

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

Decision notice

Date: 23 May 2018

Public Authority: Greater London Authority
Address: City Hall
London
SE1 2AA

Decision (including any steps ordered)

1. The complainant has requested information relating to a number of transactions that took place in 2006 relating to the Compulsory Purchase Orders for the 2012 Olympics. The GLA disclosed the recorded information it holds and informed the complainant that it does not hold the remaining information.
2. During the Commissioner's investigation, further information was identified and disclosed to the complainant. The Commissioner is however now satisfied that on the balance of probabilities all the recorded information the GLA holds has been identified and provided to the complainant and the GLA does not hold any further recorded information falling within the scope of the requests.
3. The Commissioner has however recorded a breach of regulation 11 of the EIR.
4. The Commissioner does not require any further action to be taken.

Request and response

5. The Commissioner served a decision notice on the GLA and the complainant on 20 September 2017 addressing five information requests the complainant had made between 7 April and 2 June 2016. The notice

ordered the GLA to issue a fresh response under the EIR for requests 3 and 5, which were worded as follows:

Request 3

"On or just prior to 26 May 2006 the following transactions took place regarding the relocation of Formans/H.Forman & Son/Forman & Field

- 1) The LDA/GLA purchased Formans freehold interest in Unit 1, 30 Marshgate Lane, London, E15.
- 2) The LDA/GLA purchased the freehold interest in Stour Wharf, Stour Road, London E3 2NT from Community Housing Group.
- 3) The LDA/GLA sold the freehold interest in Stour Wharf, Stour Road, London E3 2NT to Formans/H.Forman & Son/Forman & Field minus a small part of the parcel of land to enable a bridge to be constructed over the River Lee.
- 4) The LDA/GLA granted a 200 year lease from 25 May 2006 to Community Housing Group for land at Royal Albert Docks

Prior to entering into these transactions, valuations were prepared by the consultant surveyors to the LDA for the three sites listed above. Please provide copies of the valuations.

With reference to items 2 or 4, Community Housing Group may also have been known as Community Housing Association Limited of 100 Chalk Farm Road, London NW1 BEH."

Request 5

"On or just prior to 26 May 2006 the following transactions took place regarding the GLA, Formans/H.Forman & Son/Forman & Field and Community Housing Group.

- 1) The LDA/GLA purchased Formans freehold interest in Unit 1, 30 Marshgate Lane, London, E15.
- 2) The LDA/GLA purchased the freehold interest in Stour Wharf, Stour Road, London, E3 2NT from Community Housing Group.
- 3) The LDA/GLA granted a 200 year lease from 25 May 2006 to Community Housing Group for land at Royal Albert Docks Community Housing Group may also have contracted as Community Housing Association Limited of 100 Chalk Farm Road, London NW1 8EH.

For each of the above transactions please confirm and provide proof of:

- a) The amount paid or given in consideration for the purchase, disposal or grant.
 - b) The amount of any VAT paid by the purchaser.
 - c) The amount of Stamp Duty Land Tax paid by the purchaser."
6. The GLA complied with the steps ordered in the decision notice and issued a fresh response to the complainant on 25 October 2017. It disclosed all the recorded information it holds falling within the scope of the above requests.
 7. The complainant emailed the GLA the same day to say that he was dissatisfied with the response and believed information was missing and elements of the requests remained unanswered. He sent a further email to the GLA offering information to assist it in its searches.
 8. The complainant also emailed the Commissioner on 30 October 2017 to raise concerns about the GLA's latest response and asked her to consider taking further action to enforce the steps ordered in the decision notice.
 9. The Commissioner replied on 31 October 2017. She informed the complainant that the decision notice ordered the GLA to issue a fresh response under the EIR which did not rely on regulation 12(4)(b). The GLA had now issued a fresh response and had therefore complied with the steps ordered in the decision notice. The Commissioner advised the complainant that he now needed to request an internal review.
 10. The complainant requested an internal review on 31 October 2017.
 11. As the complainant had not received the GLA's internal review response, the Commissioner contacted the GLA on 3 January 2018 to request that the internal review is completed within the next 10 working days.
 12. The GLA carried out the internal review and notified the complainant of its findings on 11 January 2018.

Scope of the case

13. The complainant contacted the Commissioner on 21 January 2018 to complain about the way his request for information had been handled. Specifically, the complainant believes the GLA holds further recorded information to that already identified and believes it should approach various third parties to try and retrieve the missing information from them.

14. During the Commissioner's investigation the GLA located one further document falling within the scope of the complainant's request; described as a document which contains details of an agreement between the London Development Authority (LDA) and the Community Housing Association for the exchange of the freehold for *Supreme House, Stour Road* for a lease of a development site in the *Royal Albert Basin*. The GLA disclosed this document in full to the complainant on 17 May 2018.
15. The Commissioner considers the scope of her investigation is to determine whether, on the balance of probabilities, the GLA holds further recorded information falling within the scope of the requests to that already provided.

