

Environmental Information Regulations 2004 Freedom of Information Act 2000

Decision Notice

Date 3 May 2007

Public Authority: South Gloucestershire Council
Address: Council Offices
Castle Street
Thornbury
BS35 1HF

Summary

The complainant submitted two requests for information in relation to a planning application. The public authority provided some information in response and further information following the Commissioner's intervention. The Commissioner is now satisfied that the public authority has provided all the information it held. However, the public authority did not confirm or deny whether it held the information in relation to one element of one request within the 20 working days permitted. In addition, the public authority did not provide the information in relation to the other request within the 20 working days permitted.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act").
2. The Environmental Information Regulations (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 Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.
3. This Notice sets out his decision in relation to both the Act and the EIR.

The Request

4. This Decision Notice relates to two requests for information as outlined below.

Request 1

5. On 21 February 2005, the complainant requested the following information in relation to building works carried out on her neighbour's property:
 - a) "a copy of the missing structural calculations pages e.g.:
 - Made by CM page 1 and 2 client copy,
 - All made by CM L.A. copy pages"
 - b) "a copy of the relevant part of BRE 251 regarding crack sizes"
 - c) "a copy of [name redacted]'s Completion of Work Notice"
 - d) "your advice as to the specification of the door between [name redacted]'s garage and kitchen"
6. On 10 March 2005, the public authority responded to the complainant with the following information:
 - a) "Pages 1 & 2 of the calculations have already been provided (Pages 98 &99)"
 - b) "A copy of the BRE Report can be obtained direct from BRE at [contact details redacted]"
 - c) "Already provided"
 - d) "The general description of works, Internal Alterations, accurately describes the works carried out. The door fitted on site would have been inspected and verified on site as being satisfactory."

Request 2

7. On 22 March 2005, the complainant requested the following information:

"a copy of the documentation/planning permission relating to the application for approval of reserved matters for the original development, of which our properties form a part, together with copies of any supporting plans/documentation."
8. The public authority responded in a letter of 3 February 2006, stating that it was enclosing a copy of the 'Approval of Details of Development' dated 11 December 1975.

The Investigation

Scope of the case

9. On 23 December 2005 the complainant contacted the Commissioner to complain about the way their request for information had been handled. On 26 June 2006 the Commissioner wrote to the complainant to inform them that he understood their complaint to relate to the following:
 - the information had not been provided in response to elements a, b and c of the request of 21 February 2005 (as outlined at paragraph 3 above)
10. The complainant wrote to the Commissioner on 14 July 2006 stating that they wished to raise further aspects of complaint. The Commissioner asked the complainant for clarification on 18 July 2006 and received a response on 27 September 2006. It appeared to the Commissioner that the complainant no longer wished to complain about elements b and c of the request of 21 February 2005, but wished to complain about elements a and d of that request. It also appeared to the Commissioner that the complainant wished to complain about the request of 22 March 2005.
11. As a result, the Commissioner wrote to the complainant on 6 October 2006 to inform them that the investigation would now focus on the three aspects of complaint outlined as follows:

Complaint A

12. Firstly, the Commissioner would investigate whether there was further information to be provided in relation to element a of request 1.

Complaint B

13. Secondly, the Commissioner would investigate whether there was further information to be provided in relation to element d of request 1.

Complaint C

14. Thirdly, the Commissioner would investigate whether there was further information to be provided in relation to request 2.

Environmental Information

15. The Commissioner has treated request 2 as a request for environmental information as it is information on a planning application. A planning application is a measure which would affect or be likely to affect the state of the elements of the environment, specifically land. As such, the information fits within the definition of environmental information under Regulation 2(1)(c)¹ in the EIR.

¹ See legal annex for relevant extract of legislation

Chronology

24 October 2006

16. The Commissioner wrote to the public authority on 24 October 2006 to ask for the following information on the three aspects of complaint.

Complaint A) Structural calculations (Element a of 21 February 2005 request)

17. The complainant had put forward the argument that the four pages of structural calculations they had been provided with in response to this element of the request did not all come from the same report as submitted by the engineering consulting company, Murray Consulting. They also queried why some of the pages have 'client copy' printed on them and some have 'LA copy' printed on them. The Commissioner wrote to the public authority asking for a response to the potential discrepancy between the pages of structural calculations.

Complaint B) Advice as to the specification of the door (Element d of 21 February 2005 request)

18. The Commissioner wrote to the public authority to ask whether it held any recorded information in response to this element of the request and, if not held, provide details of its searches for the information. The Commissioner also asked the public authority to comment on the complainant's argument that the public authority must know the specifications of the door as the public authority has confirmed that the door is covered by the Completion Certificate.

Complaint C) Reserved matters (Request of 22 March 2005)

19. The complainant raised three specific points as to why they believed further information was held, as follows:
- No planning applications have been provided regarding any of the reserved matters
 - There are no drawings showing the approved official design/layout
 - There are no drawings showing the approved external appearance of the property
20. The Commissioner put the three points outlined at paragraph 17 above to the public authority and asked it to provide details of its searches for the information.

