

Freedom of Information Act 2000 ('FOIA')
Environmental Information Regulations 2004 ('EIR')
Decision notice

Date: 20 May 2015

Public Authority: Cherwell District Council
Address: Bodicote House
Bodicote
Banbury
Oxfordshire
OX15 4AA

Decision (including any steps ordered)

1. The complainant has requested details of any planning history for a specific property prior to online records. The Commissioner's decision is that Cherwell District Council was correct to refuse to provide the information under Regulation 6(1)(b) of the EIR as the information is already publicly available and easily accessible to the complainant in another form or format. He does not require any steps to be taken to comply with the legislation.

Request and response

2. On 26 January 2015, the complainant wrote to Cherwell District Council ('the council') and requested information in the following terms:

"Could you please provide details of any planning history you hold for the above property prior to the online records? I would like the reference numbers of any applications, the description, the decision and the date of the decision.

Please provide this information by email. Please note that your offices are not easily accessible to me as it would be approximately a six hour round trip."

3. The council responded on the same day and refused to provide the requested information under Regulations 6(1) and 12(4)(b) of the EIR.
4. The council provided an internal review on 16 February 2015 in which it maintained its original position.

Scope of the case

5. The complainant contacted the Commissioner on 16 February 2015 to complain about the way her request for information had been handled.
6. The Commissioner has considered whether the council was correct to refuse to provide the information on the basis that Regulation 6(1) applies as the information is already publicly available and easily accessible to the applicant in another form or format.
7. Having found that Regulation 6(1)(b) applies in this case, the Commissioner has not deemed it necessary to consider the application of the exception at Regulation 12(4)(b).

Reasons for decision

Regulation 6 – Form and format of the information

8. Regulation 6(1) states that;

"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."

9. The Commissioner considers that the use of the phrase 'particular form or format' means that a requester may specify not only the physical form but also how the information is configured or arranged within that form, i.e. the format. For example, in relation to electronic information

the term 'format' is generally used to refer to a file type, such as PDF or Microsoft Excel or CSV, and so a requester may express a preference for one of these formats. In this instance, the complainant has requested the information by email.

10. The Commissioner's guidance on Regulation 6¹ states that the EIR Code of Practice² explains why a preference for a particular format must be considered:

"A public authority should be flexible, as far as is reasonable, with respect to form and format, taking into account the fact, for example, that some IT users may not be able to read attachments in certain formats, and that some members of the public may prefer paper to electronic copies." (Paragraph 22)

11. However, the duty to make the requested information available in the preferred form or format is not an absolute one. It is qualified by regulations 6(1)(a) and 6(1)(b) in that a public authority does not have to meet the requester's preference if either it is reasonable for it to make the information available in another form or format or the information is already publicly available and easily accessible to the applicant.
12. Although the council hasn't specifically cited which subsection of Regulation 6(1) it is relying on, it has clearly stated that it considers the requested information to be already publicly available and easily accessible to the applicant in another form, therefore the Commissioner considers that Regulation 6(1)(b) is appropriate.
13. In the internal review request, the complainant said that the council has advised that the records are computerised within its offices and therefore the information should be quick and easy for staff to extract and forward by email. The Commissioner does not consider this point to be relevant when assessing whether the information is already publicly available and easily accessible to the applicant.
14. The council explained that its Public Access System, which has been available since at least 2008, allows online access to all planning

¹ <https://ico.org.uk/media/for-organisations/documents/1639/form-and-format-of-information-eir-guidance.pdf>

² Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 no 3391) issued by DEFRA

application documentation dating back to 1995 via the Council's website. It is routinely updated to ensure the most recent information continues to be available.

