

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

**Decision Notice**

**Date: 31 March 2011**

**Public Authority:** Haringey Council  
**Address:** Civic Centre  
High Road  
Wood Green  
London  
N22 8LE

**Summary**

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The complainant submitted a request to Haringey Council ('the Council') for information from environmental records held on a property in London. The Council failed to respond to this request within 20 working days. During the course of the Commissioner's investigation, the Council reconsidered the request under the EIR and 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.

## The Request

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6. On 22 September 2010 the complainant emailed the Council to request to inspect the Local Land Charges Register. The complainant requested this information in relation to a specific property.
7. Following the intervention of the Commissioner, the Council responded to this request on 12 November 2010. This response stated that the Council did not accept that the requested information was environmental in nature, and that inspection was difficult because the requested information was held in an electronic rather than hard copy format.
8. On 3 December 2010 the Council issued a revised response to the complainant. This stated that the Council did accept that the requested information was environmental and should be considered under the EIR. However, the Council confirmed that the requested information was not available for inspection, and that a fee of £45 would be levied for providing it in an alternative format.
9. Following the intervention of the Commissioner, the Council made the requested information available to the complainant via email on 24 February 2011.

## The Investigation

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### Scope of the case

10. On 21 October 2010 the complainant contacted the Commissioner to complain about the Council's failure to respond to his request under EIR.
11. During the course of the investigation, the Council disclosed the requested information to the complainant via email. The complainant has confirmed that he is happy to receive the information in this format.

### Chronology

12. On 22 October 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 summarised the Council's obligations under the EIR in relation and asked that the Council respond to the complainant's request under the EIR as soon as possible.
13. On 16 November 2010 the complainant provided the Commissioner with a copy of the response sent to him by the Council on 12 November 2010. On the same day the Commissioner wrote to the Council to ask that it explained why it considered the requested information was not environmental in nature.
14. On 23 November 2010 the Council wrote to the Commissioner to explain that it was producing "a more thorough, formal response" to the complainant's request. The Council stated that this would be sent to both the complainant and the Commissioner. The Council also informed the Commissioner that it would respond fully to his email of 22 November 2010.
15. On 2 December 2010 the Commissioner emailed the Council to reiterate his request for the Council to address the queries raised in his email of 16 November 2010 regarding why it did not consider the requested information to be environmental. The Council responded on the same day and explained that contrary to its email of 12 November 2010, it did accept that the request was for environmental information.
16. On 3 December 2010 the Council forwarded a copy of its revised response to both the Commissioner and complainant. On the same day the Commissioner wrote to the Council with some queries about this

response. The Commissioner explained that he assumed that the revised response constituted the Council's internal review of the request.

17. On 7 December 2010 the Council emailed the Commissioner to confirm its intention to respond to his queries. The Council stated that its response of 3 December 2010 did not constitute an internal review, but that it did not wish to conduct one in any case.
18. On 19 January 2011 the Council responded to the Commissioner's queries. The Council confirmed that whilst it would not provide access to inspect the requested information, it would make it available via hard copy or email. The Council confirmed that it accepted that it could not charge its usual fee of £45 for this information under the EIR, and that it would not charge for the cost of disbursements as it would not be cost-effective to administer such a small fee.

## Analysis

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### Substantive Procedural Matters

#### Regulation 2

19. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
20. 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

21. 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.

22. The complainant submitted his request for information on 22 September 2010. The Council did not provide the complainant with the requested information until 24 February 2011. Consequently the Commissioner finds that it has breached regulation 5(2) of the EIR.

## **The Decision**

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23. The Commissioner's decision is that Haringey Council has breached regulation 5(2) by failing to make the requested information available within the statutory time for compliance.

## **Steps Required**

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24. The Commissioner does not require the Council to take any further action.

## **Other matters**

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25. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following.
26. In its email of 19 January 2011 to the Commissioner, the Council acknowledges that it could not impose a charge of £45 for the requested information. This is because the charge takes into account factors such as the cost of identifying and retrieving the information. The Tribunal in *Markinson v Information Commissioner* found that these factors could not be considered as a part of a "reasonable" charge under regulation 8(3). Only the costs of disbursements such as photocopying and postage can be taken into account.
27. This decision notice only relates to entries on the Local Land Charges Register in respect of one specific property. However, as the Council has already accepted a charge of £45 for inspection is not compliant with the EIR, it should not attempt to levy this fee in response to new requests.

## Right of Appeal

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28. 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 31 day of March 2011**

**Signed .....**

**Gerrard Tracey  
Principal Policy Adviser FOI**

**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.