

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 October 2019

Public Authority: London Borough of Lambeth
Address: Civic Centre
6 Brixton Hill
London
SW2 1EG

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Lambeth ("the Council") relating to the cost of major works at a particular address. The Council stated that it had disclosed all the information it held within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the Council has failed to provide all the information it held within the scope of the request and has therefore failed to discharge its duty under regulation 5(1) of the EIR. Also, as the Council failed to provide all the information it held within the scope of the request after 20 working days of receipt of the request, failed to provide adequate advice and assistance, and failed to carry out an internal review within 40 working days of receipt of the internal review request, it has breached regulation 5(2), regulation 9 and regulation 11(4) of the EIR respectively.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response regarding the second part of the request which complies with the EIR.
4. The Council 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 15 February 2018, the complainant wrote to the Council and requested information in the following terms:¹

"Property address: [redacted]

"I am the leaseholder of the above property.

"I make this request of the landlord in accordance with Section 21 of the Landlord and Tenant Act 1985.

"As the landlord of the property, you are required to comply with the requirements of paragraphs 4 and 5 below.

"I require you to provide me/us with:

[1] a written summary of the relevant costs incurred in respect of the above property and

[2] copies of all the invoices submitted by all the contractors for the 'major works'

- If the relevant accounts are made up for periods of twelve months, in the last such period ending not later than the date of this request or

- If the accounts are not so made up, in the period of twelve months ending with the date of this request.

"You are required to supply me with the written summary within 20 days from the date of this request."

6. The Council responded on 1 May 2018. It refused to provide the information as the documents were part of material which was incomplete; therefore it cited regulation 12(4)(d) of the EIR.
7. The complainant requested an internal review on 2 May 2018 but did not receive a response.

¹ The Commissioner has altered the numbering of the constituent elements of the request to make the analysis that follows easier to understand.

8. On 8 January 2019, the complainant contacted the Commissioner to raise his concerns regarding the Council's lack of response to his request for an internal review.
9. Following the Commissioner's intervention, the Council sent its internal review response to the complainant on 11 April 2019. The Council briefly stated that it upheld its original decision.

Scope of the case

10. As mentioned in paragraph 8, the complainant contacted the Commissioner on 8 January 2019 to complain about the way his request for information had been handled.
11. After the Commissioner's initial intervention, the Council provided its internal review to the complainant in April 2019. However, once the Commissioner started her full investigation, the Council contacted her to advise the following:

"Please note that we have provided [the complainant] with the requested information in January 2019- please see attached

At the time of the request, the information was not finalised but we continued to correspond with [the complainant] through our complaints process and also informally as attached.

Please let us know if we need to continue with the ICO investigation as the applicant has been provided with the information."
12. The complainant confirmed that he had received the documents. He also considered that the Council had not responded to element [2] of his request.
13. As the Council had released information in its unfinished form and advised the complainant had been provided with the requested information, the Commissioner takes the view that, contrary to what was stated in its internal review, the Council has changed its stance. The Commissioner now considers the Council's position to be that it is no longer relying on regulation 12(4)(d) to withhold information and has in fact disclosed all the information it holds. Therefore she will not be assessing the Council's application of regulation 12(4)(d).
14. The Commissioner considers the scope of the case to be to determine whether the Council:
 - Was correct to handle the request under EIR;

- has provided all the information it held within the scope of the request; and
- has complied with the relevant timescales.

Reasons for decision

Regulation 2: Environmental information

15. Regulation 2(1) of the EIR defines environmental information as being information on:

- (a) *the state 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)...as well as measures or activities designed to protect those elements;*
- (d) *reports on the implementation of environmental legislation;*
- (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
- (f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)*

16. The Commissioner recognises that it can sometimes be difficult to identify environmental information, and has produced guidance² to assist public authorities and applicants. The Commissioner's well established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
17. The Commissioner has seen the response from the Council which includes some of the information within the scope of the complainant's request. As it is information relating to external repair works to a building, she believes that it is likely to be information about measures that affect the elements of the environment and factors affecting those elements. For example, the visual landscape, noise and waste levels would be affected as a result of the repairs.
18. The complainant had questioned the Council's motives for handling the request under EIR. However, the Commissioner notes that section 39 of the FOIA provides an absolute exemption covering environmental information – because it can be accessed via the EIR.
19. Therefore for procedural reasons, she has assessed this case under the EIR.

