THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)

Upper Tribunal Case No. GI/258/2011

APPEAL AGAINST A DECISION OF THE INFORMATION COMMISSIONER

(Decision Notice FER031174 dated 26 July 2010)

PARTIES

Kirklees Council (Appellant)

and

The Information Commissioner (First Respondent)

PALI Ltd (Second Respondent)

DECISION OF THE UPPER TRIBUNAL

10 March 2011

Before:

P L Howell QC
Annabel Pilling
Paul Taylor

Representation:

For the Appellant:	Philip Coppel QC (Vanessa Redfern, Kirklees Council)
For the First Respondent:	Anya Proops (Information Commissioner)
For the Second Respondent:	Nick Small (Director)

DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)

The DECISION of the Upper Tribunal is to dismiss the appeal. For the reasons set out below, the Appellant was obliged under the Environmental Information Regulations 2004 SI No 3391 to deal with the request for information made to it by the Second Respondent on 16 December 2009 as an effective request for environmental information pursuant to Regulation 5(1). The Information Commissioner's finding that all of the information requested, namely that needed to answer each of the standard conveyancing enquiries of a local authority on the Law Society's form Con29R (2007 Edition) in relation to the domestic property specified in the request, constituted "environmental information" within the meaning of the Regulations is not challenged in this appeal and is accordingly not reviewed. On that footing the Commissioner's determination that all of the information requested must be made available by the Appellant to the Second Respondent for examination *in situ* without charge, and that the Appellant was in breach of its duties under the Regulations in declining to do so, was correct and is confirmed. For the avoidance of doubt, this only requires the Appellant to make available for examination information held by it, whether electronically or in physical form, from which a set of answers to the standard enquiries on form Con29R in relation to the property can be derived. It does not require the Appellant to conduct any more refined evaluation of any such information or its actual relevance (if any) to any such enquiry, or to provide any information in the form of actual or putative answers to the enquiries themselves. Nor does it require the disclosure of any personal data contrary to Regulation 13.

This decision is given under sections 57 and 58 of the Freedom of Information Act 2000, as applied by regulation 18 of the Environmental Information Regulations 2004 SI No 3391, and pursuant to the transfer of this appeal to the Upper Tribunal under regulation 19(3) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 SI No 1976.

Reasons for Decision

Introduction

1. This is an Appeal by Kirklees Council (the 'Council') against a Decision Notice issued by the Information Commissioner (the 'Commissioner') dated 26 July 2010. The Decision Notice relates to a request from a private search company to inspect certain information held by the Council, as environmental information free of charge. The Council agreed to provide the information requested but only on the payment of a set fee, and denied that it was obliged to make it available under the Environmental Information Regulations 2004 (the 'EIR').

Background

2. Section 3 of the Local Land Charges Act 1975 (the 'LLCA') compels all local authorities to generate, maintain and update a Local Land Charges Register. When a property or piece of land is purchased or leased in England and Wales, it is necessary to carry out what is commonly called a "local search". A request for a local search is sent to the relevant Local Authority; under the LLCA applicants can obtain an "Official Search" of the Register by submitting form LLC1 to the relevant Local Authority. This is usually accompanied by supplementary enquiries on a standard form known as the Con29, developed over the years and approved by the Law Society, which is comprised of two parts: Part 1 (Con29R) contains a list of standard enquiries about a property and Part 2 (Con29O) contains optional enquiries. For a full official search this is sent to the relevant Local Authority with the appropriate fee and completed by the Local Authority. The terms of the Con29R enquiries relevant to this case are conveniently set out in full as Annex A to the Commissioner's decision.

3. It is possible to obtain the answers to most, but not all, of the questions on the Con29 by personal inspection of various public registers maintained by Local Authorities as well as from other sources. Private personal search companies have developed services for obtaining the necessary information and completing the Con29 rather than the Local Authority. The Second Respondent PALI Ltd ('PALI') is one such personal search company offering conveyancing support services to solicitors, estate agents and the general public.

The request for information

4. On 16 December 2009, Ben Oliver of PALI Ltd submitted this request by e-mail to the Council:

> *" Environmental Information Request*
>
> *I would like to inspect all information required to complete a HIP compliant con29r, in relation to the following property:*

6 Parkhead, Huddersfield, West Yorkshire, HD8 8XW

Specifically I would like access to the information held which will allow me to answer the following questions on the Con29r;

1.1 (a) to (h), 1.2, 2(a) to (d), 3.1, 3.2, 3.3, 3.4(a) to (f), 3.5, 3.6(a) to (l), 3.7(a) to (f), 3.8, 3.9(a) to (n), 3.10(a) and (b), 3.11, 3.12(a), (b)(i) and (ii) and (c), 3.13.

As all of these questions relate to environmental issues as defined in Article 21 of the Directive in the EIR (a) to (f), I would like you to tell me where I can inspect these registers, records, files or lists free of charge at a place set aside by you for this purpose, as soon as possible in accordance with Article 15 of the Directive to "guarantee that the information is effectively and easily accessible."

As you will be aware, the Information Commissioner has been asked to rule on several complaints where local authorities have been charging for access to information and on every case he has ruled that the Local Authority cannot charge. I assume you will accept that this request is fundamentally the same as the other requests on which the ICO has ruled and allow free access to the requested information pertaining to this and various other properties from time to time as required."

5. The Council replied by e-mail on 19 January 2010, stating that it did not consider that the information requested should be made available under the EIR. It stated that access to the Local and Charges Register is governed by the Local Land Charges Act and Rules, that any inspection of the register and the information it contains can be made upon payment of the appropriate fee and referred PALI to the Local Authorities (Charges for Property Searches) Regulations 2008 SI No 3240 (the 'CPSR') for the statutory basis for the fees charged.

6. Mr Oliver construed this response as a refusal of access to environmental information under the EIR and sought a review of the response under the Council's internal complaints procedure.

7. The Council responded by e-mail on 20 April 2010, with the subject "FOI Request". The monitoring officer upheld the decision that he was "not entitled to free access to unrefined information relating to 6 Parkhead." She placed reliance on the decision of Mr Justice Hickinbottom in *OneSearch Direct Holdings Ltd v City of York Council* (2010) EWHC 590 (Admin) ('*OneSearch*') as confirmation that the Council's current charging regime for local search information was lawful.

