

Our reference RFI.1248.1

10 February 2010

Mrs Sheila Oliver
By e-mail to

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Dear Mrs Oliver

— **Request for Information (RFI 1248) – Costs of proposed school, Harcourt Street, North Reddish, Stockport**

Further to the acknowledgement that I sent to you on 4 February 2010 I am responding now to the request for information that you submitted to the Audit Commission under the Freedom of Information Act 2000 (FoIA). We received your request on 3 February 2010.

Your request was:

“I have recently written to the District Auditor who covers Stockport raising issues about the escalating costs of a 550 pupil school to be built on a site entirely contaminated with lead, arsenic and asbestos on which rushed and inadequate contamination investigations were finally done after Stockport Council was forced to. I am worried about unforeseen contamination costs, I am concerned that even before it is built - and the cost has risen from £5.5 million on October 5th 2005 to £7.5 million on December 12th 2005, to £8.2 million and £8.6 million just six months later and then rose to £10 million, even before the contamination had been discovered (although it was known by the Council all the time that it was there). The Council said £6.9 million was coming from capital receipts (the sale of redundant school land) but they were forced to admit in December 2009 that only £1.6 million will be coming from the sale of such assets and the rest will have to be borrowed. They are signing a blank cheque if they don't know yet the full extent of the contamination. The school is not big enough even before it is built and the birth rate in the area is rising sharply. There is a large, safe, cheap, not contaminated site available but for some reason Stockport Council won't use that.

I should like to see any memos, minutes, hand written notes of telephone conversations, meetings, emails, letters or any other written document between the office of the District Auditor and Stockport Council regarding this issue. I need to ensure that the Council is telling the truth to the District Auditor.”

Although you do not refer to them, I have considered the Environmental Information Regulations 2004 (EIRs) as well as the FoIA. This is because your request is about land and concerns that you have about its use and contamination. The regulations have some similarities with the FoIA and enable members of the public to request environmental information from public authorities such as the Audit Commission. Details are at http://www.ico.gov.uk/what_we_cover/environmental_information_regulation.aspx

I have made enquiries and can confirm that the Audit Commission holds none of the information that you requested, either under the FoIA or the EIRs. The Commission has therefore not withheld any information when responding to you.

My role is to provide you with a response for the Audit Commission and the information that it holds, not for the District Auditor and his information. But as part of providing you with advice and assistance under the FoIA and EIRs I need to explain the position of District Auditors and ways in which you can obtain information.

District Auditors

District Auditors are appointed by the Audit Commission under Section 3 of the Audit Commission Act 1998 (ACA). They discharge their functions independently of the Audit Commission and are not public authorities subject to the FoIA. This is explained (see links below) on our website and referred to in the Information Commissioner's Awareness Guidance No 18, Public Audit.

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_18_-_public_audit.pdf

Further details about appointed auditors and their role can be obtained from the FAQ pages on our website

<http://www.audit-commission.gov.uk/aboutus/pages/faqs.aspx>

Section 49 of the Audit Commission Act 1998

Information held by District Auditors is subject to Section 49 (restriction on disclosure of information) of the ACA. This is explained on our website at

<http://www.audit-commission.gov.uk/legal/freedomofinformation/Pages/foiguide.aspx>

Section 49(1) contains a general prohibition on disclosure "No information relating to a particular body or other person and obtained by the Commission or an auditor, or by a person acting on behalf of the Commission or an auditor, pursuant to any provision of this Act or of Part I of the Local Government Act 1999 or in the course of any audit or study under any such provision shall be disclosed except....." It then goes on to list exceptions, the main one in practice being "(a) with the consent of the body or person to whom the information relates".

District Auditors also have to consider Section 49(2B), irrespective of whether there is consent from other bodies or persons for disclosure. Section 49(2B) enables, but does not require, the auditor to disclose information “except where the disclosure would, or would be likely to, prejudice the effective performance of” the auditor’s statutory functions.

Unlike the FoIA, information released under Section 49 does not go into the public domain and become freely available to anyone. When it is received by the person who requested it, the information becomes subject to Section 49(2C) which requires consent from the District Auditor to disclose the information to anyone else. The procedure for obtaining consent is in Section 49ZA.

Where the auditor holds information requested, he / she can consider whether to release it under Section 49. But the auditor usually allows the audited body and other bodies or persons to whom the information relates to make representations to the auditor prior to disclosure. The auditor considers these representations because they relate to obtaining consent for disclosure under Section 49(1). But the auditor will also consider under Section 49(2B) whether disclosure will prejudice the audit function. The final decision on disclosure of information held by the auditor is a matter for the auditor, not for the audited body.

Although not subject to the FoIA, District Auditors are subject to the EIRs. The restrictions on disclosure in Section 49 do not apply to environmental information held by the auditor.

If you would like the District Auditor, Tim Watkinson, to consider and respond to your request for information please let me know. There is a deadline of 20 working days for responding to information requests that come under the EIRs. For information held by the District Auditor, the 20 days will start when you let me know that you would like a response from the auditor.

Before you do so, please bear in mind other ways of obtaining the information.

Other ways of obtaining the information requested

It may be best to ask the audited body for information first, before coming to the auditor, because the audited body usually holds more information than the auditor and the audited body is subject to the FoIA.

Stockport Metropolitan Borough Council is a public authority subject to the FoIA and the EIRs. If you have not already done so, you can submit a request for this information to the Council. The Council is also subject to Section 49(2A) of the ACA which enables it to disclose information about the audit unless disclosure “would, or would be likely to, prejudice the effective performance” of the Council’s (not the auditor’s) functions. Contact details are at

<http://www.stockport.gov.uk/services/councildemocracy/yourcouncil/freedomofinformationanddataprotection/foipolicy>

Any “persons interested” have a right under Section 15 of the ACA to “inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them, and make copies of all or any part of the accounts and those other documents”. Exactly what can be inspected is a decision of the audited body. After the inspection period, local government electors for the area to which the accounts relate can question the auditor about the accounts.

The inspection period is set and advertised by the local authority in liaison with the auditor. For the 2009-10 accounts of the Council, this will be done later in 2010. Rights under Section 15 to inspect and ask questions about the accounts for 2008-9 and earlier financial years no longer exist because the audits for those years are closed.

Our website contains guidance for querying local authority accounts. This includes a link to our publication *Council accounts: Your rights*
<http://www.audit-commission.gov.uk/aboutus/contactus/Pages/councilaccountqueries.aspx>

I hope my response is a useful explanation of the information legislation and enables you to decide the best way forward. If you have a query about my comments and explanations please let me know.

If you are unhappy with my response under the FoIA, you can raise a complaint under the Audit Commission’s Access to Information Complaints Procedure, which is at
<http://www.audit-commission.gov.uk/legal/freedomofinformation/Pages/informationcomplaintsprocedure.aspx>

Yours sincerely

Richard Page
*Freedom of Information Assessor
Northern Region*