

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 3 August 2017

**Public Authority:** Royal Borough of Kensington and Chelsea  
**Address:** Town Hall  
Hornton Street  
London W8 7NX

**Decision (including any steps ordered)**

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1. In two associated requests, the complainant has requested information about an Article 4 Direction, and communications between Royal Borough of Kensington and Chelsea (RBKC) staff. RBKC has told the complainant that it does not hold the information he has requested but has directed him to where related information is already published.
2. The Commissioner's decision is that RBKC does not hold the specific information the complainant has requested and that regulation 12(4)(a) of the EIR applies to the complainant's two requests.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

**Request and response**

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4. The complainant appears to have had a lengthy correspondence with RBKC over a number of years about particular residential properties in a conservation area. On 22 March 2016 he requested the following (request 1 - FER0664807):

*"[Redacted] says in chapter 7 of his email dated 13th May 2014 that I forward you to the following*

*"7. An Article 4 Direction*

*We are considering this request and require more time before we can advise you in this aspect of your complaint. This is because of the compensation provisions relating to Article 4 Directions and the financial consequences for the Council and we will revert to you on this matter as soon as information is available"*

*However [Redacted] never reverted to me with this information which was not yet available when he sent me this email on the 13th May 2014. Hence I would like to make a Freedom of Information Request so that you provide me with this information."*

5. The Commissioner understands that an Article 4 Direction is made by the relevant local planning authority – RBKC in this case. It restricts the scope of permitted development rights either in relation to a particular area or site, or a particular type of development anywhere in the authority's area.
6. The complainant has provided the Commissioner with the email of 13 May 2014 referred to in his request. The complainant says in his request that RBKC sent *him* this email and that it did not then revert to *him* about the information referred to. However, the Commissioner notes that the email of 13 May 2014 is not addressed to the complainant, but is addressed to someone else.
7. On 18 April 2016 RBKC responded to the complainant's request. It said it had provided the information to the complainant previously, in an email dated 7 August 2014, in which it had said:

*"...There are very good reasons also for not agreeing to an ad hoc Article 4 Direction and those reasons are both financial and practical: compensation would be payable unless notice were given to owners and that notice may well prompt owners to carry out the works the Article 4 was intended to prevent, before the Article 4 takes effect"*

8. On 26 April 2016 the complainant re-stated that he wanted the financial information that [Redacted] had said was not available in his email 13 May 14, as follows:

*"What I ask under this FOI request is to be provided with the financial information which according to [Redacted] was not yet available to him on the 13th May 2014 preventing him at this time from replying to my request for an Article 4 Direction"*

9. The complainant said that the email of 7 August 2014 did not contain the 'missing financial information' to which [Redacted] has referred in his email of 13 May 2014. He further argued that the information provided on the 7 August 2016 could not be the 'missing information' because this was available to [Redacted] on 13 May 2014 (as it is 'general knowledge that anyone knows') and [Redacted] had indicated in his earlier email that the financial information in question was not yet available.
10. Having reviewed the correspondence of 26 April 2016 – which is not completely clear - it appears to the Commissioner that the complainant considers that in its email of 13 May 2014 RBKC had referred to financial information – that is, possible compensation payable to the owners of four particular properties – that prevented RBKC from issuing an Article 4 Direction in relation to those properties.
11. In correspondence dated 8 June 2016, RBKC revised its position and said it does not hold the requested information. With regard to the email of 13 May 2014, RBKC said that [Redacted] had had to speak to colleagues about an earlier request for an Article 4 Direction as he did not know what the compensation provisions were or how the request should be responded to. [Redacted] had spoken to colleagues to find out more about compensation provisions and had then sent the correspondence of 7 August 2014. RBKC said that there is no 'financial information' (of the type the complainant has requested) that exists and that no information was being withheld from the complainant. It explained that in the email of 13 May 2014 [Redacted] had simply not been aware of the circumstances that would mean compensation would be payable.
12. On 19 June 2016, the complainant requested the following (request 2 - FER0677916):
  - 1a) I would like to know who were these colleagues to whom [Redacted] has to speak...*
  - b) Why [Redacted] took three months...*
    - 2i. ... Hence I would like to know if when you say that there is no "financial information" which exists this means that there was not any compensation which was payable...*
    - ii... why [Redacted] has taken an additional three months*
    - iii... I would like to know if he knew when the compensation was payable in his email of 07th August 2014 and when this compensation was payable?*

*3. ... I would like you admits that [Redacted] did not have any reason to refuse my request for an Article 4 Direction*

*4...I would like you provide me with any evidence that [Redacted] could have for each of the four properties [Addresses Redacted] which prove that these properties have permitted development rights which give them right to financial compensation..."*