15. It further explained that all planning application documentation for the period 1990-1994 together with decision notices for the period 1948-1989 are available electronically but can only be accessed through the council's Iclipse Document Management System via self-service terminals provided at its offices in Bodicote, Banbury, Bicester and Kidlington. Its planning application documentation for the period 1948-1989 is held on microfiche and can be accessed at Bodicote House where a microfiche viewer is available for public use.
16. The Commissioner notes that the council's initial response informed the complainant that information from 1995 to date can be accessed via its Public Access Service on its website and that older records are readily available and free to access at the council's offices.
17. The council confirmed that it has taken into account the particular circumstances of the complainant when deciding whether access is easily available. It said that the complainant is an officer or employee of Pali Limited whose business is the 'supply of conveyancing searches and other property related reports anywhere in England and Wales to property professionals' (quote taken from Pali Limited's website). The council acknowledges that it would be impractical for an individual to drive for 6 hours to obtain the requested information but said that it is aware that, for this reason, it is normal practice for search companies to make use of local agents to attend offices of local authorities around the country to carry out searches on their behalf. It said that such appointments involve the agent interrogating not only the council's planning application databases but also the various other databases relevant to the questions that are included on the CON 29 enquiry form and that during the last 6 months the council has had an average of 40 personal search appointments each week.
18. The council further explained that it has invested both time and money in ensuring that planning information is made publicly accessible at each of its offices but budget constraints and resources prevent it from being able to place all information onto its online system. It said that, taking into account the normal practices of personal search companies to date, it considers that the information is easily accessible to Pali Limited albeit through an agent appointed to act on their behalf.
19. The Commissioner is of the view that information is easily accessible if a public authority is able to direct the applicant to where they can locate the same information that has been requested. The public authority has to be able to be reasonably specific as to the location of the information

to ensure that it is found without difficulty and not hidden within a mass of other information. The Commissioner has visited the council's website and was able to easily navigate to its Public Access System and to information contained within that system regarding the property referenced by the complainant.

20. The Commissioner asked the council for it to provide details if the requested information is available via its publication scheme. The council did not respond to this specific point. However, the Commissioner notes that a publication scheme search can be carried out on its website³ and when 'planning' is entered as the keyword, a document entitled 'Access to Planning Information'⁴ is available which includes the following statement:

"As a primary data source for information of this nature, this Council maintains historic registers and records, the more recent (post 1995) of which is readily available for free self service access via the Council's website at

<http://cherweb.cherwell-dc.gov.uk/publicaccess/>

Older data is readily available and free to access via the Council's electronic document management system and paper/microfiche files are accessible on request at our offices."

21. The Commissioner's general view is that information will be reasonably accessible to the applicant, irrespective of their individual circumstances, if it is included in the public authority's publication scheme.
22. Given all of the above, the Commissioner considers that the council's provision of the information from 1995 on its website, and the information prior to 1995 at its offices, and by virtue of it being included in its publication scheme, means that it is publicly available and easily accessible to this particular applicant. He has taken into consideration the complainant's statement that she would have to make a six hour round trip to the council office's to view the information but he does not consider that this prevents the information being easily accessible. He also notes that the council has explained to the complainant how she can access it.

³ <http://www.cherwell.gov.uk/index.cfm>

⁴ http://www.cherwell.gov.uk/utilities/action/act_download.cfm?mediaid=9940

23. The Commissioner therefore considers that regulation 6(1)(b) of the EIR applies and the council is not required to make the information available in the form and format requested.

Local Land Charges Search

24. The council explained, by way of background to this complaint, that the information requested is that which is usually provided in relation to a Local Land Charges Search via the Law Society's standard enquiry form CON 29. It said that the Land Charges Team provides a service whereby the information requested in this case can be provided within three working days of receipt of an application and that an appropriate charge is made for the provision of this service.

25. For information on this issue, the Commissioner would like to draw attention to the following paragraphs of his guidance on 'Property searches and the EIR'⁵:

"When a local authority is asked to complete and guarantee the content of a CON29 form, we accept that this involves more than simply providing access to environmental information as required by the EIR. Because of this, the charging provisions in the EIR will not apply and local authorities are able to use the CPSR charging regime.

When a local authority is asked to provide access to underlying environmental information, so that a third party can answer the questions in the CON29 form themselves, the charging provisions in the EIR rather than the CPSR will apply."

26. Further information can also be found in the Commissioner's guidance on 'Charging for environmental information (regulation 8)'⁶.

⁵ <https://ico.org.uk/media/for-organisations/documents/1612/property-searches-and-eir.pdf>

⁶ <https://ico.org.uk/media/for-organisations/documents/1627/charging-for-environmental-information-reg8.pdf>

Right of appeal

27. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

28. 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.
29. 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
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SK9 5AF