Reasons for decision

Does the GLA hold any further recorded information?

16. The complainant believes the GLA holds further recorded information to that already provided and provided the following submissions to the Commissioner.
17. He stated that information in relation to transaction 4 of request 3 is missing and, with regards to request 5, parts 1c, 2a, 2b, 2c, 3a, 3b and 3c remain unanswered. The complainant advised the Commissioner that many of the transactions detailed in the requests were linked and some took place at the same time. Due to the timing, he would therefore expect the same solicitors, Eversheds to have been used. He commented that Eversheds were the LDA's solicitors for the grant of the 200 year lease and provided the file reference for the lease that is registered at the Land Registry. He believes Eversheds should have all the outstanding information in their files if the GLA is unable to locate the information from its records. He also commented that as the transactions mentioned in the requests were all linked and interdependent, the outstanding information should not be too far from what the GLA has already located.
18. The complainant also said that according to the 12 April 2006 report to the Olympic Delivery Committee, both the Stour Wharf site and Albert Basin were valued by the LDA's consultant surveyors; Glenny & Co. He stated that Glenny & Co could be consulted to see whether they hold any of the outstanding information. Similarly, CHG (or One Housing Group as they are now known) and its solicitors could be contacted to try and obtain the requested information from them.

19. The complainant also mentioned Greater London Authority Land and Property Limited (GLAP). He stated that CHG (now One Housing Group) has its 200 year lease with GLAP and maybe GLAP holds the relevant files from which the missing information can be extracted. He commented that the GLAP will need the files at some point before the lease expires or if it is to be assigned.
20. He also provided some further search terms for the GLA to consider using in order to locate the missing information.
21. Overall the complainant is of the opinion that the outstanding information is discoverable. He has said that the outstanding information is with regards to transactions that took place simultaneously with the Formans transactions. He questions why the Formans information is available but the documents regarding the interdependent transactions with CHG are missing.
22. The GLA has stated that it is satisfied that it does not hold any further recorded information to that already provided.
23. It explained that it was not directly involved in the Formans/LDA CPO discussions or case; the matter was concluded before the information was transferred to the GLA. The GLA confirmed that it only holds the information transferred to it by the LDA. It has no way of confirming whether or not the information it holds in its archives is everything that was held by the LDA before this transfer took place and no means of identifying what may have been held before the transfer or what was deleted and why. It only holds what it was left with and what was transferred to it by the LDA.
24. Resolved CPO cases were transferred to the GLA as closed archive files and were archived by the GLA on their receipt in 2012. It states that these case files have been held in GLA deep-store archives, largely untouched since they were deposited in 2012.
25. It confirmed that it retrieved 8 archive boxes from storage which contain the formal records relating to Formans. These were the only boxes transferred to the GLA whose contents relate to Formans/H. Forman & Son/Forman & Field. The contents of each box has been reviewed manually one document at a time and the documents relevant to the scope of these requests has been extracted and disclosed to the complainant.
26. The GLA explained that because the archive files were compiled by the LDA it cannot possibly explain why certain information is held and why some is not and it cannot explain why some information is not archived

alongside other similar information. They were not its own files and it only holds what it was given in the format and structure it was received.

27. The GLA advised that the same applies to electronic files transferred to the GLA on the unstructured network-drive (the "LDA-drive"). This is a drive which contains electronic documents or files predating 2012 which were not part of the formal "case file" or archived files. It remains in the format and structure in which it was received.
28. With regards to the complainant's suggested search terms outlined in his internal review request, the GLA confirmed that further searches were undertaken of all records following the criteria the complainant suggested but no further recorded information came to light.
29. Addressing the complainant's concerns about GLAP, the GLA clarified that GLAP is part of the Greater London Authority. Its functions are carried out by GLA staff. The searches of GLA records would therefore also cover any information involving GLAP. It explained further that all records were transferred to the GLA from the LDA; no files were transferred directly to GLAP as everything came to the GLA.
30. Turning now to the complainant's suggestion that the GLA should approach Eversheds, Glenny & Co, CHG and its solicitors, initially the GLA refused to do so as it felt there was no requirement to do so under the EIR. With the exception of CHG and its solicitors, the Commissioner disagreed and urged the GLA to approach Eversheds and Glenny & Co to see whether they hold any of the missing information (on the basis that as they were instructed to work on the LDA's behalf, any information it still holds would potentially be held on behalf of the LDA and now the GLA having taking over responsibility).
31. Dealing with CHG and CHG's solicitors first, the Commissioner notes that these organisations were on the opposite side to the negotiations i.e. who the LDA/GLA was negotiating with to reach a settlement. Any information CHG and its solicitors would still hold now would be held on CHG or its own behalf. Being opposing sides, they would not hold information on behalf of the GLA.
32. But the Commissioner considered that Eversheds and Glenny & Co would and the GLA proceeded to make the necessary enquiries to both.
33. The GLA confirmed that Glenny & Co located two documents falling within the scope of the complainant's request relating to valuation information (request 3) but did not hold any information regarding request 5. These two documents were copies of the information the GLA had located itself from its searches of paper records and which had been disclosed to the complainant. It commented further that given that

Glenny & Co were only involved in the valuation process, there would be no reason why it would be expected to hold information about VAT or stamp duty that might have been paid.

