

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

**Decision notice**

**Date:** 16 July 2024

**Public Authority:** Westminster City Council  
**Address:** 64 Victoria Street  
London  
SW1E 6QP

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to the maintenance of a small piece of land. Westminster City Council said that it did not maintain the land, therefore it did not hold the requested information. The complainant disputed the accuracy of the Council's response.
2. The Commissioner's decision is that the Council does not hold the requested information, therefore it ought to have issued a response citing regulation 12(4)(a) of the EIR. No steps are required.

**Request and response**

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3. On 4 September 2023 the complainant wrote to the Council and requested information in the following terms:

Are you able to advise the ownership of the small triangular piece of land adjacent to [address redacted] which is maintained by the Highways Department.
4. The complainant provided a map extract for reference.
5. The Council responded to the request on 4 October 2023. It stated that it did not hold information relating to ownership of the land in question but referred the complainant to The Canals & River Trust.

6. The complainant made a subsequent request on 4 October 2023 for further information:
  - (a) Why is the land maintained by WCC Highways Department;
  - (b) Is the cost of maintenance a public expense; if it is,
  - (c) What is the annual cost.
7. The Council responded to this request on 31 October 2023. It stated that:

Our records show that this parcel of land is not inspected, or maintained by, the City Council.
8. The complainant was not satisfied with this response and requested an internal review on 31 October 2023. They provided an email from the Council's Housing Services Department which indicated that the area was managed by the Council's Highways Department.
9. The Council provided the outcome of that internal review on 22 November 2023. It stated that it had checked the information provided in response to the complainant's requests, and was content that it was accurate. The Council further clarified that the Highways Department did not maintain the land in question.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 14 December 2023 to complain about the way their request for information of 4 October 2023 had been handled. The complainant insisted that the Council maintained the shrubbery on the land in question.
11. The Commissioner has clarified to the complainant that his role is to determine whether or not a public authority has responded to a request in accordance with the requirements of the EIR. The Commissioner cannot comment on the accuracy of information held by a public authority which is disclosed in response to a request. Nor can the Commissioner determine who is responsible for maintaining the land identified by the complainant. For example, it is possible that Council officers have undertaken maintenance work which has not been formally documented.

12. The complainant has continued to correspond with the Council during the course of the Commissioner's investigation, and has provided the Commissioner with various information in support of their complaint. The Commissioner has considered all the information provided by both parties which is relevant to the request of 4 October 2023.
13. In light of the above the Commissioner considers the scope of the case to be to determine whether the Council holds recorded information that falls within the scope of the complainant's request of 4 October 2023.

## Reasons for decision

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### **Regulation 5: duty to make environmental information available Regulation 12(4)(a): information not held**

14. Regulation 5 of the EIR provides that, subject to certain exceptions, a public authority is required to make environmental information available on request.
15. The right of access extends only to recorded information held by a public authority at the time of the request. Public authorities are not required to provide opinion, comment or explanation if this does not already exist in a recorded format.
16. A public authority will have complied with its obligations under FOIA or the EIR where it has provided the recorded information that it holds in relation to a request irrespective of whether this information is accurate or not. The Commissioner cannot assess the accuracy of information disclosed in response to a request.
17. Regulation 12(4)(a) of the EIR provides that a public authority may refuse a request for environmental information to the extent that it does not hold that information at the time the request is received.
18. The Commissioner asked the Council to comment on the evidence provided by the complainant in support of their complaint. This included the email described at paragraph 8 above. The Council pointed out that the email in question stated that the "area" was managed by the Council's highways department.
19. The complainant had further provided extracts of Land Registry documents which they claimed showed that the triangle of land was owned by the Council.

20. The Council clarified that it had provided the complainant with a map on 19 December 2023 in response to further correspondence from them. This map confirmed the specific area maintained by the Council which includes adjacent paths, but excludes the queried triangle of land.
21. The complainant continued to argue that the Council was wrong and that it did in fact maintain the triangle of land, although they conceded that it may not actually be owned by the Council. They stated that the area had been planted by the Council and continued to be maintained by the Council on a regular basis.
22. The Council has advised the Commissioner that it consulted its Legal Services department and its Leasehold Litigation Manager, who confirmed that the Council did not maintain the triangle of land. The Council has provided the Commissioner with an extract of the lease for residents of the estate, showing the area for which they are liable for maintenance costs. This also excludes the triangle of land.
23. The Council also provided the Commissioner with a copy of Land Registry documents which indicated that the owner of the triangle of land is The Canals & River Trust.
24. The Commissioner appreciates the strength of the complainant's feelings on the matter. However he accepts that the Council has provided an answer to the complainant's request in terms of the recorded information held.
25. Both parties have provided evidence relating to the ownership of the land. It is not for the Commissioner to decide who is the legal owner of the land. He is merely required to determine whether the Council has provided the recorded information that it holds, and he is satisfied that it has done so. The Council has consulted with relevant business areas and the Commissioner is unable to identify further actions that the Council could reasonably be required to take.
26. Similarly, the Commissioner cannot make a determination as to who is responsible for maintaining the triangle of land. The Commissioner accepts that the Council has undertaken appropriate searches and does not hold recorded information relating to the maintenance of the land.
27. Consequently the Commissioner finds that the Council has provided the complainant with all the information it holds which is relevant to his information request. Therefore the Council has complied with regulation 5 of the EIR. However the Commissioner finds that the Council ought to have cited regulation 12(4)(a) in its response to the complainant, to make it clear that it did not hold recorded information relating to the maintenance of the land.

## Right of appeal

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28. 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)

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**