

**Legal, Licensing & Registration
Services**

Local Land Charges

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**Statement on Guidance from the Information Commissioners Office
regarding the Environmental Information Regulations and Property
Searches**

As you will be aware, the Information Commissioners Office (ICO) issued guidance on 16 July 2009 concerning property searches. The guidance is not binding on the council, but we accept that we must take this into account when deciding how we should make property search information available. The ICO has also issued decision notices on 27 July, in the cases of East Riding of Yorkshire (Reference: FERO236058), and Stoke City Council (Reference: FERO240911)

The guidance states that it considers most of the information used to compile the Con29R to be environmental information under the Environmental Information Regulations (EIR's). The guidance suggests however, that "it will still be necessary to consider the information in relation to each property search on its own merits as individual circumstances may lead to a different conclusion".

The guidance also says "it is unlikely to be reasonable for a public authority to reject a request for inspection of property records". The guidance states "we consider that a public authority should allow the inspection of the environmental information contained in property search records where this is requested. In such cases, as the requested information is inspected 'in situ', no charge can be made".

Currently, the Local Government Association (LGA) with the Local Land Charges Institute, is doing further work on this issue. Pending the outcome of this work, we accept that it can be said that the majority, if not all the CON29R enquiries seek information on administrative measures, and that those measures affect or are likely to affect the state of land, and that consequently our responses to the enquiries are likely to be environmental information under

the EIR's. We think it would be impractical and unduly bureaucratic to examine each response to each enquiry in this respect.

However, we do not accept that the duty to make this information available on request under Reg 5(1), also includes an absolute duty to make this information available for inspection at the council's offices. We take the view that under Reg 6(1)(a) if an applicant requests that information is made available for inspection, we are entitled not to do so if it is "reasonable" for us to make it available in another form or format. We take the view that Reg 6 is comparable in this regard to Sec 11 of the Freedom of Information Act 2000, whereby an applicant can express a preference for a reasonable opportunity to inspect, but where the public authority is only under a duty to give effect to that preference "so far as reasonably practicable", having regard to all the circumstances, including the cost of doing so. In our view, in deciding what is "reasonable" under Reg 6(1)(a), we are entitled to take into account the cost of making information available in a particular form or format. We note that in the East Riding and Stoke cases mentioned above, the public authorities apparently did not provide any grounds for claiming it was reasonable to make the information available in hard copy format. However, we have set out below the grounds upon which we believe it is reasonable for us to provide this information in this format.

Again there are other comparable access to information regimes where there is an express right to inspect, for example the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000. In our view if it had been intended to create such a right the EIR's, or indeed Directive 2003/4/EC upon which the EIR's are based, would have been explicit about this.

At present, there are a number of council services providing responses to the enquiries, and many of the records they need to consult are either held in manual files, or are on a number of different computer systems. In addition, many of these records contain personal data under the Data Protection Act 1998, where disclosure to someone making an inspection might constitute a breach of the data protection principles. Most of these services have no arrangements in place currently for public access to their records. As a result, it would not only cost the council a considerable amount to put in place arrangements for inspection, but this would also take a considerable amount of time. For these reasons, we take the view it would be reasonable for us to continue making this information available through our official search service, in hard copy format. We take the view these are "good grounds" for making this information available in this format, in accordance with the East Riding and Stoke cases. This service already provides this information quickly and reliably, and on a non-profit making basis.

In relation to what is "reasonable" in the context of Reg 6, and what is a "reasonable amount" under Reg 8 (see below), we have had regard to the Court of Appeal decision in *The Office of Communications v The Information Commissioner* [2009] EWCA Civ 90. To the extent the EIR's leave this open, we take the view the choice of matters to be taken into account is for the judgment of the council as the primary decision-maker, subject only to scrutiny by the courts on the basis of the "Wednesbury" principles.

In relation to charging for this information, Reg 8 provides that no charge can be made for allowing access to public registers or lists of environmental information, or for allowing information to be examined at our offices. However, subject to this, the council may make a charge provided this does not exceed an amount which we are satisfied is a "reasonable amount".

Under the Local Authorities (England) (Charges for Property Searches) Regulations 2008 (CPSR), charges for answering enquiries about a property may be made at our discretion, but must have regard to the costs of answering such enquiries. In order to demonstrate transparency, the council decided to apply the formula for unit charging in Reg 6 and 7 of the CPSR. Accordingly our current charges for official searches are based on a division of our likely total costs, as defined, by the likely number of searches.

We take the view the resulting fee is a “reasonable amount” under Reg 8 of the EIR’s. The current fee only takes into account our direct costs, and does not include any element for return on investment, or for future investment. As a result, the current fee does not pass on the entire amount of the costs, in particular indirect ones, actually incurred in making this information available.

Consequently our current fees will remain in force until the work by the LGA has been completed, and the council has considered these matters further in the light of that work.

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