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Case summary posted by the Task Force on Access to Justice

EUROPEAN UNION, Reference for a preliminary ruling, East Sussex County Council v Information Commissioner, case C-71/14

<i>1. Key issue</i>	Charges for supplying environmental information – such charges should include only other costs that do not arise from the establishment and maintenance of the registers, lists and facilities for examination are entitled to be charged by the national authorities.
<i>2. Country/Region</i>	European Union
<i>3. Court/body</i>	Court of Justice of the European Union (CJEU)
<i>4. Date of judgment /decision</i>	2015-10-6
<i>5. Internal reference</i>	<i>CJEU – Fifth Chamber, C-71/14</i>
<i>6. Articles of the Aarhus Convention</i>	Art. 4, para. 1 and 8, Art. 9, para. 1.
<i>7. Key words</i>	Access to information, EU Directive 2003/4, Charge for supplying environmental information, Reasonable amount, Costs of maintaining a database and overheads

8. Case summary

PSG Eastbourne, a property search company, requested environmental information from the East Sussex County Council in order to supply the information received for commercial purposes to persons involved in the transaction. The County Council supplied the information requested and imposed several charges amounting to GBP 17 (approximately EUR 23), applying a standard scale of charges. PSG Eastbourne filed a complaint against the charges made by the County Council. The Information Commissioner issued a decision notice finding that the charges were not in accordance with regulation 8(3) of the Environmental Information Regulation 2004 (“EIR 2004”) since they included costs other than postage or photocopying costs or other costs associated with supplying the information requested. The County Council, supported by the Local Government Association, appealed to the First-tier Tribunal against that decision arguing that the charges were lawful and did not exceed a reasonable amount. The First-tier Tribunal made a request to the CJEU for a preliminary ruling on the matter.

According to article 5(2) of EUs Directive 2003/4 on access to information, public authorities may make a charge for supplying any environmental information, but the charge must not exceed a reasonable amount. The referring tribunal asked the CJEU whether Article 5(2) of Directive 2003/4 must be interpreted as meaning that “the charge for supplying a particular type of environmental information may include part of the cost of maintaining a database and the overheads attributable to the time spent by the staff of the public authority on, first, keeping the database and, secondly, answering individual requests for information, properly taken into account in fixing the charge”. The CJEU held that in order to determine what constitutes “supplying” environmental information within the meaning of article 5(2) of Directive 2003/4, article 5(1) of this directive must also be taken into account: according to article 5(1) and in conjunction with article 3(5) of the Directive, the Member States are obliged not only to establish and maintain registers and lists of environmental information held by public authorities, or information points, and facilities for the examination of that information, but also provide access to those registers, lists and facilities for examination free of charge. Therefore, the concept of “supplying” environmental information is delimited meaning that what constitutes supplying of environmental information under article 5(1) of Directive 2003/4 must be free of charge and only other costs that do not arise from the establishment and maintenance of the registers, lists and facilities for examination are entitled to be charged by the national authorities under article 5(2) of Directive 2003/4. In particular, the costs of “supplying” environmental information encompass not only postal and photocopying costs but also the costs attributable to the time spent by

the staff of the public authority concerned on answering an individual request for information. In addition, article 5(2) of Directive 2003/4 states as a further condition that the total amount of charge provided for in that provision must not exceed a reasonable amount. In order to assess whether a charge has a deterrent effect, the CJEU held that both the economic situation of the person requesting the information and the public interest in protection of the environment must be taken into account.

In the present case, the CJEU concluded that the charges at issue in the main proceedings must be reduced in order to exclude the costs associated with the establishment and the maintenance of the database, but also stated that they did not appear to exceed what is reasonable.

9. *Link to judgement/decision*

<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-71/14>

http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/CJEU_C71_14_EastSussexCouncil/CJEU_C71-14_Judgement.pdf