

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 November 2019

Public Authority: London Borough of Barking and Dagenham
Address: Barking Town Hall
1 Town Hall
Barking
Essex
IG11 7LU

Decision (including any steps ordered)

1. The complainant requested a variety of information relating to emails and documents sent between employees of the London Borough of Barking and Dagenham ("the Council").
2. The Commissioner's decision is that the Council failed to respond to the request within 20 working days and has therefore breached Regulation 5(2) of the Environmental Information Regulations ("the EIR").
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the EIR, to the request.
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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 21 December 2018, the complainant wrote to the Council and requested, explicitly under the FOIA, a variety of emails and documents sent between Council employees in relation to alleged noise nuisance and structural defects in a particular property. In addition, *"enforcement orders and applications sent to the Planning Department from Building Control between 2012 and 2016"* were requested.
6. The Council acknowledged the request on 21 December 2018 and assigned it reference number [redacted #1].
7. Under reference number [redacted #1], the Council wrote to the complainant again on 18 January 2019, reframing the request as a Subject Access Request (SAR) and stating that *"they have [previously] provided all the information they have on file regarding your request."*
8. The Council explained that some further information could be provided if the complainant could provide a signed letter of consent from their mother, as this further information was (presumably) considered to be *her* personal data.
9. The complainant provided this signed letter of consent to the Council on 13 February 2019.
10. On 1 March 2019, under reference number [redacted #1], the Council made a SAR disclosure of some of the complainant's mother's personal data. They offered the complainant the opportunity to request an *"internal review"* of this response and signed their letter from *"The FOI Team"*.
11. On 10 May 2019 the complainant wrote to the Council to point out that the information disclosed on 1 March 2019 appeared to be outside of the scope of their 21 December 2018 request for information, and appeared to be sent in response to a different request of theirs.
12. The Council acknowledged this correspondence as a request for an internal review of their 1 March 2019 response.
13. On 10 June 2019 the Council wrote to the complainant under reference [redacted #1] to provide the outcome of its internal review. It explained that it has *"provided [the complainant] with all the information we hold regarding your request. If we have not provided you with any specific document you have requested, this is because the information is no longer held i.e. emails from staff who no longer work for the authority."*

14. On 25 June 2019 the Council wrote to the complainant stating that their 10 June 2019 letter was their "full and final response" on the matter.

Scope of the case

15. The complainant contacted the Commissioner on 12 July 2019 to complain about the Council's handling of the request.
16. The Council initially acknowledged the 21 December 2018 request as a FOIA request, but responded as though the request were a SAR.
17. Having considered the complainant's 21 December 2018 request, the Commissioner considers that its scope potentially includes information which is not the requestor's personal data.
18. The Council has explicitly stated that they have issued their final response on the matter. Therefore, the Commissioner considers it appropriate to proceed straight to a decision notice in this case.
19. The scope of this notice and the following analysis is to consider whether the Council has complied with Regulation 5(2) of the EIR.

Reasons for decision

20. 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);*
21. The Commissioner has not seen the requested information but, as it is information relating to alleged noise nuisance and structural defects, she believes that it is likely to be information about reports and measures which affect or a likely to affect factors, which themselves affect or are likely to affect the state of elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.
 22. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"
 23. 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.*"
 24. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
 25. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response under the EIR to the request within 20 working days, the Council has breached Regulation 5(2) of the EIR.

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@justice.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

**Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**