

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 October 2016

Public Authority: London Borough of Lambeth
Address: Olive Morris House
18 Brixon Hill
London
SW2 1RL

Decision (including any steps ordered)

1. The complainant has requested from London Borough of Lambeth (the 'Council') information relating to a named property during a specific time period.
2. The Commissioner's decision is that the information in question is environmental for the purposes of the EIR and that the Council had correctly applied regulation 13(5) of the EIR to the request.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 21 December 2015, the complainant wrote to the Council and requested Information in the following terms:
"Please provide all information (electronic or hard copy) including photographs, plans, drawings, correspondence, documents, meeting minutes and records relating to [named property] from September 2014 to 21 December 2015; which concern any building works, alterations, improvements on the property being:
1/ applications;
2/ consents, approvals, permissions, planning or building regulation permissions;
3/ assessments, surveys, or condition reports;

4/ complaints;

5/ costs or fees for any of the above”

5. The Council responded on 22 January 2016. The Council said that it can neither confirm nor deny that it holds the information to part (1), it provided a link to information relating to part (2) and to the remaining parts of the request the Council applied section 40(2) of the Freedom of Information Act 2000 (FOIA).
6. On 17 February 2016 the complainant asked for an internal review.
7. On 1 March 2016 the complainant asked the Council to acknowledge receipt of his internal review request.
8. On 4 March 2016 the Council acknowledged receipt of the internal review request.
9. On 22 April 2016 the complainant chased the internal review and on the same day the Council informed him that he should receive a full response by 7 May 2016.

Scope of the case

10. The complainant contacted the Commissioner on 6 May 2016 to complain about the way his request for information had been handled.
11. Further to our intervention, on 16 May 2016 the Council provided the complaint with its internal review response. The Council disclosed some information to parts of the request and withheld information to the remaining parts under section 40/regulation 13 and section 42(1)/regulation 12(5).
12. The complainant informed the Commissioner that he had received the Council's internal review response and that it had produced some of the information relating to his request (18 photographs and some redacted emails relating to survey inspections). However, the complainant disputed the Council's application of the exemptions/exceptions to parts of his request.
13. The Commissioner asked the Council to revisit and reconsider its handling of the request. On 10 October 2016 the Council provided its response and said that it did not wish to continue its reliance on regulation 12(5)(b) of the EIR/section 42 of the FOIA for withholding the information requested.

14. The Council considered the appropriate legislation is regulation 13(5) of the EIR and it applied this exception to the entire request. This includes the information which the Council had already disclosed to the complainant. However, the Council further considered that the 18 photographs and the email correspondence which it had previously provided should not have been disclosed to the complainant, as they constituted third party personal data.
15. The Commissioner considers that the scope of the case is firstly to determine whether the information is environmental. Following this, she will assess whether the Council is able to rely on regulation 13(5) of the EIR to neither confirm nor deny holding the information (the personal data of the householder) to parts of the request.

Reasons for decision

Is the information environmental information?

16. Regulation 2(1) of the EIR defines environmental information as information on:
 - (a) *"The states of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
 - (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
 - (c) *Measures (including administrative measures), 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 those elements..."*
17. The Council stated to the Commissioner that the information relates to building works for a specific property and that it constitutes environmental information.
18. The Commissioner is satisfied that the request should be dealt with under the EIR as the information relates to planning activities "affecting

or likely to affect the elements and factors” described in regulation 2(1)(a) of the EIR.

Regulation 13(5) personal information

19. Regulation 13 sub sections generally apply to personal data held by a public authority and considered exempt from disclosure. Regulation 13(5) of the EIR further excludes a public authority from neither confirming nor denying whether it holds information if to do so would reveal personal data of an individual and contravene any of the data protection principles.

Would confirming or denying whether the information is held constitute personal data?

20. Personal data is defined by the Data Protection Act 1998 (the “DPA”) as information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
21. The Commissioner is satisfied that to confirm or deny if the Council holds information would constitute the personal data of the householder as he/she is directly identifiable from information about their property.

Would confirming or denying whether the requested information is held contravene any of the data protection principles?

22. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner’s considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and potential consequences of disclosure against the legitimate public interest in confirming or denying if the requested information is held or not.
23. The Council considers that the first principle of the DPA is most relevant here; that confirmation/denial that information is/is not held should be fair and lawful.
24. The Council considers that confirmation/denial that information is/is not held would not be fair to an individual householder. The Council added that although an individual making a formal planning application would be aware of the potential for this to be disclosed on its website; other requests it receives relating to properties would not necessarily result in information being placed on its website or otherwise disclosed.

25. Therefore, the Council does not consider that any individual would hold a reasonable expectation that the Council would confirm/deny that information of this nature is/is not held.

Balancing the rights and freedoms of the data subject with the legitimate interest in disclosure

26. The Commissioner acknowledges that the complainant has an interest in the requested information. She is of the view that there is going to be some public interest in knowing what information is held by a public authority when it comes to planning matters. Knowing this may better inform the public and also encourage further engagement in the processes involved.
27. However, the Commissioner recognises that when it comes to personal data of individuals, there is an expectation that a public authority will be mindful to the consequences that could result in the release or even, as in this case, confirmation as to whether such information is held or not. If it were held, the information in question would relate to the householder's property and the release of this could cause the householder some distress/damage – in particular in relation to an invasion of privacy. This type of information which the Council applied the exception to, would relate to planning matters of a named property.
28. The Commissioner notes that the Council has information publically available regarding planning applications and planning and building control. She considers that this information would satisfy any public interest in the planning application.
29. However, the Commissioner accepts that in this instance, there are no planning applications or building control applications attributable to the named property during the time period requested. She notes that the Council had confirmed this to the complainant in its internal review response and it had provided him with a link to where information regarding planning applications and building control could be found.
30. The Commissioner acknowledges that the Council is applying the exception to the whole of the request which includes the email correspondence regarding planning matters and the photographs of the householder's property.

Consequences of disclosure

31. The Council explained to the Commissioner that it would be unfair to the householder to confirm/deny that information is held where it would not ordinarily disclose this type of information online. The Commissioner accepts that the Council has applied this exception to neither confirm nor deny information that it would not routinely publish as part of the

standard planning application exercise. The Council confirmed that the exception is being applied to the whole of the request.

32. The Council notes that disclosure is to the world in general, not to a specific applicant. It considers that it may cause the householder some distress/damage should the confirmation/denial that information is/is not held be further publicised.
33. The Commissioner is of the view that it would be unfair to either confirm or deny whether the requested information is held by the Council. She considers that to do so would reveal personal data of an individual and contravene the first principle of the DPA.
34. On consideration of the above, the Commissioner has determined that the Council was correct to neither confirm nor deny holding the information to parts of the request and to apply regulation 13(5) of the EIR.

Right of appeal

35. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

36. 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.
37. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF