

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 September 2013

Public Authority: Hampshire County Council

Address: The Castle
Winchester
Hampshire
SO23 8UJ

Decision (including any steps ordered)

1. The complainant has requested environmental information from Hampshire County Council (the council) to enable it to answer the questions on the Con29R property search form. It asked for this in the format accessed by council searchers. The council refused to provide some of the information in the requested format relying on regulation 6(1)(b). It also stated that in the alternative the complainant was directed to the council's paid services to provide answers to the search questions.
2. The Commissioner's decision is that the council was correct to say that regulation 6(1)(b) applied to questions 2a, 2c, 3.4, 3.5, 3.6, and 3.11. However, he finds that the council did not apply regulation 6(1)(b) appropriately in respect of questions 2b. The Commissioner also finds that the council has breached regulation 5(1) in failing to make all the requested information available on request and regulation 5(2) as it failed to make it available within the statutory time for compliance. Finally, the Commissioner finds that the council did not complete an internal review within the prescribed time frame and therefore breached regulation 11(4).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide copies of the information which has not been disclosed and which the Commissioner finds is not otherwise publically available and reasonably accessible in another form or format, specifically the information required to answer question 2b and the appropriately redacted information in respect of question 3.7.

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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. Section 3 of the Local Land Charges Act 1975 compels all local authorities to maintain a Local Land Charges Register and to provide local searches. 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. 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.
6. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority. The complainant represents a company which provides information about property and land issues.

Request and response

7. On 26 April 2012 the complainant made a request under the EIR for the following information:

"Please accept this request for the following information in relation to the property known as 53 Third Avenue Havant Hampshire PO9 2QR; for records containing the information necessary to answer question 2 (a -d), 3.2, 3.4 (a-f) 3.5, 3.6 (a-l) 3.7 and 3.11, of the CON29R form.

I request that the data be made available for my inspection in the same format as it is inspected by council searchers; preferably in electronic form, but if not it may be in any reasonable format that is easily accessible. As the process would therefore be the same as the council's process, the time within which that access should be afforded is also the same.

Please acknowledge receipt and confirm the arrangements for inspection."

8. The council responded on 29 May 2012 stating that regulation 6(1)(b) applied because the information was publically available for a fee. It

stated that it considered the charge levied for making property search information available to be a reasonable charge as specified at regulation 8. The council also provided a link to its personal search service which at the time of the request stated that the charge was £18.35. The Commissioner notes that the charge is now £18.65.

9. On 30 May 2012 the complainant disputed the council's response, and specifically queried the proposed imposition of a fee. He drew the council's attention to previous decision notices issued by the Commissioner regarding fees for property search requests.
10. The complainant chased a response to his request for an internal review on 26 June 2012, 20 August 2012 and 3 September 2012.
11. The council provided the outcome of its internal review on 23 October 2012. It stated in relation to each of the Con29 questions whether the information was publically available, and where it could be accessed. It therefore relied on regulation 6(1)(b) and regulation 8 in relation to questions 2a, 2b, 2c, 3.4, 3.5, 3.6 and 3.11.
12. With regard to question 2d, the council stated that it did not adopt frontages without reclaiming costs, and therefore it did not hold any information.
13. In relation to questions 3.2 the council stated that the information was not publically available and that council officers in the Highways Asset Information Team use their knowledge, skill and judgement to decide whether to call up documents in order to answer Con29 questions.
14. Finally with regard to question 3.7 it stated that the council did not hold information in respect of question 3.7(a-d) and (f), but that it did hold highway notices but these were excepted from disclosure as they were considered personal data.
15. It stated that it therefore considered that regulation 12(4)(b) applied to the request as it would be manifestly unreasonable to take officers away from their day to day tasks in order to undertake the time consuming tasks of using their knowledge and skill to locate, identify, retrieve, call up and redact the requested information.

Scope of the case

16. The complainant contacted the Commissioner on 4 December 2012 to complain about the way his request for information had been handled. He was concerned about the time it had taken the council to respond to his request and conduct an internal review. He was also concerned

about the decision to refuse to allow inspection of the information held and that the fee cited was excessive and unlawful.

17. Further to this, during the course of the Commissioner's investigation, the council provided the complainant with access to additional online and hard copy information which it considered was publically available and reasonably accessible. The complainant continues to dispute that the format in which the information is publically available for inspection is sufficient to answer the Con29 question. In respect of question 2d, the complainant has not disputed that this information is not held and therefore the Commissioner has removed this from the scope of his request.
18. The Commissioner considers the scope of this investigation to be to determine whether the council has complied with the EIR in its responses to the request.

