

Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004 (the EIR)

Decision Notice

Date: 3 February 2011

Public Authority: Homes for Islington
Address: Highbury House
5 Highbury Crescent
London
N5 1RN

Summary

On 29 June 2008 the complainant made a request to Homes for Islington for information linking a section 20 notice and a contractor's itemised list of work and costs. At the internal review stage the public authority provided further information pertaining to the request. The complainant contacted the Commissioner to complain about the public authority's delay in dealing with the request; the format and content of the disclosed information; the validity of the refusal notice and the public authority's complaints procedure. The Commissioner finds the public authority complied with section 11 of the Act and regulation 6 of the EIR but did not comply with section 10 and regulation 5. He requires no remedial steps from the public authority.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. In addition, the Environmental Information Regulations (the "EIR") were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Commissioner. In effect, the enforcement provisions of Part 4 of

the Act are imported into the EIR. The Commissioner has been required to consider both pieces of legislation in this case.

Background

3. Under UK property law, a Section 20 notice is a legal document produced by a public authority to the leaseholders of a building. The leaseholders are the people who have purchased the property from the public authority originally. This document informs them of possible or integral works which are to be carried out on the communal areas of the building. These areas are generally front entrances, communal corridors, interior and exterior along with staircases, lifts and roofs etc. Leaseholders will only be held liable for essential works that need to be carried out, redecoration and other non-essential tasks are not covered. The leaseholder is responsible for a proportionate amount of the total cost of the works.

- Quick Property Sale Ltd, 2010

4. Homes for Islington was established in April 2004 as an Arms Length Management Organisation (ALMO), a local authority controlled company solely owned by Islington Council. Homes for Islington manages Islington Council's rented and leasehold housing stock. Therefore for the purposes of freedom of information Homes for Islington is a separate public authority by virtue of section 3(1)(b) of the Act, it is also a public authority under the EIR by virtue of regulation 2(2)(b).

The Request

5. On 29 June 2008 the complainant wrote to the public authority to make the following request:

"...Many thanks for sending a duplicate copy of the 'Section 20 Notice'...Would you please let us have a copy of the documentation which links the works listed on the estimate sent with the Section 20 estimate and the Contractor's itemised list of work and costs."

6. On 05 August 2008 the complainant contacted the public authority again to chase a response to his request stating:

*"...We asked you (29 June) to provide documentation which shows how the costs you listed on the Section 20 Notice relate to costs on the Bill of Quantities Andover Estate – a copy of which you provided us with. **This has not been done.** [emphasis added by complainant] ...Would you please inform us, with precision, what legislation and if appropriate judgements the Council depends upon to legitimate the Service Charge and Environmental Works cost..."*

7. On 18 August 2008 the complainant contacted the chief executive of the public authority stating no response to his requests regarding the environmental works, Section 20 Notice and service charge had yet been forthcoming.

8. On 18 August 2008 the public authority responded to the complainant stating the following:

"...The cost of the section 20 notice was calculated by dividing the total chargeable cost of the environmental works by the total amount of units on the estate. A breakdown showing the origins of the cost was included with the section 20 notice..."

I will forward your request to the project officer for a document linking every element of the section 20 breakdown with the bill of quantities but I do not think such a document exists..."

In my letter of the 22 May I stated that the relevant legislation governing the consultation requirements and recharge of the cost of major works was the Landlord and Tenant Act 1985 as amended by the Commonhold and Leaseholder Reform Act 2002..."

9. On 02 September 2008 the public authority contacted the complainant regarding the detailed breakdown between the Section 20 Notice and Bill of Quantities. The public authority explained that the figures had been provided by an outside firm of Quantity Surveyors. Once the authority was in receipt of the figures and had reviewed them it would forward the document on to the complainant.
10. The public authority also provided references of the appropriate judgements it depended on to legitimate the Service Charge and environmental works cost. Relevant clauses and schedules of the complainant's lease, the Housing Act 1985 and the Landlord and Tenant Act 1985 were provided to the complainant along with details of websites and postal addresses of organisations where advice and guidance was available.