13. In this correspondence, the complainant seems to suggest that if the financial information he had requested did not exist, and there was no compensation payable to the owners of the four properties in question, then [Redacted] had no reason to refuse his request for an Article 4 Direction with respect to those properties.
14. On 11 July 2016, RBKC responded. RBKC explained that [Redacted] had not known what criteria the RBKC would apply to a request for an Article 4 Direction as this was not part of his role. This was why he had needed to speak to the individual who was the Head of Forward Planning at the time. The Head of Forward Planning had been on extended leave and this had caused the delay in [Redacted] responding to the complainant on the Article 4 point.
15. It said the other matters the complainant had raised had been covered in its previous correspondence with him and that his concerns had been previously investigated through RBKC's formal complaints procedure.
16. Correspondence on aspects of the 11 July 2016 email followed. In correspondence dated 29 July 2016, RBKC confirmed that there had been no intention to mislead regarding who [Redacted] had spoken to two years previously. RBKC addressed the complainant's further concerns in correspondence dated 15 August 2016. It provided the complainant with links to where general information on Article 4 Directions, including compensation, is published. The complainant remained dissatisfied and requested an internal review on 4 November 2016.
17. RBKC provided a review of its response to both requests on 12 December 2016. It confirmed that the purpose of the review was to consider whether RBKC held information within the scope of the complainant's requests and whether, if it did, there were reasons why it should not be disclosed.
18. RBKC confirmed that it does not hold the information the complainant has requested. It said there is no 'financial information' as described by the complainant. It went on to say that, as it had explained in its correspondence of 8 June 2016, [Redacted] had needed to speak to colleagues to find out what the compensation implications might be.

RBKC said it was clear that this was the information [Redacted] had been referring to in his correspondence of 13 May 2014.

## Scope of the case

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19. The complainant contacted the Commissioner on 18 and 20 April 2017 to complain about the way his requests for information had been handled. Following the Commissioner's initial assessment of his complaint, in correspondence dated 5 May 2017 the complainant confirmed that his concerns remain as follows:
  1. That RBKC's response that it does not hold the information is not clear enough and it has not complied with its duty under section 1(1)(a) of the FOIA.
  2. That what RBKC has told him is not true.
  3. That RBKC has been inconsistent and has not apologised to him on all the occasions when this was necessary.
  4. Whether RBKC is correct when it says it does not hold the information he has requested.
  5. That the Commissioner should ask RBKC to provide him with a reply that makes direct reference to the email of 13 May 2014, which was what his original request of 22 March 2016 concerned.
  6. If the requested information does not exist, RBKC should admit to him that the financial information referred to in the 2014 emails and which was 'missing' at that time, has never existed.
20. With regard to paragraph 19.1, the complainant has referred to section 1(1)(a) of the FOIA which places an obligation on public authorities to state whether information is held. The request was managed under the EIR however, and not the FOIA. The EIR do not have a directly equivalent provision but the notice addresses this concern generally.
21. With regard to paragraphs 19.2 and 19.4, the Commissioner has focussed on whether RBKC holds information within the scope of request 1 and request 2 and has complied with its obligation under regulation 12(4)(a) with regard to these requests.
22. The Commissioner has considered the complainant's concerns at paragraphs 19.3, 19.5 and 19.6 under 'Other Matters'.

## Reasons for decision

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23. Regulation 12(4)(a) of the EIR says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
24. In his request of 22 March 2016, the complainant requested particular information that he said had been referred to in the email dated 13 May 2014.
25. The Commissioner has reviewed the long and complex correspondence between the complainant and RBKC; the complainant's correspondence to her and RBKC's submission.
26. With regard to request 1 and requests 2.2(i), 2.2(iii) and 2.4, in its submission to her RBKC has acknowledged that its response of 18 April 2016 may have suggested that it held particular financial information. However, RBKC explained to the Commissioner that this was due to a misunderstanding on its behalf as to what information it was that the complainant had requested.
27. RBKC referred the Commissioner to the complainant's email of 26 April 2016 in which he had clarified what it was he wanted to know. After it had consulted with its Planning team, RBKC had emailed the complainant on 8 June 2016 to explain that such financial information is not held by RBKC. It had not, and has not, conducted any searches for the information as its position is that the information does not exist. RBKC considers that the complainant has simply misinterpreted what [Redacted] wrote in his emails of 13 May 2014 and 7 August 2014.
28. [Redacted] had appeared to indicate that particular compensation information was not currently available but that RBKC would revert to the correspondent about this as soon as possible. In its submission to the Commissioner, RBKC has explained that [Redacted] did not have the necessary knowledge about compensation associated with Article 4 Directions and had needed to speak to colleagues to find out what the compensation implications might be. Following this conversation, [Redacted] had sent to the complainant the email of 7 August 2014.
29. In response to the Commissioner's further questioning, on 17 July 2017 RBKC provided further confirmation that it does not hold the financial information requested in request 1 and request 2.2(i), 2.2(iii) and 2.4.
30. RBKC re-stated that it considers that the complainant has misinterpreted what [Redacted] wrote on 14 May 2014. It appears to RBKC that the complainant considers that that [Redacted] went away and made calculations as to the financial consequences to RBKC of a particular