34. With regards to Eversheds, the further searches and enquiries revealed that a copy of their files relating the Formans/H. Forman & Son transaction were in fact held by the GLA's legal services. It explained that Transport for London Legal Services, who work on behalf of the GLA under a shared service agreement, conducted a search of these files for information relating to the complainant's requests.
35. The search identified one new document which appeared to be relevant to one of the requests and contains details of an agreement between the LDA and the Community Housing Association for the exchange of the freehold for *Supreme House, Stour Road* for a lease of a development site in the *Royal Albert Basin*. The GLA confirmed that it disclosed this new document in full to the complainant.
36. The GLA confirmed that Eversheds' searches did not locate any additional information relating to VAT or SDLT payments for any of the sites referred to in the requests.
37. The GLA also informed the Commissioner that it conducted a search of the GLA Muniments database for any historic information on GLA title deeds for records which might relate to Marshgate Lane, Stour Wharf/Stour Road, the Community Housing Group/Community Housing Association, 100 Chalk Farm Road, and other terms provided by the complainant in his correspondence to the GLA around the time of the internal review request.
38. It confirmed that these searches located a copy of the *LDA – Community Housing Association* agreement and the *LDA – Formans LLP – Benchmark Homes Limited – Smoked Salmon Limited* agreement which it located from its searches of the archived files. The GLA stated that these documents had already been disclosed to the complainant in October 2017. No additional information was located.
39. The GLA went on to say that as part of its work to try and understand why it has not located any information about VAT or SDLT payments, from what it understands, the compensating authority are only obliged to reimburse a claimant for their net losses. If the claimant incurs a VAT charge and that is recoverable by them, only the net amount is paid. If a VAT amount is paid by the claimant and it is not recoverable, then the acquiring authority will pay, as compensation the VAT amount.
40. The GLA has not identified any information that suggests if a claim was made for non-recoverable VAT and, in any event, it has not seen

anything to suggest that the claimant in this case elected to charge VAT on the land transfer amount. If they had, the acquiring authority would have paid and then recovered that amount.

41. In relation to how much SDLT was paid by the acquiring authority for the land transaction, it has been advised that this is covered under section 60 of the Finance Act 2003 - *A compulsory purchase facilitating development is exempt from charge*. As such, it is possible no VAT was payable when the acquiring authority purchased the land and property.
42. In the absence of records covering this period, it is not clear exactly what the circumstances were involving VAT and SDLT payments, and it wishes to point out that this explanation is merely a suggestion as to why it has not been able to locate specific information on these points. Again, as it has explained on previous occasions, the GLA only holds the information transferred to the GLA by the LDA.
43. The Commissioner is satisfied in this case that, on the balance of probabilities, all the recorded information that the GLA holds has now been identified and disclosed to the complainant. Extensive searches have been carried out of all known paper and electronic records using its own searches terms and those suggested by the complainant. It has proceeded to make enquiries of Eversheds and Glenny & Co as requested by the Commissioner and these searches identified information already disclosed to the complainant and one new document, which has recently been shared without redaction. The GLA has dedicated significant resources and time to dealing with the complainant's concerns and requests and the Commissioner has no reason to doubt the thoroughness and extent of the enquiries and searches undertaken to date. The GLA has explained what records are held, how these are held and how all paper records have been reviewed document by document. For these reasons the Commissioner is satisfied that on balance all recorded information that is held has now been identified and disclosed.

Procedural matters

44. The Commissioner has found the GLA in breach of regulation 11 of the EIR in this case, as it failed to carry out the complainant's request for an internal review within 40 working days of receipt.

Other matters

45. The complainant has raised concerns that information recently disclosed should have been provided in the GLA's response of 5 April 2016 in relation to the previous decision notice of 1 March 2016, reference

FS50588725 which dealt with his information request of 22 December 2014.

46. Although the information in question technically falls within the scope of the original 2014 request, it was not identified until recently and as a result of further searches that were undertaken by the GLA. The Commissioner is not concerned that its recent discovery suggests anything untoward has occurred; simply that it is additional information that has recently been located as a result of the further work the GLA has undertaken in respect of the complainant's more recent requests. She also notes that the GLA has disclosed the information to the complainant now in full without redaction.

Right of appeal

47. 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

48. 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.
49. 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:

Samantha Coward
Senior Case Officer
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