The complaint to the Information Commissioner

8. On 10 May 2010 Mr Oliver contacted the Commissioner to complain about the Council's non-compliance with the provisions of the EIR.

9. The Commissioner commenced an investigation, writing to the Council on 12 May 2010 explaining that the information was environmental information and should be considered for disclosure under the EIR. The Commissioner also drew the Council's attention to the decision of the First-tier Tribunal (the 'FTT') in *East Riding of Yorkshire Council v Information Commissioner and York Place (EA/2009/0069) ('East Riding')* in which the Tribunal had dismissed arguments from that Council in respect of charging to provide similar information. The Commissioner indicated that reliance on *OneSearch* was misplaced. The Council responded on 9 June 2010, maintaining its stance and its reliance on *OneSearch* which it said takes precedence over any conflicting decisions of the FTT.

10. The Commissioner set out the position on the points raised by the Council in an e-mail sent on 9 June 2010. The Commissioner reiterated that *OneSearch* did not address or make any comment on the access provisions of the EIR and therefore did not take precedence over the decisions of the Commissioner or the FTT. The Commissioner invited further arguments from the Council.

11. The Council replied on 5 July 2010 again maintaining its stance, identifying the principles it considered relevant and applying those principles to the request made by PALI.

12. The Decision Notice was issued on 26 July 2010. The Commissioner concluded that:

i) the information requested is environmental information as defined by the EIR;

ii) the request from PALI was a valid request under the EIR;

iii) the Council had breached Regulation 5(1) as it had failed to make the information available on request;

iv) the Council had breached Regulation 5(2) as it had failed to make the requested information available within 20 working days following receipt of the request;

v) the Council had breached Regulation 6(1) as it had failed to make the requested information available in the particular form requested;

vi) Regulations 5(6) and 8 of the EIR entitle PALI to request to inspect the requested information free of charge and the CPSR do not apply;

vii) the Council had breached Regulation 11(4) as it had failed to notify PALI of the outcome of the internal review within 40 working days.

13. The Commissioner required the Council to make the requested information available for PALI to inspect free of charge within 35 calendar days of the Decision Notice.

The Appeal to the Tribunal

14. On 12 August 2010 the Council appealed to the First-tier Tribunal (Information Rights) (the 'FTT')

15. The FTT joined PALI as a Second Respondent. During the course of the Appeal PALI adopted the submissions made by the Commissioner.

16. The Appeal was transferred to the Upper Tribunal under Rule 19(3) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended, in light of the importance of the issue involved and the wide implications of the outcome of this Appeal for Local Authorities, particularly the significant financial implications.

17. The Appeal has been determined following a hearing on 26 and 27 January 2011. The Tribunal heard evidence from two witnesses – Mr Paolo Colagiovanni, Senior Building Surveyor with Kirklees Council, employed in its Public Protection Service and responsible for the day to day management of its Local Land Charges team, and Mr Ben Oliver, who was at the material time employed as a searcher with PALI and was the original requestor.

18. Although we may not refer to every document in this Decision, we have considered all the material placed before us.

The Powers of the Tribunal

19. By Regulation 18(1) EIR, the enforcement and appeals provisions of the Freedom of Information Act 2000 (the 'FOIA') apply for the purposes of the EIR, (subject to the amendments of such provisions as set out in the EIR).

20. The Tribunal's powers in relation to appeals under section 57 of FOIA are set out in section 58 of the FOIA, as follows:

> *(1) If on an appeal under section 57 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 shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

21. The starting point for the Tribunal is therefore the Decision Notice of the Commissioner but in determining whether that is in accordance with the law and ought to be affirmed or modified, the Tribunal may also receive and hear evidence and is not limited to the material that was before the Commissioner. It may make its own findings of fact additional to or different from those of the Commissioner, and by virtue of section 58(2) may (but need not) review any material finding of fact made by him. No material question of the exercise of a discretion arises in this case. If the information requested was subject to the provisions of the EIR and the requirements of those regulations were met, the Council was bound to make it available: if not, the EIR gave the Commissioner no jurisdiction to order it to do so.

The facts: relevant information held by the Council

22. We were provided with evidence in the form of witness statements from Mr Colagiovanni about the Council's local land charge search and enquiry systems and practice, and from Mr Oliver about his actual experience in carrying out personal searches at this and other local authorities. Each of them also gave oral evidence at the hearing and was cross-examined. We are grateful to both of them for the assistance they gave us.

23. According to the evidence before us the Council holds information of potential relevance to the Con29R enquiries in a number of different forms, which for present purposes can be grouped as follows.

24. (1) Publicly searchable electronic databases. The Council maintains such databases, which are freely accessible by the public at a terminal in its Planning department or online, containing the information held by it on its Local Land Charges Register, the statutory planning registers, and supplementary planning and building control information which, though not required to be held on a public register, is in practice treated in the same way. The system is "spatially referenced", that is the information held in relation to a particular property or location can be accessed and viewed on a screen by entering the relevant address, postcode or co-ordinates. This system enables any member of the public to view, free of charge, all or most of the information held by the Council relevant to Con29R enquiries 1.1(a)-(e) (planning matters), 1.1(f)-(h) (building control data, but only from the start of 2008), 1.2 (designations of land use and development plan proposals), 3.1 (land required for public purposes), 3.9(a)-(n) (planning enforcement notices etc.), and 3.10(a)-(b) (conservation area designation).

25. (2) Physical registers and indexes searchable by the public. These comprise in particular the Local Land Charges Register itself, available for public inspection at the Council's Local Land Charges department free of charge since 17 August 2010. This contains the information needed on any locally registered financial or other charges, restrictions on land use, etc., including for example that for enquiries 3.10 (conservation areas) and 3.11 (compulsory purchase orders). Secondly the Council maintains a register of Highways in the form of a card index of some 11,000 records, available for public inspection at the Highways department by asking to see the card entries for a particular street or address.