Reasons for decision

Regulation 6

19. 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, in accordance with regulation 6(1)(a), it is reasonable to make the information available in another format, or, in accordance with regulation 6(1)(b) the information is already publicly available in another format that is easily accessible to the complainant.
20. The council's final position in respect of this request is that the information is publically available through various inspection facilities, or else it is accessible using the paid search service. The Commissioner therefore considers that the council is relying on regulation 6(1)(b) as it is stating that the information is publically available and reasonably accessible to the complainant.
21. The complainant disputes that the information the council has directed him to is sufficient to answer the Con29 questions. Therefore the Commissioner will consider in respect of each question whether the publically available information the council has directed the complainant to provides the requested information.

22. With regard to question 2a the council provided the complainant with a link to its online database of roads maintainable at public expense. The Commissioner has viewed this in respect of the specific property and is satisfied that it provides sufficient information to answer the question in that a search of a particular road will return a result if it is publically maintained. The council states that the information used by council searchers is the GIS system which is not suitable for publication. However, the publically available information the council has directed the complainant to in respect of question 2a is reasonably accessible, and therefore the Commissioner accepts that regulation 6(1)(b) applies.
23. In response to question 2b the council initially explained that the council searchers have access to the highway engineers' working spreadsheet which is a working document for internal use. It also stated that information relating to maintainable highways is also located in section 38 agreements. The council does not hold all section 38 agreements as those entered into prior to 2005 are held by district councils. Further to this it has explained that they generally have no reference to final street names and held according to site/location in deed packets that may contain the deeds to a number of different developments. During the Commissioner's investigation, the council made a hard copy list of section 38 agreements available. As the information is not held in relation to street name, the council informed the complainant that he would need to determine which development site includes the relevant street. It advised that the local council could confirm this.
24. The Commissioner has considered the fact that the council has acknowledged that the information it has provided for inspection is not necessarily easily searchable unless the requester makes further enquiries with another public authority with regard to the development to which the named street relates. As the council has stated that it considers that regulation 6(1)(b) is engaged as the information is publically available and reasonably accessible to the applicant, the Commissioner has assessed whether the information in the format specified by the council is indeed reasonably accessible. In its most recent response to the Commissioner in respect of this matter, the council acknowledged the desirability of making section 38 agreements available online, but stated that it does not currently have the resources to do so. Given that the information is manually held, arranged chronologically according to date of entry of the deed, is listed by development rather than street name and it is likely that the requester would need to make further enquiries with third parties to determine which is the relevant development, then the Commissioner considers that it is not reasonably accessible and publically available, and therefore that the council was incorrect to rely on regulation 6(1)(b) in respect of question 2b.

25. In relation to question 2c the council's response is that the information is held in its minute books which are held in the Hampshire Records Office. However it has also advised that there is a list of prospectively maintainable highways available for inspection at the main reception. The Commissioner has viewed a sample of this information and is satisfied that it is publically available and reasonably accessible and therefore that the council was correct to rely on regulation 6(1)(b) in not providing the information in the form and format accessed by council officers.
26. In considering the response to question 3.2 the Commissioner notes that the council has provided the complainant with access to a spreadsheet which is organised into districts. The council has explained that this spreadsheet is the same as that used by council officers, with the only further element required to provide an answer being the input of the council's staff. As this information is in the same format as used by council searchers, the Commissioner is of the view that the response to this question complies with the complainant's request.
27. Turning now to question 3.4, the council's response to the complainant was to direct him to the pages of its website containing the Hampshire Local Transport Plan 2011-2031. The page contains links to various documents relating to the transport plan and links to the town access plans for the county's borough and district councils. Information relating to road schemes within 200 metres of the property in Havant is contained within the Havant Transport Statement.
28. As the complainant specified that he required the information in the same format as accessed by council searchers, the council explained that council officers use an internal tracking document which is not suitable for disclosure or publication in its current form as it contains details of resources deployed on the scheme, progress reports, project milestones and cost information. However, the council has stated that the information contained within the tracking document in relation to the existence of road schemes is the same as that which is contained in the town access plans, the transport plan and the transport statements contained on the website.
29. The Commissioner acknowledges that there is a degree of searching required to locate the information to answer question 3.4 in relation to a specific property. However, he found that a simple "ctrl F" search of the relevant documents for the names of roads in close proximity to the property directed him to the relevant pages to enable him to answer the questions.
30. The Commissioner considers that the documents which the council has directed the complainant to provide access to information to answer

question 3.4. Therefore the information is already publically available and easily accessible to the applicant and therefore the council has correctly applied regulation 6(1)(b) to this information and is not obliged to make the information available to the applicant in the form and format specified.