11. On 03 September 2008 the complainant replied to the public authority asking that the authority recognise the date of the request for the linking document was 29 June 2008 not 05 August 2008.
12. On 26 September 2008 the public authority wrote to the complainant confirming that it had received a document from the external Quantity Surveyor. The authority explained that the document was a very detailed, complex spreadsheet and therefore the authority wanted to review the contents and "user-friendliness" before sending it on to the complainant.
13. On 19 October 2008 the complainant chased the public authority for progress on the spreadsheet's disclosure. The complainant requested that the authority provide the information or issue a refusal notice.
14. On 24 October 2008 the public authority confirmed receipt of the complainant's email. The authority provided a substantive response to the complainant's email of 19 October 2008 and letter of 03 September 2008 along with the Quantity Surveyor's pdf attachments and the completed linking spreadsheet. The authority provided brief instructions on how to cross reference the Section 20 Notice and Bill of Quantities and wrote:

"...I now attach the spreadsheet and – for sake of completeness the pdf version (which may in fact be easier to print off). The 3 pdf attachments are described to me as:

 - (a) Section 20 Breakdown (4 pages)*
 - (b) Revised Mechanical & Electrical Breakdown*
 - (c) Door Entry and CCTV Schedule to show the cost of door entry installation & CCTV for each courtyard/house (1 page)"*
15. The authority explained that a separate piece of work had had to be undertaken to produce the information requested in a form of a single (or linked set of) spreadsheets and how the authority had apportioned costs between residential and non-residential units on the estate.
16. On 29 October 2008 the complainant sent correspondence to the public authority regarding details of the spreadsheets he had been provided with. The complainant highlighted discrepancies in the figures generated and commented on the format of the pdf files being "simple image files" and requested that the public authority send "pdf files from which textual and numerical information can be copied and pasted" regarding future correspondence.

17. On 31 October 2008 the complainant sent a substantive response to the public authority dissatisfied with the correspondence and information it had provided. The complainant stated that a linking document concerning the works listed on the Section 20 Notice and the Bill of Quantities had still not been provided; the spreadsheets provided did not answer the questions raised in his request of 29 June 2008 and expressed disbelief that the public authority should be content with its Service Charge calculations.
18. On 18 November 2008 the complainant wrote to the Chief Executive Officer (CEO) at the public authority detailing his requests, including those initially made on 29 June 2008, and informed the CEO that he was yet to receive the information.
19. On 02 December 2008 the public authority responded to the complainant. The authority restated answers it had previously given concerning how it accounted for the costs and contributions to the environmental works and how the spreadsheet provided was relevant to the request for a linking document.
20. The authority acknowledged that the discrepancies contained in the spreadsheet were due to the wrong version of the Bill of Quantities being provided and aimed to rectify this by sending the correct Bill to the complainant through the post.
21. The public authority also addressed the request for "*appropriate judgements*" concerning its Service Charge and reiterated that a response had previously been provided on 02 September 2008. The authority then issued a refusal notice regarding this request citing section 21 stating that the information was accessible by other means. The public authority provided details of relevant property law and charges publications available along with access to case reports via the Residential Property Tribunal Service's website.
22. On 09 February 2009 the complainant wrote to the authority to complain about the delay in a response being provided to him.
23. On 23 February 2009 the public authority responded to the complainant with what the Commissioner considers be the outcome of the internal review stating:

"...this letter is in response to your outstanding requests made under the Freedom of Information Act 2000 and is a response to your letter of 09 February 2009."

The authority identified the outstanding issues including those which were included in the requests initially made in June and August 2008, namely:

- Legislation and judgements the public authority relied upon to legitimise the Service Charge and environmental works
- Link from the Section 20 Notice to contracts itemised schedule showing their calculations

24. The authority provided a substantive response to the requests detailed above. After previously having issued a refusal notice for information surrounding the “*judgements*” the public authority detailed the relevant property legislation. It also explained that if the Service Charges were to be formally challenged at the Leasehold Valuation Tribunal it was:

“...impossible to say at this stage...what judgements or case law the public authority would rely upon.”

As a result of this the public authority concluded that it did not hold the information.

25. The authority went on to forward the response it had obtained from the external Quantity Surveyor which linked the Section 20 Notice to the contracts itemised schedule showing calculations, for example:

*“(a) (1) Total cost for Environmental works to 13 courtyards =
£1,665,012
(2) Total number of units for the whole Estate = 1,034*

*Therefore Cost for Environmental works per unit = £1,665,012 divided by 1,034
= £1,665,012 / 1,034
= £1,610.26”*

26. On 24 February 2009 the complainant responded to the public authority dissatisfied with the documents provided by the public authority being image files that did not allow data to be selected or searched for. The complainant requested that the public authority resend the documents in a format that did allow such manipulation or issue a refusal notice.
27. On 26 February 2009 the public authority responded to the complainant and stated that it was unable to send the documents in a different format. The authority explained:

"The letter and the documents attached...are not meant to be cut and pasted and are a stand alone response to your request under the FOIA."

