

Freedom of Information Act 2000 (THE ACT)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 2 March 2018

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

Decision (including any steps ordered)

1. The complainant has requested information on Bramley House, minutes of the Kensington & Chelsea Tenant Management Organisation ("KCTMO") board, external consultants' reports and confirmation of whether a named individual is still employed by the TMO.
2. The Commissioner's decision is that the Royal Borough of Kensington & Chelsea ("the Royal Borough") has failed to issue a substantive response within 20 working days and therefore breached Section 10 of the Freedom of Information Act ("the Act") and, to the extent that the requested information is environmental, Regulation 5(2) of the Environmental Information Regulations ("the Regulations").
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Respond to the request, by providing a substantive response in accordance with the Act and, or to the extent that the requested information is environmental, provide a substantive response in accordance with the Regulations.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 14 August 2017, the complainant wrote to KCTMO and requested information in the following terms:

"I....request the following:

- fire safety and inspection reports for Bramley House in the last 5 years

- minutes of KCTMO board meetings in 2017

- all public reports of the appointment of safety consultants in relation to the Grenfell refurbishment (including reports to the Board)

- whether Mr Black is still in the TMO payroll [sic]"

6. The request was acknowledged by the Royal Borough itself on 16 August 2017 in the following terms:

"I am writing to confirm that we received your information request on 14 August 2017.....We will consider your request and respond in accordance with the requirements of the Freedom of Information Act 2000."

7. The language used in the acknowledgment shows that the Royal Borough accepted responsibility for responding to this information request.

Scope of the case

8. The complainant contacted the Commissioner on 10 December 2017 to complain that she had not received a response from the Royal Borough.
9. On 15 January 2018, the Commissioner wrote to the Royal Borough to notify it of the complaint. In line with normal practice, she requested that the Royal Borough issue a response to the complainant within 10 working days.
10. The Royal Borough did not respond to the letter of 15 January 2018 and, on the evidence available to the Commissioner at the time of issuing this notice, has not issued any further response to the complainant.
11. The complainant contacted the Commissioner on 1 February 2018 to request a Decision Notice considering the Royal Borough's compliance with the Act and, to the extent that the requested information is environmental, the Regulations.

12. The Commissioner considers that the scope of this investigation is to determine whether the Royal Borough has complied with Section 10 of the Act and, to the extent that the requested information is environmental, Regulation 5(2) of the Regulations.

Reasons for decision

13. Section 1(1) of the Act states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

14. Section 8(1) of the Act states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

15. The Commissioner considers that the request in question fulfilled these criteria, and therefore constituted a valid request for recorded information under the Act.

16. Section 10 of the Act states that response to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

17. Regulation 5(1) of the Regulations states that

"a public authority that holds environmental information shall make it available on request."

18. Regulation 5(2) of the Regulations states that

"Information shall be made available.....as soon as possible and no later than 20 working days after the date of receipt of the request."

19. From the evidence provided to the Commissioner in this case, it is clear that the Royal Borough did not respond to the request within 20 working days and has therefore breached Section 10 of the Act.
20. From the evidence provided to the Commissioner in this case, it is clear that, to the extent that the requested information is environmental, the Royal Borough did not respond within 20 working days and has breached Regulation 5(2) of the Regulations.

Other matters

21. The Commissioner is conscious that the public authority has been dealing with a tragic and major incident within the Borough, which has attracted national attention and which is now subject to a high profile public inquiry. The Commissioner recognises that these are exceptional and difficult circumstances. Nevertheless, the public authority's statutory obligations remain and whilst the Commissioner is a proportionate and reasonable regulator, she is unable to ignore a complete lack of response to an information request. Likewise, she cannot ignore a complete lack of engagement with her office when undertaking her regulatory functions.
22. The Commissioner's preference is always to resolve complaints on an informal basis where possible. Unfortunately, in this case, the Royal Borough's complete failure to engage with her office in any way has rendered that approach impossible.
23. Accordingly, this is one of a series of Decision Notices which will be issued to the Royal Borough in relation to these issues within a short space of time. All of these Decision Notices have arisen from complaints made to the Commissioner about the timeliness of responses to requests made, to the Royal Borough, under the Act and/or the Regulations. The Commissioner's position is that the Royal Borough's failure to engage with her Office has left her with no alternative but to issue a Decision Notice in each case.
24. The Commissioner would strongly encourage the Royal Borough to engage properly with her Office in future.

Right of appeal

25. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

Alun Johnson
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