Article 4 Direction and as a result refused the complainant's request for such a Direction. RBKC has confirmed that this was not the case. As it had explained to the complainant in other correspondence, [Redacted] had spoken to colleagues about Article 4 Directions. RBKC has confirmed that the conversations were not recorded and no notes were made. [Redacted]'s conversation with a colleague was followed by the email to the complainant of 7 August 2014.

31. RBKC says that compensation may have been payable with regard to the properties that are the focus of the complainant's concern but that this was something that was informally discussed with no record of what was said. Consequently, it is satisfied that it does not hold the requested information; that is information about any compensation payable with regard to the specific properties and an Article 4 Direction.
32. In addition, and with regard to part 2.4, RBKC has told the Commissioner that in its internal review of 12 December 2016 it had confirmed that it had previously provided the complainant with web links to where general information that falls within the scope of this part is published.
33. RBKC has confirmed that, if necessary, an RBKC officer could form a picture of the permitted development rights for the properties that the complainant refers to in part 2.4, including the previous planning permissions granted, from a search of the relevant planning history of the sites.
34. This point appears to be academic as RBKC has confirmed that, contrary to what the complainant believes, it did not refuse the complainant's request for an Article 4 Direction because of any associated compensation that may have been payable, but for the reason it had given to the complainant on 7 August 2014, at paragraph 7 of this notice.
35. With regard to the complainant's concerns at paragraphs 19.2 and 19.4, the Commissioner acknowledges that RBKC's emails of 13 May 2014 and 7 August 2014 may have been unclear. She is, however, prepared to accept RBKC's explanation of [Redacted]'s reference to particular information on 13 May 2014, which is detailed above. She is satisfied that RBKC does not hold the financial information requested at request 1 and requests 2.2(i), 2.2(iii) and 2.4 – that is, financial information on compensation provisions associated with an Article 4 Direction with regard to the four properties on which the complainant is focussed – and is entitled to rely on regulation 12(4)(a) with regard to these requests.

36. With regard to parts 1(a) and 1(b) and part 2(ii) of request 2, in its submission to the Commissioner RBKC has acknowledged that there were shortcomings in how it responded to these parts of this request. This was because it had attempted to answer the complainant's questions from memory. RBKC has acknowledged that it should have confirmed from the outset that it does not hold the information the complainant has requested – that is, information about a conversation that took place two years previously – in recorded form. RBKC has confirmed to the Commissioner that there are no written transcriptions of conversations between [Redacted] and other staff members and so it is not possible to provide details of the content of the conversations in question.
37. The Commissioner has noted that, in the course of its correspondence with the complainant, RBKC addressed the questions posed in these parts; namely what colleagues [Redacted] spoke to (where this could be recalled) and what caused the three month delay between May and August 2014. She is prepared to accept that RBKC holds no recorded information on these matters and again, has not breached regulation 12(4)(a) with regard to these parts of request 2.
38. With regard to part 3 of request 2 - *'I would like you admits that [Redacted] did not have any reason to refuse my request for an Article 4 Direction'* - RBKC has said that this part cannot be considered to be a request for recorded information under the EIR and the Commissioner agrees. However, she has noted that RBKC has confirmed that to the extent that it might be considered to be such, it does not hold information relevant to this part and she is prepared to accept this.

## Other matters

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39. The Commissioner has considered the concerns the complainant has raised at paragraphs 19.3, 19.5 and 19.6. With regard to 19.3, she notes that RBKC has acknowledged that there were shortcomings in aspects of its communications with the complainant. Having reviewed the correspondence – which, as she has mentioned previously, is long and complex – she considers that RBKC made genuine attempts to address the complainant's many questions and requests; that it remained polite and professional and offered apologies as appropriate. Misunderstandings on both sides may have arisen but the Commissioner trusts this decision notice has resolved these.



40. With regard to the concern at paragraphs 19.5, it is not necessary or appropriate for the Commissioner to ask RBKC to issue such a reply to the complainant. The matter of the 13 May 2014 email has been addressed elsewhere in the notice. With regard to the concern at 19.6, again, these matters are addressed elsewhere in this notice.

## Right of appeal

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41. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
LEICESTER  
LE1 8DJ

Tel: 0300 1234504  
Fax: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
43. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed** .....

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**SK9 5AF**