

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** **8 February 2023**

**Public Authority:** **Royal Borough of Greenwich**  
**Address:** **35 Wellington Street**  
**London**  
**SE18 6H**

#### **Decision (including any steps ordered)**

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1. The complainant has requested information which shows the policies on investigating nuisance.
2. The Commissioner's decision is that on the balance of probabilities, the Royal Borough of Greenwich (the Council) is more likely than not to hold some information within the scope of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the request after having conducted proper searches for information within the scope of the request. If further information is held, it should either be disclosed or refusal notice issued that complies with regulation 14 of the EIR.
4. The public authority 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 FOIA and may be dealt with as a contempt of court.

## **Request and response**

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5. On 8 August 2022, the complainant wrote to the Council and requested information in the following terms:

“Please provide me with a copy of RBG ‘INVESTIGATING POLICY ON NUISANCE’”

6. The Council responded on 12 August 2022. It stated that the requested information was being withheld under Section 21.
7. Following an internal review, the Council wrote to the complainant on 14 September 2022. It stated that the requested information was environmental information and should have been considered under the EIR. The Council concluded that it does not have the described document.

## **Scope of the**

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8. The complainant contacted the Commissioner on the 11 October 2022 to complain about the way their request for information had been handled.
9. The Commissioner considers whether the Council, on the balance of probabilities, holds the requested information.

## **Reasons for decision**

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10. The Commissioner is satisfied that the request was for environmental information. The complainant is particularly interested in how the council investigates noise complaints and this would be a measure, affecting factors which in turn affect the elements of the environment. Therefore the request fell to be dealt with under the EIR.

## **Regulation 12(4)(a)**

11. This reasoning covers whether the Council has disclosed any information which it holds within the scope of the request.
12. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information, “to the extent that it does not hold that information when an applicant’s request is received”.

13. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any, or further information which falls within the scope of the request (or was held at the time of the request).
14. In the Council's Internal Review, it advised that it did not have a document as described in the request. It did, however, provide two links which it felt might support the complainant.
15. In its response to the Commissioner the Council advised that it had conducted no searches for the requested information, as no such document exists and therefore searches are not necessary.
16. The Council explained that they do not carry out consultations, as there is no legal duty to do so. The Council confirmed that the documents that were previously provided are the only documents that exist.
17. The Council confirmed that the requested information has never existed and therefore has never been deleted by the Council.

### **The complainant's position**

18. The complainant referred the Commissioner to legal documents between them and the Council, in which the Council refers to its "investigating policy on nuisance."
19. The complainant also referred the Commissioner to the section of the legal documents, which shows the Council's signed statement of truth. The complainant advised that this is evidence that the requested information does exist and is not being provided by the Council.

### **The Commissioner's Decision**

20. After reviewing the Council's submission, the Commissioner is not satisfied that the Council has conducted any adequate searches for the requested information. Whilst the Council may not possess a document with the specific title mentioned in the request, the Commissioner is sceptical that there is no policy or guidance in place whatsoever, which guides the process of investigating noise nuisance complaints. The Council's statements to the court, which, in the Commissioner's view, carry considerable weight, would indicate that the Council did have some form of policy – even if it was not specific to investigating noise complaints.

21. For the above reasoning, the Commissioner considers that on the balance of probabilities, the Council is more likely than not to hold some information within the scope of the request.
22. The Council is therefore required to carry out fresh searches to identify any relevant information it may hold. In the event that it wishes to provide a further "not held" response, the Commissioner will expect the Council to be able to explain what the policies it referenced in its statements to the court are and why it does not consider these to fall within the scope of the request.

### **Other matters**

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23. The Commissioner would like to take this time to remind the Council, that if it wishes to claim that no information within the scope of the request is held, it should still ensure reasonable searches are conducted when responding to a request for information. What is "reasonable" will depend on the facts of each case. If the Council is confident that there is no reason for particular information to exist, a consultation with an appropriate person from the relevant business area may be sufficient. If the request seeks information that the Council should hold, it is likely to need to carry out more thorough searches of the records that it holds in order to satisfy itself that the information is not held.

## Right of appeal

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24. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.
26. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**