

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

**Decision Notice**

**Date: 29 June 2011**

**Public Authority:** Lancashire County Council  
**Address:** Chief Executive's Offices  
Christchurch Precinct  
County Hall  
Preston  
Lancashire  
PR1 8XJ

**Summary**

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The complainant requested information concerning plans to build a fence on the fields behind a primary school in Lancaster. Lancashire County Council ("the Council") responded to the request however the complainant asked the Information Commissioner ("the Commissioner") to consider whether she had been provided with all of the information she requested. The Commissioner considered that the requests should have been handled under the Environmental Information Regulations 2004 ("the EIR") however he was satisfied that on the balance of probabilities, the complainant had been provided with all of the recorded information held by the public authority relating to this particular request. He therefore requires no steps to be taken. The Commissioner found breaches of regulation 5(2), 14(1) and 14(2) of the EIR.

**The Commissioner's Role**

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1. The EIR 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 EIR shall be enforced by the Commissioner. In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 ("the FOIA") are imported into the EIR.

## The Request

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2. For clarity, the complainant made a number of information requests during the course of her correspondence with the Council and made a number of detailed enquiries about the handling of these additional requests. Much of the correspondence below deals with the issues that arose as a result of the handling of these requests. The Commissioner has only made references to the correspondence so far as it is relevant to the request that was made on 22 April 2010.

3. On 22 April 2010, the complainant wrote to the Council and requested information in the following terms:

*"I note that work has started to build a fence on the fields behind Moorside School (Moorside Primary School, Bowerhamm Road, Lancaster, LA1 4HT). This work started on 15<sup>th</sup> April (this is when white lines appeared on the field). Under the Freedom of Information Act I would like some information about this work.*

- 1. a copy of the tender document for this work*
- 2. the names of each of the contractors who responded to the tender*
- 3. the final figure quoted for the work by each of the contractors who responded to the tender*
- 4. the name of the contractor who won the contract*
- 5. the date that the contract was signed for the work*
- 6. the sources of funding for this work and a breakdown of how much each of these sources is contributing to the work (i.e. what percentage of the funding is provided by each of these sources).*
- 7. a copy of the rules governing how Lancashire County Council deals with tenders and contracts of this sort".*

4. The request was acknowledged by the Council on the same day. The Council replied to the complainant on 25 May 2010. It apologised for the delay in responding and said that it had answered each point of the request.

5. On 27 May 2010, the complainant wrote to the Council asking for clarification regarding a statement made by the Council when it responded to point 1 of the request of 22 April 2010.

6. The Council responded on 12 July 2010. It apologised for the delay. It responded to the complainant's query.

7. The complainant replied on 20 July 2010. She said that she felt that the Council had misunderstood her query regarding the comment it had made in respect of point 1 of the request of 22 April 2010.

8. On 2 August 2010, the complainant wrote to request further clarification regarding the Council's response to her of 25 May 2010. Her query referred to point 5 of the Council's response to her.
9. From this point onwards, there were a number of email exchanges between the complainant and the Council concerning the response to her request. The Commissioner understands that this culminated in the Council's final response on 12 October 2010.

## **The Investigation**

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### **Scope of the case**

10. The complainant initially complained to the Commissioner on 6 July 2010 about the Council's failure to respond to the request within 20 working days. Following a letter to the Council, the Commissioner decided to take no further action at that time.
11. A further complaint was made by the complainant on 8 October 2010 in which the complainant reiterated her unhappiness with the fact that the Council had exceeded the time limit for responding to her request. As the complaint form referred to matters that are being considered by the Commissioner separately, the Commissioner wrote to the complainant on 10 March 2011 in an attempt to clarify the scope of the complaint concerning this particular request. When the complainant responded on 8 April 2011, she continued to refer to matters that were under separate consideration by the Commissioner however the Commissioner understood that aside from the time delay, the nature of the complainant was that the complainant wished the Commissioner to consider whether she had been provided with all of the information held. The complainant referred specifically to point 5 of her request but no specific reference was made to any other parts of the request.

### **Chronology**

12. The Commissioner sent a standard letter to the Council on 12 October 2010 to inform it that he had received a complaint that it had not provided all of the information it held.
13. The Council responded on 15 October 2010. It said that its position was that the complainant had been provided with all of the information it held and it provided copies of its most recent correspondence with the complainant. It said that it had received the impression from this correspondence that the complainant accepted that no further information was held.

14. As described above, the Commissioner wrote to the complainant on 10 March 2011 to set out his understanding of the request. He specifically referred to the fact that his investigation in this case only concerned the request made on 22 April 2010. He invited the complainant to clarify more precisely what the nature of her complaint was in relation to this particular request, particularly in view of the fact that the Commissioner was aware that there had been further correspondence between her and the Council since the complaint was made which may have resolved the issues involved.
15. The complainant replied to the Commissioner on 8 April 2011. As indicated in the scope, it was clear to the Commissioner that the complainant had not restricted her letter only to her complaint about the request of 22 April 2010. However, the Commissioner understood that the complainant doubted that she had been provided with all of the information she had requested.
16. On 12 April 2011, the Commissioner wrote to the Council. He set out the scope of his investigation and he asked the Council some questions designed to help him to consider whether on the balance of probabilities the Council had provided the complainant with all of the information it held relating to this request.
17. The Council replied on 3 May 2011. It continued to maintain its position that it did not hold any information that had not been provided to the complainant.
18. On 4 May 2011, the Commissioner asked for some additional information which the Council provided on 19 May 2011.

