

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

Decision notice

Date: 10 March 2015

Public Authority: Greater London Authority
Address: The Queen's Walk
London
SE1 2AA

Decision (including any steps ordered)

1. The complainant has requested the GLA to disclose a full copy of the original Development Agreement dated 19 April 2011 and a full certified copy of the Deed of Variation dated 10 December 2013 including appendices relating to the Blackwall Reach Compulsory Purchase Order. The GLA disclosed some information but informed the complainant that it did not hold the version of the Development Agreement it required. For this element of the request the GLA applied regulation 12(4)(a) of the EIR.
2. During the Commissioner's investigation it came to light that the version of the Development Agreement the complainant required was still held by the GLA's predecessor the HCA. It was therefore accepted that the HCA in fact holds the requested information on behalf of the GLA. At the time of writing this notice, the GLA had obtained the requested information from the HCA but had not issued a fresh response to the complainant.
3. The Commissioner therefore requires the HCA to take the following steps to ensure compliance with this legislation:
 - the GLA should issue a fresh response in relation to the copy of the Development Agreement obtained from the HCA, that does not cite regulation 12(4)(a).
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.

5. In terms of how the request was handled, the Commissioner has found that the GLA was in breach of 11 of the EIR in this case.

Request and response

6. On 29 May 2014, the complainant wrote to GLA and requested information in the following terms:

"We request disclosure of... A certified copy of the full original Development Agreement dated 19 April 2011 and a full certified copy of the related Deed of Variation dated 10 December 2013 including all relevant Appendices and Schedules together with any document which amends or purports to amend or purports to supersede this Development Agreement or Deed of Variation. Please note our request is for a certified copy of the relevant documents and not for an electronic form of the document which purports to be a "conformed copy" or similar electronic version of these documents."

7. The GLA responded on 26 June 2014. It stated that it required extra time to consider the request.
8. The GLA responded on 11 July 2014. It stated that it was releasing the majority of requested information but had made limited redactions under regulation 12(5)(e) of the EIR.
9. The complainant responded on 16 July 2014 invoking the GLA's internal complaints procedure. The complainant stated that the GLA had not complied with its request for a certified copy of the full original Development Agreement dated 19 April 2011 and had failed entirely to supply this document. In relation to the certified copy of the Deed of Variation dated 10 December 2013 including appendices and schedules, the complainant confirmed that the document supplied by the GLA on 11 July 2014 had been heavily censored. The complainant confirmed that it felt the redactions were excessive and not justified by public interest considerations.
10. The GLA responded on 28 July 2014. In relation to complainant's request for a certified copy of the full original Development Agreement dated 19 April 2011, the GLA confirmed that it does not hold this information. It clarified that the only version the GLA holds is the scanned version of the "conformed copy", found at Appendix A to the December 2013 Deed of Amendment and Restatement that was released to the complainant on 11 July 2014. The GLA confirmed that it

does not hold any other versions of the 19 April 2011 Development Agreement. It explained that it does not hold the original conformed copy of the 19 April 2011 Development Agreement, as it was entered into by the Homes and Communities Agency (HCA). It stated that the only version of this document that the GLA holds is the version released to the complainant on 11 July 2014 which is an electronic scanned copy at Appendix A to the 2013 Deed of Amendment and Restatement. The GLA therefore stated that it now wished to rely on regulation 12(4)(a) of the EIR for this element of the complainant's request.

11. The complainant wrote to the GLA again on 30 July 2014. The complainant stated that it wished to remind the GLA that it was invoking the GLA's internal complaints procedures in relation to two separate issues. Firstly, the redactions made to the recorded information released on 11 July 2014 and secondly the GLA's assertion that it does not hold the version of the Development Agreement dated 19 April 2011 that it requires. The complainant challenged the second issue again in this letter and requested a further response from the GLA.
12. As the complainant received no response, it chased the GLA again on 14 August 2014.
13. The GLA responded on 2 September 2014. It apologised for the delay in its response and confirmed that it would respond in full by 12 September 2014.
14. The GLA completed its internal review on 24 September 2014 and wrote to the complainant to let it know of its findings. It stated again that it does not hold the version of the Development Agreement dated 19 April 2011 that the complainant requires and explained the reasons why. It therefore confirmed that it upheld its previous application of regulation 12(4)(a) of the EIR. In relation to the redactions made to the disclosed information, it explained again why it remained of the opinion that regulation 12(5)(e) of the EIR applies to these redactions.

