

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 13 October 2014

Public Authority: Thurrock Council

Address: Civic Offices

New Road

Grays

Essex

RM17 6SL

Decision (including any steps ordered)

1. The complainant requested information about specific types of land and buildings from Thurrock Council (the Council). The Council originally stated that this information could be obtained through Local Land Charges enquiries, specifically the Con29 searches, and so was exempt under section 21 of the Freedom of Information Act 2000 (the Act) as the information was reasonably accessible to the complainant through other means.
2. During the course of the Commissioner's investigation the Council altered its position. It stated that some of the information was available for inspection at its offices and the remainder was available through its Environment Department. No information was disclosed to the complainant.
3. The Commissioner's decision is that the Council has incorrectly handled the complainant's request. The request should have been considered under the EIR rather than under the Act. Further, the complainant never asked to inspect the information, only to have it provided to him.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Respond to the request in accordance with the regulations of the EIR either by providing copies of the requested information in

accordance with the Commissioner's guidance on charging for property search information, or by issuing a valid refusal notice.

5. 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.

Request and response

6. On 14 November 2013, the complainant wrote to the Council and requested information in the following terms:

"Could you please answer the following:

1. *Are there any sites entered on your Contaminated Land Register?*
2. *If there are, can you please provide a copy of the register entry?*
3. *Is any of the land within your area registered as common land or town or village green under the Commons Registration Act 1965 or the Commons Act 2006?*
4. *Has any enforceable order or decision been made to compulsory purchase or acquire any property within your area?*
5. *If yes, please advise which addresses.*
6. *Does your authority maintain a list of 'Locally Listed Buildings'?*
7. *If yes, please could you provide a copy?*
8. *Is there any land within the authority which is included in 'land for public purpose'?*
9. *If there is, can you please provide details?*
10. *Is there any land to be acquired for road works?*
11. *If there is, can you please provide details?"*

7. The Council responded on 26 November 2013 and refused the request. In its refusal notice it stated that the information was available to the complainant through other means. Specifically, it stated that the information could be obtained through Con29 property searches, for which there would be a charge.
8. Following an internal review the Council wrote to the complainant on 18 December 2013. It upheld the original decision to refuse the request.
9. This position was altered by the Council during the Commissioner's investigation after the Commissioner wrote to the Council and stated his

view on charging for environmental information under the terms of the EIR. On 2 July 2014 the Council wrote to the complainant and stated that the information could be viewed at its premises, or was "available" through its Environment Department.

Scope of the case

10. The complainant contacted the Commissioner on 21 February 2014 to complain about the way his request for information had been handled. This appeal took place after the internal review but before the Council altered its position on 2 July 2014.
11. The original appeal was that the Council charges were excessive and not in keeping with the provisions of the EIR. However, due to the change in the Council's position the Commissioner considers the scope of the request to be whether the Council fulfilled its obligations under the EIR by stating to the complainant that the information was available for inspection at its offices.

Reasons for decision

Is the information environmental?

12. Whilst the Council originally handled the request under the terms of the Act, the Commissioner considers that the request should have been handled under the provisions of the EIR.
13. Within the EIR, the definition of environmental information is outlined at regulation 2 (Commissioner's emphasis):

"(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;*

...

*(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;*"

14. The Commissioner considers that items 1 – 3 and 8 – 11 of the request come under the definition stipulated at regulation 2(1)(a), as the information relates to land. Items 4 - 7 are considered to meet the definition under regulation 2(1)(c), as the information relates to measures taken that will have an impact upon the land. Therefore, the Commissioner will base his decision on the provisions of the EIR rather than the Act.

Commissioner's view of the Council's position

15. Regulation 6(1) of the EIR states that (Commissioner's emphasis):

*"(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."

16. In the Council's initial response to the Commissioner it stated that it would maintain its refusal of the request, and instead of using section 21 of the Act it would rely on regulation 6(1)(b) of the EIR. This regulation states that information does not need to be made available if it is already publicly available and easily accessible to the applicant. The Council stated that the information could be obtained via a Local Land Charge Search, specifically a Con29, which was available through its website. As the complainant had submitted his request electronically it follows that he has access to the internet and could easily access the Council's website.
17. As previously mentioned, the Council altered its position after the Commissioner wrote to the Council to provide his view on its response to the request. This new response stated that the information could be made available for inspection through its offices. As the complainant asked for copies of the information in his requests rather than the chance of inspection it would need to be demonstrated that this new response from the Council either met with regulation 6(1)(a) or 6(1)(b).

18. The Commissioner's view of this new response is that it does not meet the requirements of either regulation 6(1)(a) or 6(1)(b). Regarding 6(1)(a), the Council is perfectly capable of providing copies of the information requested and does so through its Con29 land searches service. Regarding 6(1)(b), the Council has not made the information easily accessible to the complainant as there is a considerable distance between where he is based and the Council's offices. The complainant confirmed to the Commissioner that he still wants copies and is not interested in travelling the long distance to the Council's offices. Therefore, neither regulation 6(1)(a) or 6(1)(b) apply and the Council must issue a response to the complainant again and provide the information or issue a valid refusal notice confirming why the information can be withheld.
19. The Commissioner notes that in its initial refusal notice the Council referred the complainant to the local land charges page of its website which offers Con29 searches for a fee.¹ The Commissioner would remind the Council of his guidance on this subject,² which states that the legislation behind the Con29 searches "cannot be used as the basis for charging for access to environmental information and public authorities must adopt the charging provisions in the EIR." Instead, the Council can only cover the cost of disbursement for requests made under the EIR for information about property searches.

¹ <https://www.thurrock.gov.uk/local-land-charges/fees-and-charges>

²

[http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental info reg/Practical application/property-searches-and-eir.pdf](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental%20info%20reg/Practical%20application/property-searches-and-eir.pdf)

Right of appeal

20. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

21. 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.
22. 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

Alexander Ganotis
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