



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Case No. EA/2010/0040

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FER0265630
Dated: 12 November 2009**

Appellant: Castle Point Borough Council

Respondent: Information Commissioner

Determined on the papers on 23 July 2010 at Holborn Bars, London

Before

Robin Callender Smith

Tribunal Judge

and

**Jenni Thompson
Ivan Wilson**

Tribunal Members

For the Appellant: Emma Holmes, Legal Officer, Castle Point Borough Council
For the Respondent: Mr Richard Bailey, Solicitor for the Information Commissioner

Subject matter:

Environmental Information Regulations 2004

Regulation 5

Regulation 6

Regulation 8

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 23 March 2010 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. At the time of the original request for information, property search reports were a compulsory component of Home Information Packs ("HIP"s). HIPs were required by vendors of residential properties that were put on the market.
2. Property search information is compiled from information provided by local authorities in response to various standard enquiries. The enquiries requiring answering for the purposes of a HIP are – in most cases – the enquiries contained in the standard local search enquiry form CON29R. The form is submitted to the authority by anyone seeking the information and the authority then completed the form by responding to the enquiries, in general, with a "yes" or "no" answer.

The request for information

3. The individual making the enquiry that forms the subject of this appeal e-mailed Castle Point Borough Council ("the Appellant") on 21 July 2009 as follows:

"I request an appointment to view the information held by your Council building control Department to be able to answer questions 1.1f, g, h and 3.8 on a standard CON29 form, relating to [address redacted]. I also wish to know if the Council has information relating to the compulsory purchase order for the mention property."

4. The Appellant agreed to provide the information requested but only on provision of a fee in accordance with the Local Authorities (England) (Charges for Property Searches) Regulations 2008.
5. During the Information Commissioner's ("IC's") investigation the Appellant argued that the requested information was exempt from disclosure under section 5 (3) of the Environmental Information Regulations 2004 ("EIR").
6. Under Regulation 5 (1) EIR – and subject to and in accordance with various other provisions of EIR – a public authority that holds environmental information is required to make it available on request. "Environmental information" is defined in Regulation 2 (1) EIR.

7. Under Regulation 6 (1) EIR, where an applicant requests environmental information in a particular form or format, the public authority is obliged to make the information available in the requested form or format, save that the duty to make the information available in the requested form or format does not arise either where "*it is reasonable for it to make the information available in another form or format*" or "*the information is already publicly available and easily accessible to the applicant in another form or format*".
8. Regulation 8 EIR makes provision for public authorities to charge for making environmental information available. Under Regulation 8 (1), public authorities have a general power to charge for making environmental information available, but the authority may not make any charge for allowing an applicant "*to access any public registers or lists of environmental information held by the public authority*" or "*to examine the information requested at the place which the public authority makes available for that examination*".

The appeal to the Tribunal

9. The IC in his decision notice concluded that the request was a request to inspect environmental information but that the Appellant could not charge for the information by virtue of Regulation 8 (2) (b) EIR.
10. During the IC's investigations, the Appellant indicated that it did not wish to take any further action in relation to the matter until the case of *East Riding of Yorkshire Council v Information Commissioner EA/2009/0069* ("the East Riding case") had been determined.
11. The Information Tribunal in the East Riding case had to decide whether information requested to enable the requestor to answer information on the CON29R should be released.
12. On the facts of that case, the Information Tribunal concluded that East Riding Council were not able to demonstrate that restrictions placed on inspection were reasonable. The Tribunal found that the Council was not reasonable in refusing an inspection under Regulation 6 (1) (a) EIR and therefore could not charge for the disclosure of the information in a hard copy format under Regulation 8 (2) EIR.

The questions for the Tribunal

13. By the time the Appellant's appeal came before the Tribunal on 23 July 2010 the issues between the Appellant and the IC had narrowed considerably.
14. The requestor had paid the Appellant for providing the information requested on 27 July 2009 and the information had then been provided. The IC noted the Appellant – in a letter to the Tribunal dated 6 May 2010 – accepted that it had complied partially with the decision but not fully, as a charge had been made.
15. It was this part of the IC's decision that the Appellant continued to challenge.
16. The question before this Tribunal is whether the information should have been made available for inspection free of charge, confirming the IC's decision on this point.
17. The Tribunal, in directions issued on 16 June 2010, put the Appellant on notice that it had formed a preliminary view that the Appellant's case had no reasonable prospect of succeeding.
18. Under the provisions of Rule 8 (4), this gave the Appellant an opportunity to make representations in writing in relation to the proposal to strike out the appeal.
19. On 28 June 2010 the Appellant indicated it did not wish to make any further representations.

Conclusion

20. The Appellant has continued with this appeal in the face of the Tribunal's clear ruling in the East Riding case, which postdates the appeal but which the Tribunal allowed the Appellant time to consider and reflect upon.
21. The issues set out in the IC's decision notice correctly identified the law and procedure in relation to this area.

22. The Appellant should not have charged the requestor for access to the information and – although it is not within the Tribunal's power to order this – the Appellant should consider refunding to the requestor the fee paid for access to the information.
23. Our decision is unanimous. Helpfully, one of the Tribunal members on this appeal had also been part of the East Riding decision (Jenni Thompson).
24. The Tribunal makes no order as to costs in relation to this appeal.
25. Under section 11 of the Tribunals, Courts and Enforcement Act 2007 and the new rules of procedure an appeal against a decision of the First-tier Tribunal on a point of law may be submitted to the Upper Tribunal. A person wishing to appeal must make a written application to the First –tier Tribunal for permission to appeal within 28 days of receipt of this decision. Such an application must identify any error of law relied on and state the result the party is seeking. Relevant forms and guidance can be found on the Tribunal's website at www.informationtribunal.gov.uk.

Robin Callender Smith

Judge

25 August 2010