26. Though known historically as the register of "highways maintainable at public expense" this index in fact contains card entries for unadopted as well as adopted roads, and each card entry for a road or street is noted up with references to relevant road or street schemes or orders affecting it. From this it is possible to see whether a particular address is potentially affected by such a scheme or order; though to determine whether it is in fact so affected, it may be necessary to look at the individual details in the paper scheme or

other documents referred to. These are identified from the entries on the card index and produced for inspection by the Highways department staff on request. Together the index entries and referenced file documents at the Highways department provide the information to answer enquiries 2(a)-(d) (roads maintainable at public expense etc.), 3.6(a)-(l) (local traffic schemes etc.), 3.7(e) (highway notices) and 3.11 (compulsory purchase for highways).

27. (3) Paper copies of documents, maps, orders etc. freely accessible by the public. These comprise for example copies of the Unitary Development Plan (containing the information required for enquiry 1.2), Health Protection Agency maps of areas affected by radon gas (enquiry 3.13), and the published orders, schemes etc., of which information is in practice and for the most part more conveniently collated and held on the Council's other indexes and databases.

28. (4) Internal electronic databases and systems (or layers of systems) not freely accessible by the public. These comprise additional layers of information which can be accessed and viewed on a terminal by the Council's own officers and staff for their internal use but are not made generally available to the public, for example because they may allow access to data protected from general disclosure, or because they consist of information also available in other ways which the Council's officers have mapped on to their own spatially referenced system from elsewhere (e.g. from other authorities, as to proposed road works) for their own use in dealing with enquiries more efficiently. These systems give access to the information required to deal with Con29R enquiries 1.1(f)-(h) (building control information before 2008), 3.2 (land to be acquired for road works), 3.4(a)-(f) (road or rail schemes within 200m), and 3.8 (building control proceedings). In addition, the highways information required to complete enquiries 2(a)-(d), 3.2, 3.4(a)-(f), 3.5, 3.6(a)-(l), 3.7(e) and 3.11, and the environmental health information for enquiries 3.7(b),(c),(f), 3.12(a)-(c) and 3.13, is held and accessible by this means.

29. Mr Colagiovanni's evidence was that in practice a member of the public wishing to carry out personal searches, for example of highways information, would normally be allowed access to the same database using a terminal under the guidance of a member of the Highways department staff, for a

token charge of £4. Alternatively a member of staff would operate the system for them and generate all the information required in which case the charge was £11. Mr Oliver's evidence was that when he attended to carry out personal searches the staff told him that the only way to get all the information needed to replicate the answers the Council would itself give on an official search in response to the Con29R enquiries was to pay the £11 (and corresponding charges in other departments), which he had accordingly done under protest in order to complete his searches.

30. (5) Paper documents and files not automatically accessible by the public. These would include files relating to building control and enforcement prior to 2008 (enquiries 1.1(f)-(h)) and statutory notices etc. in housing matters (3.7(d)), for example the details of investigations leading to the issue of such notices: all likely from their nature to contain personal data so that unrestricted access by the public is not provided. If access to a document held (or within a file held) in this category was sought for the purposes of a personal search it would have to be examined and extracted individually.

Charging

31. The Council makes a combined charge of £75 for carrying out a full official search of the Local Land Charges Register together with a set of official answers to the Con29R enquiries on a domestic property. For personal searches of the Local Land Charges Register no charge has been made since the abolition of the prescribed fee under section 8 of the Local Land Charges Act 1975 in August 2010 (before that it was £22); and for persons wishing to make personal searches to complete their own answers to the Con29R enquiries the following charges are made, separately for each Council department involved, in respect of the staff time and retrieval costs in producing those parts of the information not available on public registers:

(1) Planning Services: £5 (Questions 1.1(a)-(e), 1.2, 3.1, 3.9(a)-(n), 3.10(a)-(b), 3.11)
(2) Building Control: £5 (Questions 1.1(f)-(h), 3.3(a)-(b), 3.7(a), 3.8)
(3) Private Sector Housing: £2 (Questions 3.7(b),(d),(f)
(4) Environmental Health: £2 (Questions 3.7(b),(c),(f), 3.12(a)-(c), 3.13)
(5) Highways Registry: £11 (Questions 2(a)-(d), 3.4(a)-(f), 3.5, 3.6(a)-(l), 3.7(e), 3.11).

32. It is the payment of those relatively modest sums, a total of £25 if every department is visited, that is the real bone of contention between PALI (and other property search companies) and the Council. The actual information itself has been long since provided, in the first instance on payment of the charges under protest, because of course Mr Oliver and PALI's clients could not wait, and also in the course of these proceedings themselves, when Mr Colagiovanni helpfully produced as part of his evidence a complete set of official search answers in respect of the property named in the request, so as to illustrate what is involved: pages 83-93 of the agreed documents.

33. What remains to be determined therefore is the question of principle of whether, by virtue of the EIR and in response to a request such as that made by PALI in the email of 16 December 2009, a local authority is now obliged to allow access to such information for nothing. This is a question to be determined neutrally, without regard to the identity, purpose or interest of the person making the request: cf. recital (8) to and Art. 3(1) of the Directive.

The Issues

34. The three main issues the Commissioner had to consider, following the Council's blanket refusal of the request and the complaint to him, were thus:

> (i) was the information requested environmental information as defined by the EIR?
>
> (ii) was the e-mail of 16 December 2009 a valid request for information under the EIR?
>
> (iii) if the e-mail of 16 December 2009 was a valid request for information under the EIR, was the Council entitled to refuse to allow inspection unless a fee was paid?

Issue (i): Was the information requested environmental information as defined by the EIR?

35. The Commissioner addressed and determined the first question by making an express finding that all of the information at issue, namely that

needed to compile a set of answers to the Con29R enquiries relating to the property specified in the request, was environmental information within the meaning of the EIR.

36. The EIR gave domestic effect to Council Directive 2003/4/EC on public access to environmental information (the 'Directive') which, in turn, was adopted to implement the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the 'Aarhus Convention').

37. By regulation 2(1) of the EIR the expression "environmental information" is expressly given the same meaning in those regulations 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;*
>
> *(d) reports on the implementation of environmental legislation;*

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).”

38. In the Decision Notice, the Commissioner made an express finding that the information requested fell with the definition of environmental information within Regulation 2(1)(c) of the EIR, because it was information about plans or measures or activities that affected or were likely to affect the elements of the environment: see paragraphs 16-17 of the notice.