28. The authority also stated that it considered the information request was now closed. The authority suggested that the complainant's information requests were possibly born out of his being unhappy with certain works on the Estate and offered an *"open and frank discussion"* in an effort to resolve matters.
29. On 26 February 2009 the complainant replied to the public authority again disputing the pdf format of the documents provided. He also stated that the information the authority had provided him with to date had not fully answered his requests and as a result he had had to repeat certain requests. The complainant stated that the authority had often failed to respond to him within the statutory 20 day time limit and again he had had to chase the public authority on many occasions to obtain a response. The complainant also discredited the authority's suggestion that the requests were due to his dissatisfaction with works carried out previously on the Estate.
30. On 27 February 2009 the public authority responded to the complainant stating that it had complied with the request and the pdf version of the disclosed documents was in line with the ICO's guidance. The authority reiterated that all the requests had been responded to and were now closed.
31. On 04 March 2009 the authority restated that it had fully responded to the information requests and they were now closed. Details of how to complain to the public authority were provided along with the ICO's contact details.
32. On 09 April 2009 the complainant submitted a further complaint to the public authority. The complaint concerned the public authority's response of 23 February 2009 and the three pdf attachments it contained being provided in an unsatisfactory format. The complainant requested that the public authority review its refusal to provide them in a textual format and informed the authority he would be complaining to the ICO if he did not receive a response within seven days.

The Investigation

Scope of the case

33. On 25 August 2009 the complainant contacted the Commissioner to complain about the way his requests for information of 29 June 2008 and 05 August 2008 had been handled. The complainant specifically asked the Commissioner to consider the following points:
- Responses made outside the 20 working day time period
 - The format and content of the disclosed information
 - The quality and validity of the refusal notices issued
 - Failings of the internal review procedure
34. The Commissioner has therefore investigated the public authority's compliance with the following:
- Section 10 – Time for compliance with request
 - Section 11 – Means by which communication to be made
 - Regulation 5 – Duty to make available environmental information on request
 - Regulation 6 – Form and format of information
35. The Commissioner has not investigated the following for the purposes of this notice:
- Section 17 – Refusal of request

The Commissioner discounted this matter from the investigation as it is clear that although the public authority initially relied upon section 21 to withhold part of the requested information it dropped this exemption at the internal review stage. The Commissioner therefore considers this matter to have been informally resolved.

- The failings of the internal review procedure
36. The Commissioner has not included this matter within the scope of the decision notice as it is not a statutory requirement of the Act. It will be dealt with under the "Other Matters" section.

Chronology

37. The Commissioner contacted the public authority on 08 October 2009 to detail the scope of the investigation. He also wanted to ascertain

- how far the internal review had been taken and what information had been disclosed to the complainant.
38. The public authority responded to the Commissioner on 03 November 2009 to acknowledge the scope of the investigation and confirm the last documents sent to the complainant including attachments.
 39. The public authority also stated that owing to the amount of correspondence related to the request and its complexity it was proving difficult to understand the sequence of events including whether or not the internal review had been concluded.
 40. The Commissioner wrote to the complainant on 04 January 2010 to outline his initial findings including details of the likely outcome of the investigation and offer a possible informal resolution.
 41. The complainant responded to the Commissioner on 13 January 2010 in answer to his initial findings. The complainant highlighted matters for the Commissioner's attention and further investigation and requested a formal conclusion to the case.
 42. The Commissioner wrote to the public authority on 06 April 2010 to ask the authority to provide copies of the spreadsheets sent to the complainant in October 2009 as the spreadsheets already in his possession were not the relevant documents.
 43. On 17 May 2010, following correspondence between the public authority and the Commissioner, the public authority provided copies of the spreadsheets and attachments that were previously disclosed to the complainant to the Commissioner.

Analysis

Substantive Procedural Matters

The full wording of all the sections of the Act and the EIR quoted here can be found in the Legal Annex.

Regulation 2

44. The Commissioner has considered whether part of the information requested by the complainant is environmental information as defined by the EIR.

45. The Commissioner considers that while the information relating to works carried out by the public authority on the interiors of the buildings falls under the Act, the remaining information regarding exterior works falls under the EIR.
46. Part of the information falls within regulation 2(1)(c): *“measures (including administrative measure), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect these elements”*. The Commissioner considers part of the requested information relating to the exterior works carried out by the public authority to be environmental as it relates to information on an activity which may affect the land or landscape. Accordingly, the Commissioner has also gone on to consider, where appropriate, the relevant regulations under the EIR.

Procedural Requirements

Section 10 Matters

47. Section 10(1) of the Act states:

“...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following date of receipt.”

On both occasions in this case the public authority failed to respond to the complainant within the statutory time frame as is evidenced in the sequence of correspondence. The public authority took almost two months to acknowledge the first request and over 12 months to provide the information requested in relation to the second request.

Section 10 conclusions

48. The Commissioner finds the public authority to be in breach of the requirements set out in section 10(1) of the Act in failing to respond to the information request within 20 working days.

