

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 September 2011

**Public Authority:** Sheffield City Council  
**Address:** Town Hall  
Pinstone Street  
Sheffield  
S1 2HH

#### Decision

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1. The complainant has requested information relevant to CON29R queries for a particular property.
2. The Commissioner's decision is that Sheffield City Council ('the council') was not entitled to rely on the exception at regulation 12(4)(b) to refuse to comply with the complainant's request.
3. The Commissioner requires the council to either disclose the requested information to the complainant in accordance with regulation 5(1) or issue a valid refusal notice in accordance with regulation 14.
4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply 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.

#### Request and response

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5. On 10 November 2010 the complainant emailed the council. The email was headed with the address of a specific property. Beneath this the complainant had requested information in the following terms:

"...we wish to examine the information requested free of charge...the information we wish to examine is all the information which the council holds that will enable us to complete and / or answer the questions in the form CON29R (enquiries of the local authority) in respect of the property mentioned above."

6. The council responded on 12 November 2010 and stated that the request had been formulated "in too general a manner" as set out in regulation 9(2).
7. The complainant requested an internal review of this decision on 23 November 2010. The council provided the outcome of this review, which upheld the original response, on 17 December 2010.
8. During the course of the investigation the council confirmed to the Commissioner that it relied on the exception at regulation 12(4)(b). This applies to manifestly unreasonable requests.

### **Scope of the case**

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9. On 10 March 2011 the complainant contacted the Commissioner to complain about the way her request for information had been handled.
10. The Commissioner has investigated whether the council was entitled to refuse the request under the exception at regulation 12(4)(b).

### **Reasons for decision**

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#### **Regulation 2**

11. Regulation 2(1)(c) provides that any information on "measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities" that will affect or are likely to affect the elements of the environment as set out in regulations 2(1)(a) and (b) will be environmental information. The complainant has requested information relevant to the CON29R form which contains a number of enquiries about the status of a property and any policies or decisions likely to affect it. The Commissioner therefore considers that the requested information is environmental as defined by regulation 2(1)(c).

#### **Regulation 12(4)(b)**

12. Regulation 12(4)(b) applies where a request is 'manifestly unreasonable'. The EIR contain no definition of the phrase "manifestly unreasonable" but the Commissioner considers that the word "manifestly" means that a request should be obviously or clearly unreasonable.

13. The council originally relied on regulation 9(2), as it believed that the request was formulated in too general a manner.<sup>1</sup> During the course of the investigation, the Commissioner wrote to the council as follows:

"...In this case, it is difficult to see where any uncertainty about request arises. This seems to be clear: the complainant states she wishes to inspect information relevant to CON29R queries for a specified property. The Council argues that it would take an excessive amount of time to look through the requested information in order to provide a response under the EIR. However, if this is the case, then it would seem that the appropriate exception would be regulation 12(4)(b), which applies to manifestly unreasonable requests. It can be used where a public authority believes that complying with the request would take an excessive amount of time."

The Commissioner invited the council to explain further why it believed that the request was formulated in too general a manner.

14. However, the council then wrote to the Commissioner and confirmed that it would in fact rely on regulation 12(4)(b) as "...it would be manifestly unreasonable to require the Council in addition to go through all its files or make all its information available for inspection when the questions in respect of which the information was requested had already been answered."
15. In its initial response to the complainant, the council stated that the complainant's request "requires the appropriate departments of the council to carry out a considerable amount of administrative work in attempting to locate what files, if any, actually exist in respect of the questions".
16. The council also stated that it assumed that the request was "...realistically, your request is not so much for the right to inspect all the files so as to form your own view on whether or not the question is capable of being answered, or in what form the question is capable of being answered, but rather of obtaining the answers to the specific questions in the form"
17. The Commissioner believes that the council was incorrect to consider the complainant's motive in seeking the requested information. He notes the decision of the Upper Tier Tribunal in [Kirklees v Information Commissioner](#), which commented on the complainant's request to

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<sup>1</sup> The Commissioner would observe that the correct exception to cite in these circumstances is located at regulation 12(4)(c). Regulation 9(2) refers to a public authority's duty to provide appropriate advice and assistance in these circumstances.

inspect all information required to complete a CON29R in relation to a specific property. The Tribunal stated that:

“The Council was being asked to identify that recorded information it held which the Council would have to consider if it was itself required to answer the questions on the Con29R. PALI was not asking the Council itself to provide answers to the questions on the Con29R; moreover, PALI was not asking the Council itself to conduct any appraisal or evaluation of any raw information held by the Council. PALI was asking the Council for permission to inspect raw information relating to the property so as to enable PALI to be in a position where it could itself evaluate that raw information with a view to constructing answers to the particular Con29R queries...” (para 81)

The Commissioner concurs with this interpretation. He notes that the complainant's request is worded very similarly to the one considered in *Kirklees v Information Commissioner*. The Commissioner considers that the request clearly sets out that the complainant wishes to examine any information relevant to the CON29R queries for the property. It does not ask that the council provides answers to these queries. The Commissioner will only consider the impact of complying with the specific request made by the complainant rather than the modified request as interpreted by the council.

18. The council also stated that “the information required to answer the CON29R form questions is not as a matter of fact held in one place”. However the council also stated that it saw no obligation to make environmental information available in one location in response to a request and would only direct an applicant to inspect information at the location that it is held. It is therefore not clear why it believes that this would place a significant burden upon the council or why the request is manifestly unreasonable.
19. The council has provided the Commissioner with no further arguments about why it believes that this request is manifestly unreasonable, other than it considers that it should not be required to “go through all its files or make all its information available for inspection when the questions in respect of which the information was requested had already been answered”. The council has provided no evidence that these questions have in fact “already been answered”.
20. It appears that the council believes that the complainant's request is manifestly unreasonable because the complainant has requested to inspect all of the information relevant to the CON29R queries. The council states in its initial response to the complainant that if the

requested information was already available on a public register, it would only be obliged to direct an applicant to this. The Commissioner considers that where information is already available, a public authority is likely to be able to comply with its obligations under regulation 5(1) by directing an applicant to the information – for example, by providing a URL. He also observes that where information is already publicly available, then a public authority may be able to refuse to provide it in an alternative format under regulation 6(1)(b), which provides an exception to the duty to make information available in the format requested by an applicant where “the information is already publicly available and easily accessible to the applicant in another form or format”.

21. The council also stated that “where...the council has, as a matter of fact, no information sufficient to enable it to respond to the request, the statement that no information is available means that the duty under the regulations is not engaged”. The Commissioner notes that where a public authority does not hold information requested, the correct exception to cite is located at regulation 12(4)(a).
22. However, the council has not in this case identified any information that is already available to the complainant, nor provided any guidance about where it might be accessed. It has not stated that it does not hold any of the requested information. The fact that some information may not be available, or might already be accessible does not invalidate the complainant's request to inspect any relevant information. If information is already available, or is not held, then it is the council's responsibility to identify this and inform the complainant in its response. The Commissioner does not consider that these obligations have any impact on whether the council was entitled to apply regulation 12(4)(b) to the complainant's request.
23. The Commissioner therefore considers that regulation 12(4)(b) is not engaged and he has not gone on to consider the public interest test.

### **Regulation 14(3)**

24. Regulation 14(3)(a) requires a public authority in receipt of a request to issue a refusal notice citing the exception it relies upon. The council failed to cite the exception at regulation 12(4)(b) and so the Commissioner finds that it has breached regulation 14(3)(a).

## Right of appeal

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25. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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.

Signed .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**