39. It is important that this finding has not been challenged at all in this appeal. In response to our specific questioning in the course of the hearing Mr Coppel QC on behalf of the Council confirmed that it had not at any stage disputed that all of the information at issue was environmental information for the purposes of the EIR, and we were not being asked to review the Commissioner’s finding. Accordingly we heard no argument on the issue and have not reviewed the finding. For the purposes of our decision on the remaining issues that were argued before us, it stands unchallenged.

Consequences of the finding on issue (i)

40. Once it is accepted that the whole of the information needed to answer the Con29R enquiries is environmental information within the EIR, it must in our judgment follow that all such information held by local authorities, in any form and whether at present held on a public register or not, is in principle subject to the free access provisions of those regulations, as held by the FTT in *East Riding.* We consider this to be self-evident on the plain wording of the regulations themselves and to be so notwithstanding anything to the contrary in any other legislative provision or rule of law, by virtue of regulation 5(6)

which prescribes expressly that these are not to apply to prevent disclosure in accordance with the EIR.

41. Those overriding provisions must in our judgment apply despite the fact that the application of the EIR does not seem to have occurred to anyone involved in the recent proceedings in *OneSearch,* where Hickinbottom J's consideration of the dispute between PSC's and local authorities over access to and charges for property information was limited to the Local Government, Housing Act and local land charge legislation and related policy documents: paragraph 89 of his judgment expressly records that he decided only the issues before him, Counsel having conceded in terms (see paragraph 18) that there was "no relevant legislation" imposing any express duty on authorities to disclose the full information needed to answer Con29R enquiries.

42. The stance adopted by the Council and other local authorities on such issues is also the more understandable given that the Secretary of State himself appears only recently to have recognised the impact of his own legislation on the existing local authority search system and charging structure. (The EIR came into force on 1 January 2005 yet it was only in the summer of 2010 that the statutory prescribed fee for a personal search of the local land charges register, a feature of the system since 1925, was revoked as inconsistent with the EIR and the Directive.) Nor is it clear what thought was given to the financial consequences for local authorities of the extra burdens imposed on them by central government; and it is a matter of regret that the Secretary of State at an earlier stage declined an opportunity to be joined as a party to these proceedings so as to clarify his position on the issues they raised. None of that however can alter the actual effect of the plain words of the EIR which the Commissioner and we are bound to apply.

43. There is in our judgment no possibility of arguing against the application of the EIR to environmental information properly requested, even if for the purpose of a Con29R enquiry. Nor is it at all arguable that the decision in *OneSearch* is capable of disapplying or overriding any requirements of those regulations, as initially contended by the Council; and Mr Coppel rightly did not pursue either of those points.

44. It is also common ground that none of the potential exceptions to the duty to disclose environmental information under regulation 12 is applicable in the circumstances of this case, and no reliance has been placed on any such exception. Nor, as demonstrated by the official search answers produced by Mr Colagiovanni, does any question actually arise here of having to look at detailed information in files, etc., that might contain personal data prohibited from disclosure under regulation 13, since all the answers about the existence of possible orders, proceedings, etc. that might have involved such information have come in as clear negatives; though in any case any order made under the EIR must automatically be subject to the qualification that such data must not be disclosed, as the regulations themselves prohibit it.

45. As a final preliminary point we should also record that we heard submissions exclusively about the EIR regime, its origins and purpose, and there was no suggestion that PALI's request or the complaint to the Commissioner should have been dealt with under the FOIA rather than the EIR. Although Mr Coppel submitted that the main argument advanced by the Council would apply with equal force and for the same reasons under both the EIR and the FOIA the two sets of legislation are not identical, and if the Council's argument that the request of 16 December 2009 was not a valid request for information under the EIR had been accepted, there could still have been an argument that the Council should have considered it under the FOIA. But on the view we take of the matter that does not arise.

Issues (ii) and (iii)

46. We turn therefore to the remaining issues which were argued. The two main arguments advanced by Mr Coppel were that because of the form in which the email request of 16 December 2009 was made the Council was not obliged to respond to it as a request under the EIR at all, so that the machinery and its statutory obligations under those regulations never became applicable; alternatively that if they did, the charges made by the Council for retrieval costs and access to non-public information in connection with personal searches were consistent with the EIR and permissible.

47. Miss Proops for the Commissioner made a formal objection to these points being advanced, insofar as they had not been raised or relied on by the Council in its initial response to the request for information, or further or alternatively articulated in its grounds of appeal; but we did not accept that objection as valid. Both the extent of the Council's obligation to respond to the request made of it, and the question of whether it was obliged to do so by supplying information without charge, were in our judgment clearly within the proper scope of this appeal on any reasonable view. In any event they were necessary questions to be determined by the Commissioner for himself as part of his decision. These are public law proceedings involving statutory duties and functions, whose object is to give effect to the true obligations of public authorities under the EIR and not to anything else. Neither the Commissioner nor the Tribunal is necessarily confined to what may have been earlier asserted as might be the case in private adversarial litigation.

Issue (ii): was the e-mail of 16 December 2009 a valid request for information under the EIR?

48. Part 2 of the EIR confers the basic right of access to environmental information held by public authorities and imposes correlative duties on those public authorities to provide that information. The Council conceded that it is apparent from the recitals to the Directive that the overall policy of the EIR is to secure increased public access to environmental information and the dissemination of that information and that the EIR achieves this policy principally through two discrete duties imposed upon public authorities:

> (1) A general duty to disseminate to the public the environmental information which they hold: Regulation 4(1). This duty does not depend upon a request for information being made before it is engaged and incorporates (1) an obligation to make such information progressively available to the public by electronic means which are easily accessible and (2) an obligation to take reasonable steps to organise the information relevant to its functions with a view to the active and systematic dissemination to the public of the information; and

(2) A duty to make environmental information available on request: Regulation 5(1).

49. Mr Coppel submitted that the e-mail sent by PALI on 16 December 2009 was either;

(1) a complaint that the Council has failed to comply with its duties under Regulation 4 of the EIR; or
(2) an "enquiry", or a request for research, not a valid request under Regulation 5 of the EIR.

50. Regulation 4 of the EIR provides as follows:

4. - (1) Subject to paragraph (3), a public authority shall in respect of environmental information that it holds –

(a) progressively make the information available to the public by electronic means which are easily accessible; and

(b) take reasonable steps to organise the information relevant to its functions with a view to the active and systematic dissemination to the public of the information.

