

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 September 2022

Public Authority: London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant has requested scanned copies of handwritten notes produced in a pre-application planning meeting. The London Borough of Croydon (the Council) initially supplied the complainant with an illegible, low resolution photograph however on internal review supplied the complainant with a clear and readable photograph copy of the notes.
2. The Commissioner's decision is that the Council has provided the complainant with the information sought by the request. However the Commissioner finds that the Council did not fully comply with its responsibilities at regulation 11(3) as it had not considered the entirety of the complainant's representations in their request for internal review.
3. There are no steps required.

Request and response

4. On 13 February 2022, the complainant wrote to the Council and requested information in the following terms:

"Thanks for this. In that case could you please supply your notes? These are disclosable (for example under FOI which covers all recorded material). I trust in the circumstances that you will not stand on the 20 working day wait, which would fall outside the closing date for comments.

It is important that those who may be affected by planning applications should have complete factual and balanced information, which the pre App process provides from Council experts.

As to the applicant, they have chosen to apply before receiving the formal pre App advice. It is their choice and contrary to the Council's emphatic advice.

A scan of handwritten notes would be fine assuming it's in a hand better than mine. I am keen that the notes are clearly original and not clouded by anything that could create a different perception.

Many thanks"

5. The complainant contacted the Commissioner on 14 March 2022 to complain about the Council's delay in responding to their request.
6. On 19 April 2022 the Commissioner issued a decision¹ finding the Council in breach of regulation 5(2).
7. The Council responded on 21 April 2022. It provided the complainant with a low resolution, redacted photograph copy of the pre-application planning meeting notes.
8. On 6 May 2022 the complainant requested an internal review in the following terms:

"Please explain how the copy of the notes supplied has become degraded and appears to have been manipulated to make it hard or impossible to read. Please supply a clear, true and computer monitor readable copy of the original source, authenticated and countersigned as such by a senior Council official."

9. Following an internal review the Council wrote to the complainant on 25 May 2022. It provided the complainant with a clearer, legible photograph copy of the notes with redactions. The Council also provided an email from a Senior Planning Officer confirming that the photograph was a true likeness.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4020195/ic-161442-s4c9.pdf>

Scope of the case

10. The complainant contacted the Commissioner on 29 May 2022 to complain about the way their request for information had been handled. The complainant was dissatisfied that the Council had not provided an explanation for the poor quality of the photograph supplied in its initial response to the information request, despite explicitly asking for one, and asked the Commissioner to investigate this.
11. The Commissioner therefore considers the scope of the investigation to be whether the Council handled the request in line with its obligations at regulation 11(3) (representations and reconsideration) of the EIR.
12. The complainant also alleged that the Council has committed a regulation 19 offence and expressed this allegation in the following terms:

“The fact that no reasonable (or any) explanation is forthcoming for the distortions and illegibility suggests that the answer lies in deliberate alteration designed to conceal information”
13. The Commissioner will address these allegations in the Other Matters section.

Reasons for decision

Is the requested information environmental?

14. 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;

15. In this case the requested information concerns a pre-application planning meeting. The Commissioner considers that information relating to a planning application would constitute 'measures and activities affecting, or likely to affect, the elements and factors of the environment'. Accordingly, the Commissioner is satisfied that the requested information would fall within the definition of environmental information at regulation 2(1)(c) of the EIR and has considered the case under this access regime.

The complainant's position

16. In their correspondence to the Commissioner the complainant stated that in their request for internal review they had asked for a legible copy of the photograph and for the Council to provide an explanation for why the original photograph was illegible. The complainant states that the internal review response received had not covered this latter point.

The Council's position

17. The Commissioner wrote to the Council to query the poor quality of the photograph provided in its initial response.
18. The Council explained to the Commissioner that it understood the degradation issue to stem from the conversion of the photograph to PDF through its casework management software and the application of redactions. The Council acknowledged that it had not recognised the poor quality of the image at the time of its initial response however had sought to correct this at the internal review stage.
19. The Council confirmed that the information contained within the photograph was a true likeness and had not been amended through the conversion and redaction process.

The Commissioner's position

20. Regulation 11(3) states that:

"(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.

21. The Commissioner acknowledges that the Council did not consider the complainant's request for internal review in its entirety. The Commissioner considers that while the EIR does not require public authorities to generate answers to questions or provide explanations unless in the form of information already held, in the spirit of providing a satisfactory level of customer service to the complainant the Council should have addressed the complainant's request for an explanation in its internal review. By doing so this may have negated the requirement for the Commissioner's involvement.
22. However the Commissioner's position is that the principal issues regarding the photograph that were identified in the Council's initial response were rectified by the Council at the internal review stage, and an outcome was provided to the complainant in a timely manner. The Commissioner believes that this evidences the purpose of the internal review mechanism.
23. The Commissioner considers that the narrative explanation for the poor quality of the photograph, as outlined above, is sufficient for the purposes of concluding the case and through the investigation process the Council has now complied with its obligations under regulation 11. The Commissioner does not require any steps to be taken by the Council.

Other matters

24. Regulation 19 of the EIR states:

"19-(1) Where –

- (a) A request for environmental information has been made to a public authority under regulation 5; and
- (b) (b) the applicant would have been entitled (subject to payment of any charge) to that information in accordance with that regulation, any person to whom this paragraph applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals and record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to which the applicant would have been entitled."

25. The complainant alleges that the Council has committed a criminal offence under regulation 19 of the EIR.

26. The allegations were referred to the Commissioner's Criminal Investigations Team (CRIT), who are tasked with considering such allegations, on three separate occasions. The outcome of each referral to CRIT was that there is insufficient evidence to substantiate a claim of a regulation 19 offence.
27. While the Commissioner acknowledges the complainant's reasoning behind making the allegations, he considers the decision of the CRIT team to be final and will not comment further on this matter.
28. The Commissioner is aware that the complainant made an information request to the ICO for copies of the Council's response to the Commissioner's investigation letter, which, as of the date of this decision notice, has been provided to the complainant.
29. The Commissioner has had sight of the response provided by the ICO and considers the content to be materially the same in its explanation of the degradation of the photograph as the narrative provided above.

Right of appeal

30. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

31. 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.
32. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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