

THIS IS AN IMPORTANT DOCUMENT. IT AFFECTS YOU.
PLEASE READ IT CAREFULLY

FREEDOM OF INFORMATION ACT 2000
SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE
Dated 16 October 2003

To: The Chief Executive
Allerdale Borough Council

Of: Allerdale House
Workington
Cumbria
CA14 3YJ

1. Allerdale Borough Council (the "Council") is a public authority for the purposes of the Act pursuant to section 3(1)(a) and paragraph 7(a) Part II Schedule 1 to the Act.
2. Section 19(1)(a) of Part I of the Act provides that:

It shall be the duty of every public authority to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Commissioner (in this Act referred to as a "publication scheme").
3. Section 19(1) of the Act came into force on 28 February 2003 for those public authorities listed in Part II Schedule 1 of the Freedom of Information Act 2000 (Commencement No.2) Order 2002 (the "Order"). The Council is included in Part II Schedule 1 of the Order by virtue of it being "a Local authority within the meaning of the Local Government Act 1972, namely – (a) in England, a county council, a London borough council, a district council or a parish council.
4. The Freedom of Information Act 2000 (the "Act") contains enforcement provisions at Part IV which are exercisable by the Information Commissioner (the "Commissioner"). Section 52 of the Act requires that before considering supervisory action, the Commissioner must be satisfied that a public authority has failed to comply with any of the requirements of Part I of the Act.
5. In August 2002 a mailing was sent to all local authorities, including the Council, explaining their obligations under the Act and advising that the

Council would be required to adopt a Publication Scheme, approved by the Commissioner, by 28 February 2003.

6. The Council failed to meet the deadline of 28 February 2003. A letter was sent to the Chief Executive of the Council explaining the above. A reminder letter was sent by the legal department to the Council's Chief Executive on 8 July 03. On 30 July 03, a letter was received from the Borough Solicitor, NJL Fardon, stating that on his return from holiday he would hopefully be in a position to let the Commissioner have the detailed "Scheme".
7. The Commissioner served a Preliminary Notice on the Chief Executive of the Council on 08 August 2003 allowing him 28 days to make written representations as to why the Commissioner should not serve an Enforcement Notice requiring the Council to submit a Publication Scheme within 28 days of such Notice. Although the Commissioner received an email from the Council's executive assistant confirming that the Council had received the Preliminary Notice, to date, no written representations or Publication Scheme have been received from the Council.
8. The Commissioner is satisfied that the Council has failed to comply with section 19 (1)(a) of Part I of the Act.
9. In view of the matters referred to above, the Commissioner hereby gives notice that in exercise of his powers under Section 52 of the Act he requires the Council to submit a Publication Scheme to the Commissioner for his approval within 28 days of this Notice.

Right of Appeal

There is a right of appeal against this Notice to the Information Tribunal. Information about appeals is set out in the attached Annex 1.

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Notice is served. If the Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Dated this ^{16th} ~~6th~~ day of October 2003

Signed: ..

Richard Thomas
Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

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ANNEX 1

FREEDOM OF INFORMATION ACT 2000

RIGHT OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 57 of the Freedom of Information Act 2000 gives any public authority upon whom an Enforcement Notice has been served a right of appeal to the Information Tribunal against the notice.
2. If you decide to appeal and if the Tribunal considers:-
 - (a) that the notice against which the appeal is brought is not in accordance with the law; or
 - (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.
3. You may bring an appeal by serving a notice of appeal on the Secretary to the Information Tribunal, Freedom of Information and Data Protection Division, Department for Constitutional Affairs, 4th Floor, MWB Business Exchange, 10 Greycoat Place, London, SW1P 1SB.
 - (a) The notice of appeal must be served on the Tribunal within 28 days of the date on which notice of the Commissioner's decision was served on or given to you.
 - (b) If your notice of appeal is late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.
 - (c) If you send your notice of appeal by post to the Tribunal, either in a registered letter or by the recorded delivery service, it will be treated as having been served on the Tribunal on the date on which it is received for dispatch by the Post Office.
4. The notice of appeal should state:-
 - (a) your name and address;
 - (b) the decision which you are disputing and the date on which notice of the decision was served on or given to you;
 - (c) the grounds of your appeal;

- (d) whether you consider that you are likely to wish a hearing to be held by the Tribunal or not;
- (e) if you have exceeded the 28 day time limit mentioned above the special circumstances which you consider justify the acceptance of your notice of appeal by the Tribunal; and
- (f) an address for service of notices and other documents on you

In addition, a notice of appeal may include a request for an early hearing of the appeal and the reasons for that request.

- 5. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.
- 6. The statutory provisions concerning appeals to the Information Tribunal are contained in sections 57 to 61 of, and Schedule 4 to, the Freedom of Information Act 2000, Schedule 6 to the Data Protection Act 1998 and the Data Protection Tribunal (Enforcement Appeals) Rules 2000 (Statutory Instrument 2000, No. 189).