

FOIA s.21 – Absolute exemption: **information accessible by other means**

FOIA s.39 – Qualified exemption: environmental information

EIR Reg 6 – Format and means of communication

Rhondda Cynon Taff County Borough Council v IC

EA/2007/0065

5th December 2007

Cases:

Facts

The Appellant was a Local Authority that had been asked for a copy of the Land Drainage Act 1991. The Local Authority's response was that this was available in its libraries or on the internet. The Local Authority relied on section 21 FOIA. The IC in a Decision Notice concluded that the matter should properly be dealt with under EIR and that there was no similar provision to s.21 and therefore there was an obligation to provide a copy of the Land Drainage Act 1991 to the Complainant.

Findings

The Tribunal looked at the inter-relationship between the FOIA and EIR regimes. They held that the FOIA and EIR are two regimes operating in parallel and that FOIA contains a right to have information communicated to an applicant whereas EIR only obliges environmental information to be made "available". This does not necessarily mean providing an applicant with a copy of information, but may include offering them inspection.

The Tribunal held that where an applicant has not specified in their request for environmental information a particular form or format for the material, a public authority must go on to consider whether it is obliged to provide the applicant with a copy of the information, notwithstanding an offer to make the information available to him or her by way of inspection.

S.39 FOIA does not limit the availability of s.21 FOIA for environmental information that has been made available by inspection. This applicant had not specified a form or format for the information and the public authority had complied with its EIR obligations by making it available through offering inspection at its libraries and the information was reasonably accessible to the applicant under s.21 at the Council's libraries, on the internet or from the Stationery Office.

Conclusion

The Tribunal unanimously upheld the appeal. The Council had complied with its obligation under Regulation 5 EIR by making the information available. The Council

had also complied with its obligation under FOIA by relying on the exemption is s.21, namely that the information was reasonably accessible to the complainant.