31. In response to question 3.5, the council again directed the complainant to a website containing easily accessible publically available information. The webpage in question is a specific page of Network Rail's website and contains information about its Route Utilisation Strategies. Question 3.5 very specifically asks for information about whether the property is within 200 metres of a proposed railway, tramway, light railway or monorail. The council has explained in its response to the Commissioner that there have been no such schemes in Hampshire for many years and that there have been no notifications of any such schemes within the working experience of the current officers. In any case, it is clear from the Network Rail information that there are no new rail schemes planned within the proximity of the Havant property.
32. With regard to the request for the information in the form and format used by council officers, the council again explained that it uses the internal tracking document which it considers is unsuitable for publication, but as mentioned in paragraph 30, it has also stated that it is aware that there have not been any railway schemes in Hampshire in recent times. Again the Commissioner considers that the documents the council has directed the complainant to provide sufficient information to answer the question by doing a simple "ctrl F" search for the town of Havant and the nearby road names. Again therefore the Commissioner finds that the council was correct to rely on regulation 6(1)(b) in respect of question 3.5.
33. The council has confirmed to the Commissioner that the information that is now publically available in respect of questions 3.6 is the same as that accessed and used by the council searchers when they compile answers to the Con29 questions in response to a paid property search. The information used to answer question 3.6 is a page of the council's website containing the Hampshire Local Transport Plan 2011-2031 in addition to the public notices section of the council's website.
34. As the information in respect of questions 3.6 is publically available in the same format as is accessed by the council officers, the Commissioner considers that the information has been provided to the complainant in the format he specified, ie that used by council searchers. The Commissioner therefore considers that the information has been provided in the form and format specified by the requester and the council has complied with regulation 6(1) in respect of question 3.6.

35. With regard to question 3.7, which asks for outstanding notices in relation to the specified property, the council initially informed the complainant that it was not able to disclose or publish the notices as they contain specific information about individuals. However, it did not state that it was relying on any exception in relation to this. The council has since acknowledged that in order to avoid breaching the Data Protection Act 1998 it can now provide redacted versions of the notices for inspection. As the council did not initially make this information available for inspection in the form and format requested by the complainant, or confirm that the information was otherwise publically available and reasonably accessible, the Commissioner finds that the council failed to comply with regulation 5(2) which provides that information must be made available within 20 working days of the request.
36. With regard to question 3.11 the council has also confirmed that the information which is both publically available is the same as that used by council searchers. The format in which it is accessible to the public is a printed list of all CPOs. The council has confirmed that the available list is the same as that held in the council's record management system. It advised that the council searchers use their expertise in order to locate relevant information to a property search query from these records.
37. As with question 3.6, the Commissioner considers that as the council has provided the information in the same format as accessed by council searchers in respect of 3.11, it has complied with regulation 6(1).
38. In conclusion, the Commissioner finds that regulation 6(1)(b) was applied correctly to questions 2a, 2c, 3.4, 3.5, 3.6, and 3.11. However, he finds that the council did not respond in accordance with the EIR in respect of questions 2b and 3.7.

Regulation 5(2)

39. 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.
40. The complainant made his request on 26 April 2012 but was not provided with access to all the information required to answer the questions within 20 working days, particularly with regard to the information in respect of question 3.7 which as referred to in paragraph 35 has yet to be provided.

Regulation 11(4)

41. Regulation 11 provides applicants with a right to “make representations” to a public authority if it appears to them that the authority has failed to comply with the EIR in respect of a request for environmental information.
42. On 30 May 2012, the complainant wrote to the council formally requesting an internal review of the council’s response.
43. Regulation 11(4) requires a public authority in receipt of representations from an applicant to consider the grounds of the review and notify the applicant of its decision as soon as possible and no later than 40 working days after the date of receipt. As the council did not provide a substantive response to the complainant’s internal review request of 30 May 2012 until 23 October 2012, the Commissioner finds that the council has failed to comply with regulation 11(4).

Other matters

44. The Commissioner notes that whilst he has found that for the most part the council complied with regulation 6(1)(b) in making the requested information available to the complainant, it has also referred to its paid property search service in its responses. In this particular case, it has not been necessary to consider the charges as all the information in question is or will be publically available. However, the Commissioner wishes to make it clear that in line with the recent First-tier Tribunal – Information Rights decision *Leeds City Council v Information Commissioner*, costs which can be charged in line with regulation 8(3) of the EIR must be of a reasonable amount. The Tribunal specifically stated that cost should be construed narrowly so as only to apply to the cost of making the information available, it also stated that public authorities cannot charge for staff time in locating, retrieving or redacting the requested information.
45. The fee which Leeds City Council sought to charge in those cases was £22.50, which the Commissioner and the Tribunal concluded was unreasonable and in breach of regulation 8(3). The fee which Hampshire County Council charges is £18.65 and the Commissioner therefore wishes to ensure that the council is aware of the Leeds City Council Tribunal decision in its future responses to requests for information in respect of Con29 questions.

Right of appeal

46. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

47. 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.
48. 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

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