Scope of the case

15. The complainant contacted the Commissioner on 19 September 2014 to complain about the way its request for information had been handled. The case was accepted for formal consideration once the GLA's internal review was received from the GLA on 24 September 2014.
16. The complaint referred to the Commissioner concerned the original Development Agreement dated 19 April 2011 (a copy of the version of the agreement that was marked up as certified on 19 April 2011) and the GLA's response that it does not hold this version of the document.

No complaint was progressed in relation to the information that was disclosed by the GLA on 11 July 2014 and the redactions made to this under regulation 12(5)(e) of the EIR.

Reasons for decision

Regulation 12(4)(a) - does the GLA hold the requested information?

17. Regulation 12(4)(a) of the EIR states 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.
18. The complainant first argued that solicitors acting on the GLA's behalf and another public authority may hold the version of the document required. The complainant stated that enquiries should be made to the solicitors concerned and if it turns out that they do hold the version required it could be argued that the solicitors hold the version required on behalf of the GLA. The complainant confirmed that the GLA is then obliged to obtain the version required from the solicitors and release a copy of it.
19. The issue was explored in depth. The GLA confirmed that the solicitors concerned were not instructed by the GLA itself to act upon its behalf. Another public authority which is party to the agreement instructed the solicitors concerned and so there is no adviser – client relationship between the solicitors concerned and the GLA. The GLA confirmed that it was therefore its view that the solicitors only held the version required by the complainant on behalf of the public authority that instructed it not the GLA.
20. The Commissioner has given this matter careful consideration. Although there was a mutual agreement between parties that the GLA would act on the advice of the solicitors concerned, the Commissioner notes that the solicitors concerned were commissioned by another public authority and not the GLA. The Commissioner is therefore satisfied that the solicitors concerned do not hold the version of the agreement the complainant requires on behalf of the GLA. The Commissioner agrees with the GLA that the solicitors concerned only hold the version required for its own purposes and on behalf of another public authority.
21. These considerations however raised a further point that the Commissioner required investigating. The Commissioner was of the view that enquiries should be made to the HCA (predecessor to the GLA in relation to this development) to see whether it still held the requested information. The Commissioner's view is that if the HCA still holds the requested information for whatever reason it holds it on behalf of the

GLA and the GLA is obliged under the EIR to obtain a copy and provide it to the complainant (unless some or all of it is exempt from disclosure under the EIR).

22. The GLA made enquiries to the HCA at the Commissioner's request. It came to light that the requested information was one of a number of documents that were not transferred over to the GLA when it took over from the HCA. The HCA therefore confirmed that it still holds the requested information.
23. The Commissioner is therefore satisfied that regulation 12(4)(a) of the EIR was incorrectly applied by the GLA in this case and it does in fact hold the requested information. It now requires the GLA to issue a fresh response under the EIR to the complainant.

Procedural breaches of the EIR

24. The Commissioner finds that the GLA was in breach of regulation 11 of the EIR in this case. It is clear that the complainant invoked the GLA's internal complaints procedure on 16 July 2014. Regulation 11 states that a public authority must reconsider how it has handled a request and notify an applicant of its findings as soon as possible and no later than 40 working days after the date of receipt of the applicant's representations.
25. In this case the GLA did not comply with regulation 11 of the EIR until 24 September 2014. The GLA therefore failed to adhere to the maximum time permitted by this regulation in which to carry out an internal review.

Right of appeal

26. 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

27. 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.
28. 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

Lisa Adshead
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