(2) For the purposes of paragraph (1) the use of electronic means to make information available or to organise information shall not be required in relation to information collected before 1st January 2005 in non-electronic form.

(3) Paragraph (1) shall not extend to making available or disseminating information which a public authority would be entitled to refuse to disclose under regulation 12.

(4) The information under paragraph (1) shall include at least –

(a) the information referred to in Article 7(2) of the Directive; and

(b) facts and analyses of facts which the public authority considers relevant and important in framing major environmental policy proposals.

51. Mr Coppel submitted that on a proper analysis of the e-mail of 16 December 2009, taken together with the witness statement and oral evidence of Mr Oliver, this is a complaint about the Council's Regulation 4 duties. As such, he submitted, the Tribunal does not have jurisdiction to adjudicate upon its failures or otherwise.

52. Miss Proops submitted that this argument was misconceived and that it would be unfair to characterise the e-mail of 16 December 2009 as a complaint regarding Regulation 4.

53. We consider the argument advanced by Mr Coppel on this point to be unpersuasive. There is nothing in the wording of the e-mail of 16 December 2009 to suggest that this is a complaint that the Council has failed progressively to make available environmental information which it holds by easily accessible electronic means. We consider that the words used by PALI in the e-mail are clear and unambiguous and amount to a request under regulation 5 of the EIR for access to inspect the information identified.

54. We think it is fair to say there was some element of shadow-boxing on both sides in the way the request was formulated and responded to. Mr Oliver acknowledged in his oral evidence that as a trained and experienced searcher he was quite aware that the information in the planning register, for example, was freely available to search anyway so there was no need to resort to an EIR request to obtain access to it. He had nevertheless deliberately included it in his request and listed all of the numbered Con29R enquiries in order to bring the issue into the open and emphasise his point that all of it was environmental information to which he was entitled free of charge under the EIR. Mr Colagiovanni for his part acknowledged that he and the Council were of course aware of the activities and campaigns of PSC's in this field and he had viewed this request as in effect one to be given a set of the answers to the Con29R enquiries that PALI would then be charging its clients to supply. The time of the Council's officers would thus be taken up in going through and assessing the detailed pieces of information and exercising judgment as to which was actually relevant as on a full official search, doing much if not all of PALI's work for nothing at the expense of the taxpayers.

55. It is a fair inference that this last assumption, or something close to it, accounted for the rather brusque and unhelpful response PALI's request was given but if so it was both a legal and a tactical mistake for the Council to have taken such matters into account. The duties of an authority under the EIR exist, as already noted, regardless of any purpose or interest behind the request and as this case demonstrates, there is a real danger in inferring an intention that is not clearly expressed or alternative meanings of the request on the basis of assumed or presumed knowledge about a requestor or an organisation that requestor may work for.

56. Turning to the main argument advanced by the Council, that the e-mail of 16 December 2009 was not a valid request under Regulation 5 of the EIR, Mr Coppel submitted that we had to identify whether this amounted to a valid or "descriptive" request or an invalid "purposive" request.

57. Mr Coppel submitted that under both the FOIA and the EIR, a request for information will only be regarded as a *valid* request if it identifies the information sought by the content (actual or imputed) of the information or class of that information. He referred to this definition of a valid request as a "descriptive request". With a "descriptive request" a public authority is required to conduct a reasonable search for all information held by it, the content (actual or imputed) or class of which answers the description in the request (subject to cost limits and other requirements prescribed by the legislation). He furthered this by identifying an *invalid* request as a "purposive request", that is, a request that identifies the information sought by the ability to use that information to achieve a purpose or to serve a function. This type of request would require a public authority to form a view of the type, quality and quantity of information needed to achieve the purpose or serve the function stated in the request. This process would involve an understanding of the requirements needed to achieve the purpose or to serve the function and may involve considering the identity of the requestor, including what other information the requestor has or has ready access to and may involve professional judgement. Having carried out the judgement or evaluation to work out which of its information is needed to achieve the

purpose or achieve the function, the public authority will then have to locate that information (to the extent that it holds it) and communicate it to the requestor in one form or another. Mr Coppel submitted that it is the necessity of carrying out the judgement or evaluation exercise which renders a request invalid, under the FOIA or the EIR.

58. Further, Mr Coppel submitted, this distinction between "valid, descriptive requests" and "invalid, purposive requests" is necessary because requiring a public authority to carry out the evaluative exercise required by a "purposive request" is alien to any freedom of information regime. He argued that this is supported by the jurisprudence of the Information Tribunal (now the FTT (Information Rights)) and by comparative jurisprudence. In particular he relied on the following conclusions:

> (i) That if officials of a public authority know more about the matter in respect of which an applicant has made a request for information, the public authority is not obliged to reduce what it knows to writing[1].
>
> (ii) That the Tribunal will not be concerned with whether a public authority should have recorded or held particular information[2].
>
> (iii) That under Council Regulation (EC) 1049/2001, the entitlement is to recorded information and not to interrogate the organisation[3].
>
> (iv) That information that can be assembled from material held by a public authority but which has not been recorded at the time of the receipt of the request is not information recorded in any form[4].

59. While we are not bound to follow FTT decisions, we consider the conclusions relied upon by Mr Coppel to be uncontroversial and demonstrate the approach of the FTT to give the words of the legislation their natural meaning. We do not consider that they offer any particular support to the

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1 *Reed v Information Commissioner and Astley Abbotts Parish Council* (EA/2006/0018)
2 *Brigden v Information Commissioner and North Lincolnshire and Goole Hospitals NHS Trust* (EA/2006/0036)
3 *WWF European Policy Programme v Council of the European Union* (ECJ 25 April 2007)
4 *Simmons v Information Commissioner* (EA/2005/0003)

necessity, or desirability, of categorising a request as “descriptive” or “purposive”.

60. Applying the definitions as identified above of “descriptive” and “purposive” request to the e-mail of 16 December 2009, Mr Coppel submitted that this was a “purposive” request and therefore an invalid request under the EIR, or FOIA. He submitted that in terms, the e-mail required the Council to work out which information PALI needed in order to complete a HIP compliant Con29 form in respect of that particular property, that is, the information PALI needed in order to answer numerous specific questions about that property.

