect to the complainant's preference to inspect information. The Commissioner does not consider that this is an excessive amount of time and therefore finds that the complainant should be permitted to inspect the requested information.

Regulation 6(2)

Regulation 6(2)(c)

38. Regulation 6(2)(c) provides that where a public authority refuses to provide information in a form or format requested by an applicant, it should "inform the applicant of the provisions of regulation 11 and the

enforcement and appeal provisions of the Act applied by regulation 18".

39. In its response to the complainant of 8 July 2010 the Council failed to inform the complainant that he could request an internal review, or of the enforcement and appeal provisions contained in regulation 18. The Commissioner therefore finds that the Council has breached regulation 6(2)(c).

Regulation 8

40. Regulation 8 provides a general right for public authorities to charge for making information available.

Regulation 8(2)

41. The right under regulation 8 to impose a charge for making information available is subject to a number of conditions. The relevant conditions in this case are set out in regulation 8(2).
42. Regulation 8(2)(a) states that a public authority shall not make any charge for allowing an applicant to access any public registers or lists of environmental information, and regulation 8(2)(b) states that a public authority shall not make any charge for allowing an applicant to examine the information requested at a place which the authority makes available.

Regulation 8(2)(b)

43. The Commissioner notes that the Council currently imposes a charge for providing the requested information in accordance with the charging provisions set out in the [Local Authorities \(England\) \(Charges for Property Searches\) Regulations 2008](#) ('the CSPR'). Regulations 5, 6 and 7 of the CSPR set out the charges that may be levied for providing access to property search information.
44. The Commissioner's position is that regulation 5(6) specifically disapplies the charging provisions under the CSPR. This regulation provides that "any enactment or rule of law that would prevent the disclosure of information in accordance with these regulations shall not apply".
45. Consequently, the Commissioner considers that if the property records comprise environmental information as defined by regulation 2 of the EIR, the CSPR cannot be used as the basis for charging and the Council must adopt the charging provisions of the EIR. The Council has not

disputed that this property information is environmental. Therefore, regardless of the charging provisions of the CSJR, the information should be considered for disclosure under the EIR. For the reasons set out above, the Commissioner considers that the EIR entitle the complainant to request to inspect the requested information free of charge, and the CSJR cannot apply. This position also acknowledges the primacy of EU legislation whereby European law, such as the EIR, takes precedence over domestic law.

46. Regulation 8(2)(b) provides that a public authority is not entitled to charge a fee for allowing inspection of information. Therefore, the Commissioner is of the opinion that the complainant is entitled to exercise his right to request to view the information free of charge.

The Decision

47. The Commissioner's decision is that Christchurch Borough Council did not deal with the request for information in accordance with the EIR. The Council has breached regulations 5(1) by failing to make information available upon request, and regulation 5(2) by failing to make information available within the statutory time for compliance. 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 has also breached regulation 6(2)(c) as it failed to inform the complainant of his right to seek an internal review, and of the enforcement and appeal provisions of the Act when refusing to provide information in a specific format.

Steps Required

48. The Commissioner requires that the Council make the requested information available for the complainant to inspect free of charge.
49. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

50. 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

51. 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 22nd day of November 2010

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.

Regulation 11 - Representation and reconsideration

Regulation 11(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

Regulation 11(2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

Regulation 11(3) The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

Regulation 11(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations.

Regulation 11(5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of –

- (a) the failure to comply;
- (b) the action the authority has decided to take to comply with the requirement; and
- (c) the period within which that action is to be taken.

Annex A - CON29R Enquiries

1.1 Which of the following relating to the property have been granted, 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 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 any 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 works for a proposed alteration or improvement to an existing road involving (i) construction of a roundabout (other than a mini roundabout) or (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, footbridge, 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 published 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 or (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 Has a local authority approved but not yet implemented any of the following for the roads, footways 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 restrictions
- g) traffic calming works including road humps
- h) residents parking contracts
- i) minor road widening or improvement
- j) pedestrian crossings
- k) cycle tracks
- l) bridge building

3.9 Do any of the following subsist in relation to the property or has a local authority decided to issue, serve, make or commence any of the following:

- a) an enforcement notice
- b) a stop notice
- c) a listed building enforcement notice
- d) a breach of condition notice
- e) a planning contravention notice
- f) another notice relating to breach of planning control
- g) a listed buildings repairs notice
- h) in the case of listed building deliberately allowed to fall into disrepair, a compulsory purchase order with a direction for minimum compensation
- i) a building preservation notice
- j) a direction restricting permitted development
- k) an order revoking or modifying planning permission
- l) an order requiring discontinuance of use or alteration or removal of building or works
- m) a tree preservation order
- n) proceeding to enforce a planning agreement or planning contribution