

Mr Carroll
[request-106338-xxxxxxx@xxxxxxxxxxxxxx.m](#)

My ref: IL0 - Unclassified
Your Ref: ENQ 1-208096066
Please ask for: Stuart Taylor
Telephone No: 0121 569 3715
Email: Stuart_Taylor@sandwell.gov.uk
Date: Friday 18th May 2012

Dear Mr Carroll,

Environmental Information Regulations 2004 - Request for Review - Inspection Strategy for Potentially Contaminated Sites

I refer to your request for a review of 20th March 2012, in respect of the Council's response to your Environmental Information Regulations 2004 enquiry entitled "Inspection Strategy for Potentially Contaminated Sites".

I have undertaken this review in my capacity as Corporate Information Governance Manager, with corporate responsibility for ensuring that the Council complies with the provisions of the Environmental Information Regulations 2004 (EIR).

My review has involved inspecting the Council's responses and giving detailed consideration to the exceptions contained within the EIR, as well as the public interest.

Your request and the Council's response

On 18th February 2012, you submitted a request which asked the following four questions:

"Having been supplied with the inspection strategy in another Freedom of Information request – [request51906b519a8e1@whatdotheyknow.com](#) I am seeking further explanation of the gradation of "inspection priority category" which I cannot find any reference to in the inspection strategy document. Could I therefore ask for the Council's full numbered gradation category scheme in respect of identification of priority and an explanation of each numbered category

Could I ask if the “Trans-Thematic Working Party on Contaminated Land” still exists or when it ceased to exist and if minutes of its meetings are publically available? On how many occasions does it meet per month/ annum?

Can you confirm that this (the inspection) timetable was met and that all sites have now been assigned an “inspection priority category” in the Metropolitan Borough of Sandwell?

Could you provide a full location list of sites that have so far been categorised according to the numbered “inspection priority category”, stating the number assigned for each site, and whether these sites have been inspected under the councils inspection strategy? Could I request this in excel spreadsheet form if possible?”

The Council responded to the first three of your question to your satisfaction and within the twenty working days required by the EIR; I have, therefore, not considered these responses further. However, the Council declined to answer your final question and applied the exception to disclosure listed at regulation 12 4 (d) in respect of material in the course of completion.

Your request for a review, broadly speaking, makes the following points:

- The inspection ranking strategy is a completed document and the fact that it might be subject to revision is irrelevant.
- All sites have been assigned an inspection category and therefore the Council holds the information.
- You were provided with similar information in respect of the Gower Tip at Tividale. The public interest favours disclosure because it would provide transparency and enable individuals to scrutinise how public money has been spent.

Findings

I have found that the Council was correct to withhold the requested information. My reasons for this decision are outlined below.

I should explain at the outset that the information held within the inspection strategy document has been compiled by officers in a mapping database and contains information about the factors which might cause a site to be classified as "contaminated". This is based on an initial assessment of historic site information which is often incomplete, dated and might later be proven to be factually incorrect. It is, therefore, not reliable information and is intended as a guide to officers, as opposed to a definitive document.

The information compiled to date comprises a list of a large number of sites across the Borough. The sites have been identified on the basis that they may potentially be classified as "contaminated land", based on their historic use, environmental setting and current uses. The purpose of the inspection strategy document is to provide an internal preliminary risk assessment of potential sites where further investigation may be required and to prioritise further investigations. It is hereafter referred to in this review as the "prioritisation document".

With regard to the exception applied by the Council relating to material in the course of completion, I have found that it was not applicable on this occasion. Whilst it is the case that the prioritisation document held by the Council will be added to and amended as funding to undertake further investigations becomes available, the document is information currently held by the Council.

However, I have found that the following exceptions to disclosure are applicable to your request.

- **Regulation 12 4 (b) - where the request is "manifestly unreasonable".**

This exception can apply in the same way as the exemption contained within the Freedom of Information Act 2000 (FOIA) pertaining to "vexatious" requests. In applying this exception to disclosure, I have taken into account the large number of requests that you have submitted under the EIR and the FOIA to the Council in recent years, as well as the number of general enquiries and complaints that you have submitted to the Council, especially in relation to the Rhodia Lagoon.

I have also considered the large number of requests you have submitted to a number of public bodies relating to contaminated land issues. Having inspected the “whatdotheyknow” website, it is evident that you have submitted at least ninety requests to a variety of public authorities and I have considered the cumulative effect of these requests across these bodies as a whole, which place a significant burden on resources on the public sector as a whole. This does not take into account the further requests or complaints or other enquiries not submitted via the “whatdotheyknow” website.