61. In answer to a question from the Tribunal, Mr Coppel did not accept that a more specific request, such as a request for all planning applications relating to 6 Parkhead, would amount to a valid request as he submitted that on the evidence of Mr Colagiovanni that some judgment would need to be applied by the Council in order to identify that information. However, Mr Coppel appeared to accept that if the e-mail of 16 December 2009 had been framed in terms of a series of specific questions relating to each entry on the Con29R form, that would amount to a valid request; for example, “please provide me with a map or other information showing whether there is a road scheme within 200m of 6 Parkhead”. Mr Coppel did not accept that such a valid request could be made in respect of every entry on the Con29R, and submitted there would be some entries for which judgment would have to be exercised to assess relevance. He gave entries 3.2 (land to be acquired for roadworks) and 3.6 (traffic schemes) as specific examples of entries where an evaluative exercise would always be required however the request was phrased.

62. We consider that it would be unduly restrictive and a misinterpretation of the words in Regulation 5 to require a requestor to provide a series of specific questions relating to each entry on the Con29 form in order for this to amount to a valid request under the EIR. We note also that the request in this case is in strikingly similar terms to the formulation identified by the FTT in *East Riding* as the “clarified” form of a request that had originally suffered from “a certain looseness of language”: see in particular paragraphs 26 and 29 where

the FTT identify the request as one for "the information that would enable [the requestor] to answer the identified questions set out in Form Con29R". They plainly did not regard that way of formulating the request as an uncertain or illicit way of identifying the information being sought and neither do we.

63. There is no real dispute that in this case the Council in fact knew not only what information was sought by PALI but also how to access it so the point does not arise directly, but it is material to note for other cases that if there had been any doubt or any need to seek clarification of what was sought, the Council has a duty under Regulation 9 of the EIR to advise and assist.

64. The relevant part of Regulation 9 provides as follows:

> *9 (1) A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.*
>
> *(2) Where a public authority decides that an applicant has formulated a request in too general a manner it shall*
>
> *(a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and*
>
> *(b) assist the applicant in providing those particulars.*

65. If the Council had considered the request to be ambiguous therefore, its blanket refusal would still have been an inadequate response.

66. Although some of the Panel found it hard to accept Mr Oliver's evidence that he was not fully aware of which information was publicly available free of charge, we were in agreement that the evidence suggests that the Council's stance from the start was to issue a blanket refusal of the request unless PALI paid the charges, and that no consideration was given to advising what information was publicly available and how it could be accessed. The Council could have explained how the information about each particular issue is stored and indicated how this could be accessed publicly without making a request under the EIR.

67. For example, in respect of the question at 3.6 of the Con29R, the Council could have explained that it holds a publicly accessible card index sorted by each identifiable street; in some cases there might be entries written on the card relating to a particular street that would lead to a separately held paper file if, for example, the Council had approved but not yet implemented any of the listed traffic schemes; if there is no entry on the card, the inference could be drawn that there is no such approval. It would be for PALI to specify which cards it wished to inspect, in this case whether just for Parkhead or for any specified neighbouring street that PALI identified as being relevant.

68. Miss Proops submitted that the duty to make environmental information available on request in Regulation 5 of the EIR is triggered by a request for access to environmental information and that the EIR are intentionally unprescriptive as to how that request is to be framed.

69. She submitted that there were "safety valves" in the EIR provided for in Regulation 6 as to the method and means by which the environmental information should be made available:

> *6(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.*

70. Miss Proops argued that the Council had misinterpreted the request from PALI in that PALI had requested the "raw" information which they themselves would analyse in order to construct the answers to the questions on the Con29R. She submitted that the request did not explicitly or implicitly require the Council to undertake any evaluation, save that the Council was being invited to assess what recorded information it held which would fall within the ambit of the request.

71. We agree that if the Council did interpret the request as one for it to construct a set of answers for PALI rather than to show it the information from which to do so for itself, that was not a fair reading of the request. It is simply not what it says, on any objective understanding of the words used.

72. However even the identification of this "raw" evidence itself would require the Council to conduct an evaluative exercise according to Mr Coppel and Mr Colagiovanni.

73. According to Mr Colagiovanni, some of the information held by the Council would have to be interpreted or placed alongside other information in order to enable an individual to know how to answer a particular property search query. His evidence was to the effect that in order to be in a position to answer the questions on the Con29R, certain queries would be asked of a number of relevant Council officers.

74. We consider that is irrelevant when assessing whether there was a valid request or not. The fact that the raw information was held by the Council in a variety of different formats and locations is also irrelevant when assessing that question. It may be that the Council does not hold all the information needed to answer a particular question on the Con29R but that assessment would be made by PALI when completing the form; the Council may have to alert PALI to the fact that it does not hold particular information in discharge of its duty under Regulation 9 of the EIR.

75. A differently constituted Tribunal in *Johnson v Information Commissioner and The Ministry of Justice*[5] held that if answering a request for information merely requires *"simple collation of raw data [already held] to arrive at the total figures that the Applicant has sought*" this does not mean that the requested information is not 'held' by the public authority. In that case the applicant requested statistics on an annual basis of claims allocated to and struck out by individual masters of the High Court. Although the statistics were not held in that collated form, nor could they be obtained from a database because *"the relevant data [had] either not been input into the*

[5] (EA/2006/0085)

database, or it [had] not been input with the consistency necessary to obtain reliable results", the information was nevertheless 'held' because it was available by inspection of the paper files kept in respect of each case from which the information could be extracted. (On the facts of that case the Tribunal concluded that the time which would be involved in extracting the information from the paper files was such that the appropriate limit for the purposes of section 12 of the FOIA[6] was vastly exceeded and that the Ministry of Justice was not obliged to supply the information requested.)