Analysis

Complaint A) Structural calculations (Element a of the 21 February 2005 request)

21. In the relevant enclosure to their initial complaint letter to the Commissioner dated 23 December 2005, the complainant acknowledged that they had already been provided with the report containing the structural calculations prior to their request

of 21 February 2005. Therefore, this element of the request of 21 February 2005 is in fact a request for any missing information in the structural calculations.

22. The public authority explained in its letter of 20 November 2006 that the report was not produced as a single document and is in fact made up of word processed, handwritten and specialist software produced documents. The seven pages of the consultant's report are numbered pages 95 to 101 as part of the public authority's own numbering convention. The following is an extract from the public authority's response to the Commissioner in relation to this aspect of the complaint:

- "Page reference 95 is the cover sheet of the report - it appears to have been produced as a 'word' type document.
- Page reference 96 is an extract from the architects drawing for the project. The structural engineer has annotated it by hand. Its purpose is to provide a pictorial summary of the structural work proposed.
- Page reference 98 and 99 are 'Word' type documents produced by the structural engineer to indicate the structural loadings to be input into the structural calculations.
- Pages reference 100 and 101 are the actual calculations, these together with the summary sheet (page reference 97) have been produced by the structural engineer using a specialist software package (in this case it would appear to be 'Superbeam 4')

23. The public authority has stated that it cannot explain why some of the pages of the report have 'client copy' printed on them and some have 'LA copy' printed on them. The public authority has presumed that the structural engineer had mixed up his copies before sending them to the client and the public authority. The public authority has stated that the structural calculations are a complete set and the only set received.

24. The Commissioner is satisfied that the public authority has provided all the information it held in response to this request.

Complaint B) Advice as to the specification of the door (Element d of 21 February 2005 request)

25. The public authority provided the following response on 10 March 2005:

"The general description of works, Internal Alterations, accurately describes the works carried out. The door fitted on site would have been inspected and verified on site as being satisfactory."

26. It should be noted that the response above does not give a definitive answer as to whether information is held on this element of the request. Therefore, the Commissioner wrote to the public authority to ask whether information was held.

27. The public authority has explained that the door in question was fitted between the kitchen and garage of [address redacted], as part of the internal alteration works carried out under the Building Regulations notice application reference BK02/3290/BN. The door would have been required to be a fire resistant type under the provisions of the Building Regulations 2000 and as such would have been inspected. The public authority has stated that the issuing of a Building Regulations final inspection certificate means that the door met the requirements of the Regulations. It has explained that it has never held any information on advice as to the specification of the door and has no legal obligation to hold this information.
28. The Commissioner is satisfied that there is no information held by the public authority in response to this element of the request. In its response to this element of the request, the public authority should have informed the complainant that no information was held.
29. Whilst this Decision Notice confirms the Commissioner's opinion that the public authority holds no information on this element, it should be pointed out that the public authority did not previously inform the complainant whether it held information in response to this specific area of the request. However, the Commissioner does not consider that there is any useful purpose in requiring the public authority to communicate this to the complainant now.

Complaint C) Reserved matters (Request of 22 March 2005)

30. The public authority initially provided information in response to this request on 3 February 2006 and the complainant forwarded this information to the Commissioner on 21 February 2006.
31. The public authority informed the Commissioner that, following the Commissioner's letter of 24 October 2005, it had conducted a further search for information on the reserved matters from its microfiche records. This search resulted in further information being retrieved, which the public authority enclosed with its response to the Commissioner of 20 November 2006. The Commissioner forwarded this information to the complainant on 4 December 2006.
32. The complainant wrote to the Commissioner on 9 January 2007 to state that they had received "no further information whatsoever relating to the 'reserved matters'" from the public authority or the Commissioner. To ensure completeness, the Commissioner, on 20 February 2007, forwarded the information the public authority had provided to the complainant on 3 February 2006 (outlined at paragraph 21 above) and the information he had initially forwarded to the complainant on 4 December 2006 (outlined at paragraph 22 above).
33. The Commissioner is satisfied that the public authority has, via the Commissioner, provided all the information it held to the complainant in response to this request, but this was not done within the time permitted under the Act.

The Decision

34. The Commissioner's decision is:

- that the public authority has dealt with the request for information, the subject of complaints A and B, in accordance with section 1(1) of the Act by providing all the information it held
- that the public authority has dealt with the request for information, the subject of complaint C, in accordance with Regulation 5(1) of the EIR by providing all the information it held
- that the public authority has not dealt with the request for information, the subject of complaint B, in accordance with section 10(1) of the Act by not informing the complainant that the information was not held within 20 working days following receipt of the request
- that the public authority has not dealt with the request for information, the subject of complaint C, in accordance with Regulation 5(2) of the EIR by providing the information later than 20 working days following receipt of the request

Steps Required

35. The Commissioner requires no steps to be taken.

Right of Appeal

36. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 3rd day of May 2007

Signed

Steve Wood
Assistant Commissioner

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal annex

Regulation 2(1) “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(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(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.