## **Analysis**

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### **Substantive Procedural Matters**

#### **Was the request for “environmental information” under the EIR?**

19. The Council’s response indicates that it considered the request under the terms of the FOIA. However, the Commissioner considers that the request should have been considered under the terms of the EIR as it is the Commissioner’s view that the information requested falls within the description of “environmental information” provided by regulation 2 of the EIR. For clarity, regulation 2(1)(c) of the EIR provides that any information on plans affecting or likely to affect the elements or factors of the environment is environmental information. The plan to build a fence on a field would, in the Commissioner’s view, affect the land and the information requested in this case clearly concerns that plan.

**On the balance of probabilities, was any further information held?**

20. In cases where there is a dispute over whether all of the recorded information held by a public authority has been provided, the Commissioner will consider the issue on the “balance of probabilities”. This involves the consideration of what searches have been conducted by the authority and, where appropriate, any explanation that can be provided as to why information was not held.
21. The Council informed the Commissioner that it wished to maintain its position that it had not withheld any information from the complainant in this case. In terms of the searches undertaken, the Council explained that following the request in April, the Council considered a request from the complainant for all the information it held relating to the project. The Council asked its Building Surveyor to conduct searches for all the information it held. The Council explained that all the information held on the school fencing project was held in an electronic format. The Council supplied all of this information to the complainant. When some queries were made by the complainant, the Council asked its Building Surveyor to check again whether it held any information that had not been made available to the complainant. At this point, the Council said that its Building Surveyor explained that some of the Council’s information was currently being held on its behalf by the school. This information was subsequently obtained and provided to the complainant.
22. The Council also confirmed to the Commissioner that it is not aware of any information falling within the scope of the request has been deleted, destroyed or mislaid.
23. The Commissioner considered the Council’s response to the complainant of 25 May 2010. He notes that the Council did not indicate that any information had been withheld as part of that response. In relation to the request to know the date when the contract was signed, the Council explained why no contract had been signed in this case. The Commissioner notes that the complainant’s subsequent correspondence with the Council about the request referred to points 1 and 5 of the response. In response to point 1, the Council referred to the urgency to complete the work. This prompted queries from the complainant as to why the matter had been considered urgent. This matter does not relate to the Commissioner’s considerations on whether all of the recorded information was held. The Commissioner also notes that the complainant engaged the Council in correspondence about point 5 of its response as well. In point 5, the Council said that because of the value of the tender, no formal contract had been signed. The Commissioner understands that the complainant does not

believe that no contract was signed and he has given this aspect of the complaint particular consideration below.

24. The complainant referred to a document that had been provided to her during the course of her correspondence with the Council named "BDF102". She alleged that this document states that a contract was signed. The Council said that it had explained to the complainant that no contract had been signed in its original response. It said that it had explained to her that a formal contract is only signed in the case of projects over £50,000. It said that the appointment had been made on the basis that the contractual terms are implied. It referred to the Joint Contracts Tribunal Agreement for Minor Works Building Contract 2005 amended in accordance with Preliminary Clauses and General Conditions and said that this was the implied contract in this case. It is not signed and a copy has already been provided to the complainant. The Council disputes that the document referred to by the complainant, which the Council refers to as a "tender sheet" states that a contract was signed. The Commissioner asked the Council to provide a copy of the tender sheet in question. He notes that a column headed "target dates at inception" contained reference to a target date for a contract to be signed on 7 April 2010. The Council said that this column had been filled in automatically at the beginning of the process, as is often the case, as the same form is used whether or not a third party actually enters into a formal contract with the Council.
25. Having considered the above details, the Commissioner agrees with the Council that the tender sheet does not contain evidence that a contract was signed in this case. Furthermore, the Council has been able to explain why it was not necessary to sign a contract for the work. The Commissioner's view is that, on the balance of probabilities, the Council did not hold any further information.

### **Procedural Requirements**

26. The request was made on 22 April 2010 but the Council did not respond until 25 May 2010. This was a breach of regulation 5(2) which requires public authorities to respond to information requests within 20 working days.
27. The Council's position is that it did not hold the information requested in point 5 (the date the contract was signed). Under the EIR, when information is not held, a public authority should issue a refusal notice citing regulation 12(4)(a). As the Council did not do this in this case, it breached regulations 14(1) and 14(2).

## The Decision

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28. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the EIR:
- It provided all of the recorded information that it held to the complainant.
29. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the EIR:
- It breached regulation 5(2) for failing to respond to the request within 20 working days
  - It breached regulation 14(1) and 14(2) for failing to issue a refusal notice citing regulation 12(4)(a) in relation to point 5 of the request.

## Steps Required

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30. The Commissioner requires no steps to be taken.

## Right of Appeal

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31. 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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

32. 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.
33. 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 29<sup>th</sup> day of June 2011**

**Signed .....**

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



## Legal Annex – Environmental Information Regulations 2004

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### Regulation 2 - Interpretation

#### Regulation 2(1) In these Regulations –

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

**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;