76. Similarly, in *Home Office v Information Commissioner*[7] the Tribunal rejected an argument that there was a distinction between running of an existing report to "extract" information and running a new report to "research" or "create" new information; in both cases the information comes from the same database and is held by the public authority. The Tribunal accepted that obtaining the specific information requested, in that case the number of work permits obtained in 2005 and 2006 by nine named employees in the IT sector, would involve "some skill and judgment" but considered that the legislation envisages that a public authority may be put to considerable work in complying with its duty to disclose information and *"there is no reason to suppose that it was not also envisaged that such work may involve skill and judgment….[The FOIA] was clearly designed to impose on public authorities obligations which may well go beyond those imposed by their normal business activities."*

77. The FOIA provides a definition of a "request for information" in section 8:

> *8(1) In this Act any reference to a "request for information" is a reference to such a request which-*
>
> *(a) is in writing,*
>
> *(b) states the name of the applicant and an address for correspondence, and*
>
> *(c) describes the information requested.*

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6 See paragraph 82 below

7 (EA/20008/0027)

78. There is no similar definition or qualification in the EIR; the EIR do not prescribe any formalities for the request. Regulation 5 provides simply:

> *"[Subject to various provisions] a public authority that holds environmental information shall make it available on request.*"

79. A valid request under the EIR could therefore (at least in theory) be made anonymously and orally, by a person attending at the authority's premises and asking to be shown the information. This is in line with Article 3 of the Directive that Member States shall ensure that public authorities are required to make available environmental information held by or for them to any applicant at his request and without his having to state an interest.

80. If we adopted and approved Mr Coppel's definition of a valid or "descriptive" request, applicants would be faced with technical hurdles and this could risk unduly narrowing access to environmental information. We consider that the terms "purposive" and "descriptive" are unhelpful and misleading, in both the freedom of information regime generally and with particular regard to environmental information. We drew no assistance from the examples given by Mr Coppel to illustrate the operation of these labels. We think that the word "request" in Regulation 5 of the EIR needs no qualification or further definition; it is not a term of art or legal construction, but a common word. We consider that it was intentionally left wide and unrestricted for policy reasons and we do not think we should try to narrow or further define the term.

81. The Council was being asked to identify that recorded information it held which the Council would have to consider if it was itself required to answer the questions on the Con29R. PALI was not asking the Council itself to provide answers to the questions on the Con29R; moreover, PALI was not asking the Council itself to conduct any appraisal or evaluation of any raw information held by the Council. PALI was asking the Council for permission to inspect raw information relating to the property so as to enable PALI to be in a position where it could itself evaluate that raw information with a view to constructing answers to the particular Con29R queries. PALI was also clearly

asking that access to the information be made available by means of inspection, rather than, for example, through the supply of photocopies of documents.;

82. In respect of any request for information, whether under the FOIA or the EIR, it is inherent that a public authority will have to undertake some sort of evaluative exercise to establish what information it holds that falls within the request. Every public authority has to do this in respect of every request; some will require more evaluative work than others but that cannot take it outside the definition of a request. There is a measure of protection in each set of legislation against unreasonable administrative or cost burdens in complying with statutory requests, but that is achieved by express provisions that limit or alleviate the authority's obligation to comply (section 14 FOIA; regulation 12(4) EIR), not by limiting or redefining what counts as a request.

83. We are satisfied that the email of 16 December 2009 was a valid request for information under the EIR. Even if the Council had been in any doubt as to what information was sought, clarification could, and should, have been sought under Regulation 9 of the EIR.

84. In our judgment therefore the Commissioner was correct in concluding that the request was a valid one for the purposes of the EIR and the Council was obliged to deal with it as such. The proper construction of the request, and the way it should have been dealt with, was as one to make available for personal inspection the information held by the Council, in whatever form, from which a set of answers to the Con29R enquiries could be derived by the requestor: not to construct for the requestor a set of the answers themselves.

Issue (iii): If the e-mail of 16 December 2009 was a valid request for information under the EIR, was the Council entitled to refuse to allow inspection unless a fee was paid?

85. It therefore becomes necessary to decide whether the Council was obliged by the EIR to make the requested information (as so construed) available for personal inspection and search without charge, or whether the

charges sought were consistent with the EIR even if not expressly made by reference to those regulations but rather under the CPSR.

86. The Commissioner found that Regulations 5(6) and 8 of the EIR entitle PALI to request to inspect the requested information free of charge and the charges the Council sought to impose under the CPSR do not apply. The relevant parts of Regulations 5(6) and 8 provide as follows:

> *5(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.*
>
> *……*
>
> *8(1) Subject to paragraphs (2) to (8), where a public authority makes environmental information available in accordance with regulation 5(1) the authority may charge the applicant for making the information available.*
>
> *(2) A public authority shall not make any charge for allowing an applicant-*
>
> > *(a) to access any public registers or lists of environmental information held by the public authority; or*
> >
> > *(b) to examine the information requested at the place which the public authority makes available for that examination.*

87. Mr Coppel submitted that even if there was a valid request for information under the EIR, the Council was still entitled to charge a fee for making it available to PALI for inspection: Regulation 8(2) prohibits charging for the facility to examine but is silent about locating and retrieving the information itself for that examination. He gave the example of information being stored off site, the file containing the information being retrieved, brought to the local authority's office and placed in a cubicle for inspection; the local authority could charge for the process of locating and retrieving that information. He argued that it would be reasonable to impose a charge for the locating and retrieving process itself, regardless of where the information was actually

kept, for ease of administration in the same way the Royal Mail imposes the same charge for a letter to be sent first class whether its destination is the next street or the opposite end of the country.

88. We were provided with the Council's charging scheme under the CPSR which Mr Coppel submitted is compliant with Regulation 8(1) and (2) and is reasonable in its own right. The CPSR came into force on 23 December 2003 and is a statutory regime which entitles local authorities to charge for:

> (a) permitting access to property search records (Regulation 5);
> (b) providing answers to property search queries (Regulation 8).

89. Mr Coppel did not accept the Commissioner's position that Regulation 5(6) of the EIR can be read as disapplying the CPSR.

90. Article 5 of the Directive provides that:

> *1. Access to any public registers or lists established and maintained as mentioned in Article 3(5) and examination in situ of the information requested shall be free of charge.*
> *2. Public authorities may make a charge for supplying environmental information but such charge shall not exceed a reasonable amount.*
> *3. Where charges are made, public authorities shall publish and make available to applicants a schedule of such charges as well as information on the circumstances in which a charge may be levied or waived.*

91. In common with Article 5(2) of the Convention, Article 3(5) of the Directive imposes a general obligation on Member States to ensure that:

> *"The practical arrangements are defined for ensuring that the right of access to environmental information can be effectively exercised, such as:*
> - *the designation of information officers;*
> - *the establishment and maintenance of facilities for the examination of the information required;*

- *registers or lists of the environmental information held by public authorities or information points, with clear indications of where such information can be found."*

92. Mr Coppel made two submissions:

(1) the local authority does not have to allow examination in situ if it would be impractical to do so; and

(2) Article 5(2) expressly permits a public authority to make a charge for supplying any environmental information, albeit that the charge must not exceed a reasonable amount, and the word "supply" encompasses the process of locating and retrieving the information for inspection.