In reaching this decision, I have found that the Decision Notice promulgated by the First Tier Tribunal (Information Rights) (Case Reference EA/2011/0222) in respect of the Independent Police Complaints Commission (IPCC) is relevant in this case. The Tribunal found that it was reasonable to classify a request as vexatious in respect of an individual who had submitted 25 information requests over a period of two years.

The guidance in respect of vexatious requests produced by the Office of the Information Commissioner lists five categories which should be considered when classing a request as vexatious:

- Can the request fairly be seen as obsessive?
- Is the request harassing the public authority or causing distress to staff?
- Would complying with the request impose a significant burden in terms of expense and distraction?
- Is the request designed to cause disruption or annoyance?
- Does the request lack serious purpose or value?

It is important to stress that all five categories do not have to apply for a request to be classed as vexatious. The Commissioner’s guidance clarifies that the context of the request must be considered when determining that a request is vexatious.

I have found that this request could reasonably be classed as obsessive, cause harassment and would impose a significant burden on the Council in this case. In reaching this decision, I have considered the volume of your previous correspondence with the Council, the diversion of

resources to answer these enquiries and the fact that your requests have also been mingled with complaints and comments made regarding the Council, such as being “apologists for industry” and your ‘tag’ on “whatdoyouknow” which refers to “sinister agents in Government Agencies”.

Finally, I have also considered the fact that disclosure of this information is highly likely to lead to large numbers of further requests from you, which will again cause serious disruption to the Council.

The Council did not initially find your request manifestly unreasonable and answered parts of your request. I have found that it would have been reasonable to apply the manifestly unreasonable exception to the whole of your request at the outset. The fact that the Council did not initially class your request as manifestly unreasonable does not prevent such a conclusion being reached at review stage.

Regulation 12 5 (e) the confidentiality or commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest

The Council has considered the legitimate economic interests of property owners within the Borough and the possibility of causing “blight” in certain area, based on potentially inaccurate information. The information compiled to date comprises a list of in excess of a large number of sites across the Borough. The sites have been identified on the basis that they may potentially be classified as “contaminated land”, based on their historic use, environmental setting and current use.

The prioritisation document is a list of sites which may fulfil this criterion, identified for further investigation to identify whether this is actually the case and ranked according to potential risk. In a proportion of cases, further study is sufficient to determine that the site in question does not satisfy the legislative definition of contaminated land and as such no further action is deemed necessary.

In view of this, making the preliminary information available at this stage, prior to a detailed assessment being undertaken, is likely to unnecessarily

blight sites and cause undue concern, based on what is not definitive information.

The information requested has been generated by an initial assessment of site history, environmental setting and current use solely drawn from a mapping database.

For these reasons, I have found that release of the information in its initial form may needlessly impact upon the economic interests of property owners within the Borough.

- **12 5 (g) Protection of the environment to which the information relates**

Finally, I have found that it is likely that publication of the prioritisation list could result in blight and risk subsequent deterioration to the property market within the Borough and reduce the likelihood of attracting inward investment. The list contains a large number of sites across the Borough and if taken out of context may create the impression that the Borough is an unattractive option with regard to economic regeneration potential. It is likely that when assessed in detail, as previously described, a considerable proportion of sites identified as potential sites of concern will be re-classified as low risk and as such prove a more attractive option for redevelopment. This would have both a negative impact on the Borough in both economic and environmental terms.

Public Interest Consideration

In terms of the public interest with regard to the exceptions referred to above, I have found that the public interest favours non-disclosure of the information on this occasion, for the following reasons:

- It is reasonable for the Council not to respond to requests where they can be deemed as obsessive and that may place an unjustifiable burden on that authority, especially in the context of a request being one in a long line of correspondence or complaints.
- The Council should not divert resources responding to requests that can be seen as obsessive.

- The prioritisation document is based on an initial assessment conducted by officers and is likely not be accurate in all cases. Where further tests are conducted, the assessments may well change. There is an inherent public interest in not placing information which may well be inaccurate into the public domain
- Where further detailed investigations are undertaken, individuals living in the vicinity are notified of the findings. Where reliable, meaningful, information is obtained, this is provided in a pro-active manner to local residents.
- There is a clear public interest in the Council protecting legitimate economic interests of property owners
- There is a legitimate and inherent public interest in the Council not disclosing information where to do so might impact on inward investment into the area, especially where the information may be based on partial or inaccurate information.

If you remain dissatisfied with the Council's response to your request, you have the right to refer the matter to the Office of the Information Commissioner. The Commissioner's contact details are as follows:

Office of the Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
www.ico.gov.uk

Yours sincerely

Stuart Taylor
Corporate Information Governance Manager
Sandwell Metropolitan Borough Council