Regulation 5 – Duty to make information available on request

Has the Council provided the information requested?

20. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.
21. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
22. To revisit part of the request, the complainant asked the Council for:
"[1] a written summary of the relevant costs incurred in respect of the above property and [2] copies of all the invoices submitted by all the contractors for the 'major works'"
23. From the documentation the Council has sent to the Commissioner, it has only provided the complainant with the unfinished summary of the works completed. It also took the view that it was satisfied it had

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https://ico.org.uk/media/fororganisations/documents/1146/eir_what_is_environmental_information.pdf

provided the complainant with the information requested. The complainant has advised that the information provided to him does not reflect the whole scope of his request because it does not address element [2].

24. The Commissioner is satisfied that the Council has not located all of the information it holds within the scope of the request.
25. The Council has not identified copies of any invoices submitted to it relating to the specific building works that the complainant requested, which the Commissioner would expect the Council to hold in order to create the spreadsheet that was provided to the complainant. In fact, the Council have failed to even identify what, if any, searches have been undertaken in respect of these documents.

Was the request responded to within the time for compliance?

26. Regulation 5(2) states that such information shall be made available "*as soon as possible and no later than 20 working days after the date of receipt of the request.*"
27. From the evidence presented to the Commissioner in this case, the complainant made the request on 15 February 2018, and the Council responded to the request on 1 May 2018. Therefore it is clear that, in failing to issue a response to the request within 20 working days, the Council has breached regulation 5(2) of the EIR.

Regulation 9 of the EIR – Advice and assistance

28. Regulation 9(1) of the EIR states:

"A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants."

29. Regulation 9(3) of the EIR states:

"Where a code of practice has been made under regulation 16. And to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case."

30. The Commissioner's guidance on the EIR code³ advises that the term 'reasonable' is not defined in the EIR. However the Code states that public authorities should take a flexible approach and treat each request or proposed request individually depending on the circumstances.
31. In this case, despite the request being put in clear terms, the Council seemed to be unclear of what the complainant had requested. The Commissioner finds that it would have been beneficial to establish what was required and then respond rather than only responding to one part of the complainant's request, therefore she finds that the Council has breached regulation 9 of the EIR.

Regulation 11 - Reconsideration (internal review)

32. Regulation 11 of the EIR states that:

- (1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*
- (2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*
- (3) The public authority shall on receipt of the representations and free of charge—*
 - (a) consider them and any supporting evidence produced by the applicant; and*
 - (b) decide if it has complied with the requirement.*
- (4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
- (5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*

³ <https://ico.org.uk/media/2013834/eir-advice-and-assistance-regulation-9.pdf>

- (a) *the failure to comply;*
- (b) *the action the authority has decided to take to comply with the requirement; and*
- (c) *the period within which that action is to be taken.*

33. From the evidence presented to the Commissioner in this case, the complainant requested an internal review on 2 May 2018 and the Council provided some information in January 2019 but then once pressed by the Commissioner, an internal review on 11 April 2019.
34. With either response it is clear that, in failing to carry out an internal review within 40 working days the Council has breached Regulation 11 of the EIR.

Other matters

35. The Commissioner notes that Regulation 11 of the EIR only requires a public authority to inform the complainant of the outcome of its Reconsideration (internal review). However, she considers that it is good practice for a public authority, which is content that its initial response was correct, to provide some further explanation as to why it believes that to be the case and to address any counter-arguments put forward by the complainant.
36. The Commissioner considers that the fact that the Council's internal review response of 11 April 2019 appeared to not account for the fact that some information had already been provided to the complainant calls into question the thoroughness with which the Council carried out its internal review. By providing such a cursory response, the Council has only amplified those concerns.
37. The Commissioner considers that a more thorough internal review might have enabled this complaint to have been resolved informally.

Right of appeal

38. 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@justice.gov.uk

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

39. 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.
40. 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

Andrew White
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