93. Miss Proops argued that reading these Articles together produces the following result: a public authority cannot justify the imposition of a charge for supplying particular requested environmental information to an applicant, for example, through the provision of photocopies, in circumstances where it could and should have avoided the need to incur costs by simply permitting the applicant to inspect the information in situ.

94. Miss Proops submitted that the Council's duty under the EIR is to permit inspection of the raw information that it holds free of charge, save where such inspection can properly be refused on an application of Regulation 6(1)(a) and/or (b): cf. paragraph 69 above.

95. We read Article 5(1) as providing for two separate matters – access to the registers and lists mentioned in Article 3(5) of the Directive is free of charge (implemented by Regulation 8(2)(a) of the EIR) and examination in situ of information requested (for example, here, under Regulation 5 of the EIR) is free of charge (implemented by Regulation 8(2)(b) of the EIR). Although perhaps less well expressed at first sight than it might be, the reference in Art. 5.1 to "the information requested" can in our judgment only be to information the authority is obliged to supply in response to a specific request under Article 3. That is a category separate from, and wider than, the information that happens at any time to be comprised in a public register under Art. 3.5.

96. We therefore reject Mr Coppel's suggestion that the Council has a choice whether to allow inspection in situ, which he concedes it cannot charge for, or whether to retrieve information and take it to a place set aside for examination, at which point it can impose a charge for the retrieval process. There is no suggestion in the Convention, the Directive or the EIR that public authorities can impose charges on the public seeking access to examine on site environmental information which that public authority holds on the basis of the individual storage arrangements of that information. It is clear from the wording of Regulation 8(2)(b) that charging a fee can only be permissible in connection with the provision of a copy, or a supply of the requested information in some other way than allowing it to be examined in situ.

97. We also disagree with Mr Coppel's submission that the word "supply" in that sense can be extended to cover the process of locating and retrieving information for examination. We consider that the proper reading of Article 5(2) of the Directive and Regulation 8(2)(b) of the EIR is to prevent a public authority from charging an applicant for examining in situ the requested information and to permit fees to be imposed only for supplying the information in some different way, e.g. by provision of a copy of some sort. To put it simply, an authority that makes a charge for going and getting the information to make available for examination in situ, and refuses to make it so available unless the charge is paid, is not making that information available for examination without charge.

98. There is in our judgment no inconsistency between these provisions and the CPSR. Indeed Regulation 4(2) of the CPSR makes express provision to ensure that the CPSR do not trespass on other enactments which require information relevant to property searches to be provided free of charge. The relevant part of Regulation 4(2) of the CPSR provides that:

> *"regulations 5 and 8 do not apply ....(b) in respect of access to free statutory information, except to the extent that a local authority is providing a service which is supplementary or incidental to that described in the enactment in question."*

99. "*Free statutory information*" for this purpose is defined by regulation 2(3) of the CPSR as information required to be provided by a local authority under an enactment, where that enactment expressly prohibits the authority from making a charge for doing so or requires that the authority provides the information free of charge. We agree with the submissions of Miss Proops that the EIR is one such enactment, inasmuch as Regulations 6(1) and 8(2)(b) require public authorities to provide environmental information by allowing applicants to examine it in situ without charge. This is reinforced by the disapplying provision in Regulation 5(6) of the EIR, though had the CPSR in fact sought to override the provisions on free access contained in the EIR, a local authority would in any event have been bound to disapply those provisions in order to give effect to the requirements of the Directive.

Conclusion and remedy

100. We therefore reject Mr Coppel's submissions on both of the issues argued and unanimously dismiss this appeal against the Commissioner's decision, confirming for the avoidance of doubt (and for easier reference in other cases) that the effect so far as the main issues of principle are concerned is as set out in the formal part of our decision above.

101. The Commissioner found that the Council had breached the following Regulations of the EIR:

(i) Regulation 5(1) as it had failed to make the information available on request;

(ii) Regulation 5(2) as it had failed to make the requested information available within 20 working days following receipt of the request;

(iii) Regulation 6(1) as it had failed to make the requested information available in the particular form requested; and

(iv) the Council had breached Regulation 11(4) as it had failed to notify PALI of the outcome of the internal review within 40 working days.

102. The procedural breaches were not admitted by the Council but no arguments to the contrary were raised before us. On the facts we agree that the Commissioner correctly found the Council in breach of those Regulations.

103. No argument was raised in this case that one of the "safety valves" in Regulation 6 of the EIR (paragraph 69 above) applied, to relieve the Council from the obligation to produce the Con29R information in the "form or format" requested, namely by making it available in viewable or documentary form for personal examination. Any reliance on this ground would have had to have been set out in a notice to the applicant in accordance with Regulation 6(2)(a)-(c) of the EIR; and in any event if put forward as justifying a total refusal of the request without payment of charges would have been unsuccessful, for the reasons explained by the FTT in *East Riding* with which we respectfully agree. As already noted, the possibility of documents having to be produced in an individually redacted or extracted form to avoid divulging personal data does not arise on the facts of this case, but authorities will need to keep it, and the requirements of Regulation 6, in mind for others.

104. As also noted above, all of the information at issue in this case has in fact already been made available so the practical effect so far as No. 6 Parkhead is concerned may be limited to a remission of the charges paid by PALI under protest. As regards other cases involving similar issues the effect is perhaps best summarised by saying that the familiar difference between "public register information" and that held by an authority on its own system for internal use has largely been neutralised where environmental information is concerned: all information within the scope of the EIR is in principle public unless it can be justifiably excepted under Part 3.

P L Howell
Judge of the Upper Tribunal
Annabel Pilling
Judge of the Upper Tribunal
Paul Taylor
Member of the Upper Tribunal
10 March 2011