

**FREEDOM OF INFORMATION ACT 2000 (SECTION 50)
ENVIRONMENTAL INFORMATION REGULATIONS 2004**

DECISION NOTICE

Dated 13th February 2006

Name of Public Authority: Rugby Borough Council
Address of Public Authority: Town Hall
Evreux Way
Rugby
Warwickshire
CV21 2RR

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint from the above person (the "complainant") which states that on 4th January 2005 the following information was requested from Rugby Borough Council:

"Planning Application R03/0159/23111/P including reinstatement of bridge on Cathiron Lane, Cathiron and land cross hatched on attached plan. All recorded Information Including Emails."

It is alleged that:

1. Information was withheld without valid reason;
2. The request was not responded to within 20 working days of receipt;
3. Information was not communicated by the means specified by the complainant;
4. A refusal notice was not issued.

The Commissioner's Decision

The information requested by the complainant is environmental information as defined in regulation 2 of the Environmental Information Regulations 2004 ("the Regulations").

Under section 50(1) of the Freedom of Information Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part 2 and 3 of the Regulations and to issue a Decision Notice to both the

complainant and the public authority.

1. Rugby Borough Council stated that it withheld information because:

(i) Rugby Borough Council believed that there was a possibility of future legal action by the complainant and that the contents of information requested that would otherwise have been provided would have been used to assist this action.

(ii) Information, specifically e mails exchanged between Rugby Borough Council and Warwickshire County Council, had previously been provided to the complainant by Warwickshire County Council. Whilst the e mails in question were relevant to the request, Rugby Borough Council believed that they were not under an obligation to provide this information as it had been provided to the complainant previously by Warwickshire County Council.

The Commissioner's decision in relation to the above is that:

(i) There is no exemption within the Regulations that allows a public authority to withhold requested information solely because the information may assist the complainant in future legal action against the public authority. Rugby Borough Council have therefore failed to comply with Part 2 of the Regulations in that they have breached Regulation 5(1).

(ii) That another public authority may have responded to a similar information request from the same person is of no relevance. Rugby Borough Council have therefore failed to comply with Part 2 of the Regulations in that they have breached Regulation 5(1).

Regulation 5(1) states:

"...a public authority that holds environmental information shall make it available on request."

2. The information request was sent by the complainant on the 4th January 2005. Rugby Borough Council did not respond to the request until 7th March 2005, outside the 20 working day statutory time frame. The Commissioner's decision, therefore, is that Rugby Borough Council have failed to comply with Part 2 of the Regulations in that they have breached Regulation 5(2).

Regulation 5(2) states:

"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."

3. The complainant expressed a preference for communication of the information requested by the provision of the information in a permanent form. The information that was provided by Rugby Borough Council was provided in

a permanent form. The Commissioner's decision, therefore, is that Rugby Borough Council have complied with Part 2 of the Regulations in that they have complied with Regulation 6(1).

Regulation 6(1) states:

"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."

4. Where a public authority intends to withhold information from the response to an information request, regulation 14 requires that the public authority inform the requester of this and of the provision of the Regulations that allows this. The response dated 7th March 2005 from Rugby Borough Council was not adequate for the purposes of regulation 14 as it provided no such explanation. The Commissioner's decision, therefore, is that Rugby Borough Council have failed to comply with Part 3 of the Regulations in that they have breached Regulation 14.

Regulation 14 states:

"If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

(2) The refusal shall be made as soon as possible and no later than 20 working days after the receipt of the request.

(3) The refusal shall specify the reasons not to disclose the information requested, including-

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

(4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or complete.

(5) The refusal shall inform the applicant-

- (a) that he may make representations to the public authority under regulation 11; and

(b) of the enforcement and appeal provisions of the Act applies by regulation 18.”

Action Required

In view of point 1(ii) above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that, within 30 days of the date of this Notice, Rugby Borough Council provide to the complainant all information that was withheld on the basis that this information had previously been provided to the complainant by Warwickshire County Council.

In relation to point 1(i) above, the Commissioner understands that Rugby Borough Council has now provided this information to the complainant.

Whilst this Decision Notice does also find that the Council breached regulations 5(2) and 14, it does not appear that further action is necessary in relation to these breaches at this stage. In relation to regulation 5(2), the information request was responded to, albeit outside the 20 working day time limit. In relation to the failure to issue a refusal notice in line with regulation 14, it is not necessary to issue a refusal at this stage as this Decision Notice requires that the Council supply to the complainant all information that is still withheld.

Failure to comply

Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the “Tribunal”). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

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

Reference: FS50072105

Dated the 13th day of February 2006

Signed:

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