Regulation 5(2) conclusions

49. Regulation 5(2) provides that a public authority shall make the information available as soon as possible and no later than 20 working days after receipt of the request. In relation to both requests, in so far as the information is environmental, the Commissioner finds that the

public authority failed to comply with regulation 5(2) in responding outside the statutory time frame.

Section 11 Matters

50. Section 11(1) of the Act states:

"Where on making his request for information, the applicant expresses a preference for communication by one or more of the following means namely –

- (a) the provision to the applicant of a copy of the information in permanent form acceptable to the applicant,*
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing information, and*
- (c) the provision to the applicant of a digest or summary of the information in permanent form in another form acceptable to the applicant,*

the public authority shall so far as is reasonably practicable give effect to that preference."

Specific electronic formats

51. Cases have arisen leading to decision notices relevant to this case, such as that in *FS50094281 Bath and North East Somerset Council*

http://www.ico.gov.uk/upload/documents/decisionnotices/2007/decision_notice_fs50094281.pdf

where a complainant requested an electronic copy in a particular format, for example in a word document or a pdf file. The Commissioner's view is that there is a distinction between the form in which a piece of information is communicated e.g. an electronic form and how the data is arranged within that form i.e. the specific software format. In short, although an applicant can ask for an electronic copy they are not entitled to specify down to the next level, the specific software format.

52. The Commissioner notes that in this case, similar to *FS50094281*, the complainant did not stipulate the information be provided to him in a specific form at the time of submitting the request in June 2008. He requested *"a copy of the documentation which links the works listed on the estimate..."* and then sought the information in a specific format later on 29 October 2008. Therefore as the complainant did not specify a format at the time of the request and the Act does not entitle him to do so at a later date the authority would not be obliged to provide the information in a specific format.

53. The complainant appears to have accepted the information provided in the form of the excel spreadsheet however he remained dissatisfied with the formatting of the provided pdf image files. His request of 29 October 2008 stated that the public authority should send *"pdf files from which textual and numerical information can be copied and pasted"* and such files *"allow data to be selected and searched for"*. The Commissioner takes the view that section 11(1)(a) includes the right to be provided with a copy of information in electronic form but does not entitle the applicant to specify how the data is arranged within a certain software format.

Section 11 conclusions

54. Notwithstanding the fact the complainant is not entitled to ask for specific software formats under section 11, the Commissioner notes that the complainant did not specify a form he wished the information be provided to him in at the time of making the request. Therefore the Commissioner finds that the public authority complied with the Act in providing the disclosed information in electronic form and refusing to alter at a later date its format within that form.

Regulation 6 conclusions

55. Regulation 6(1) of the EIR states that where an applicant requests that information be made available in a particular form or format a public authority shall make it available in that way unless it is reasonable to make it available in another form or format. The Commissioner considers it reasonable to read his guidance on section 11(1) of the Act across into regulation 6(1). Therefore, in so far as the information is environmental, he holds that the complainant did not state a specific form or format for the information to be provided in at the time of the request. The public authority made the environmental information available in a reasonable form and format.

The Decision

56. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- Section 11 – complied with providing the information in a format which was reasonably practicable

- Regulation 6 – complied with providing the environmental information in a format which was reasonably practicable.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- Section 10(1) – failed to comply with the statutory time for compliance with request
- Regulation 5(2) – failed to comply with the statutory time for compliance with request.

Steps Required

57. The Commissioner requires no steps to be taken.

Other matters

58. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

- Internal reviews

Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint.

59. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

60. In relation to the complainant's complaint regarding an alleged lack of a response to the request for an internal review the Commissioner considers the request for an internal review was made on 29 October 2008. The response was provided on 23 February 2009, although it did not address the format issue until 27 February 2009. The

Commissioner is satisfied that the internal review request was dealt with however he is concerned about the significant delay involved despite the publication of his guidance on the matter.

Right of Appeal

61. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

Dated the 3rd day of February 2011

Signed

**Gerrard Tracey
Principal Policy Adviser**

**Information Commissioner's Office
Wycliffe House
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Cheshire
SK9 5AF**

Legal Annex

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Means by which communication can be made

Section 11(1) provides that –

“Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The public shall so far as is reasonably practicable give effect to that preference.”

Section 11(2) provides that –

“In determining for the purposes of this section whether it is reasonably practicable to communicate information by a particular means, the public authority may have regard to all the circumstances, including the cost of doing so”

Section 11(3) provides that –

“Where a public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination

Section 11(4) provides that –

“Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances.”

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1)

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2)

Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 6 - Form and format of information

Regulation 6(1)

Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

- (a) it is reasonable for it to make the information available in another form or format; or
- (a) the information is already publicly available and easily accessible to the applicant in another form or format.