

Freedom of Information Act 2000 (Section 50) The Environmental Information Regulations 2004

Decision Notice

Date: 7 May 2009

Public Authority: London Borough of Enfield
Address: Civic Centre
Silver Street
Enfield
EN1 3XJ

Summary

The complainant submitted a series of requests to the public authority which were mainly focused on housing issues relating to the 'Edmonton Partnership Initiative' regeneration project and as a consequence of the responses received, made several complaints to the Information Commissioner ("the Commissioner"). On 5 August 2006, the complainant requested information relating to a particular property and liability for communal areas. The complainant alleged that the public authority failed to respond to this request. Following intervention by the Commissioner, the public authority confirmed that it did not hold the information requested, a position which the Commissioner upheld. The Commissioner investigated and found that the public authority, in respect of some of the information, breached section 1(1)(a) and section 10(1) of the Act, and in respect of the remaining information, breached the Environmental Information Regulations 14(3)(a) and 14(2), for not initially informing the complainant that no recorded information was held but does not require the public authority to take any action.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. The Environmental Information Regulations ("EIR") were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

The Request

3. On 5 August 2006, the complainant wrote to the public authority requesting the following information:
 - i) “Please confirm unequivocally without ambiguity right of the council to enter does no longer apply to [a particular property]. (Since title transfer AGL[a particular number]).”
 - ii) “Please confirm unequivocally without ambiguity Enfield Council will be adopting Roads & Pavements AND we will not be liable for maintenance & cleaning of same separately. Further please confirm without ambiguity when adoption by Enfield Council will take place 6, 12, 18 months?”
 - iii) “Why the Barbot Estate landscaped recreational/play areas trees communal areas will not be adopted by the Council as per formal offer document?”
 - iv) “State clearly with plan coloured differently to show which are landscaped recreational/play areas and communal areas? Plans in attached email for your perusal. [Named persons] should be able to provide a better plan and detailed statement of fact.”
 - v) “Kindly confirm unequivocally without ambiguity ‘no charge will be payable by us for maintenance & cleaning of Landscaped & Communal Areas until adoption by council’ as per formal offer document.”
4. As the complainant has made a series of requests and complaints regarding the Edmonton Partnership Initiative to the public authority since early 2004 there is a great deal of correspondence between the two which displays the inability of the parties to reach a settlement on the issues. Not all of these pieces of correspondences are relevant to the complaints made to the Commissioner and so are not recorded here.
5. In response to part ii) of the request, the public authority, by letter dated 26 September 2006, informed the complainant that “the council will adopt the roads and pavements on the estate and be responsible for their maintenance”. In a letter dated 20 October 2006, the public authority further informed the complainant of the likely timescales for the adoption.
6. In response to parts iii) and v) of the request, by letter to the complainant dated 20 October 2006, the public authority stated; “I understand that you have a particular concern about the future maintenance of the landscaped areas. These provide no highway purpose but are intended, as I understand it, to enhance the amenity of the area. There is therefore no question that the Council should be maintaining these areas in its capacity as highway authority”. This has been clarified to mean that the council will not be maintaining the landscaped areas.
7. In a letter dated 1 February 2007, the public authority in response to part iv) of the request, informed the complainant that; “Any division of the two landscaped areas on the site to differentiate between ‘recreational/play’ area and ‘communal areas’ would be for the estate owners to determine. There is no planning requirement to

establish different areas. In practice, the deposited application for a children's playground may help to identify areas likely to be used for active as opposed to passive use, but the final decision will rest with the applicants". This letter also provided the complainant with information regarding landscaping in general and copies of documentation.

The Investigation

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. Due to the interrelated nature of the complaints it has been difficult to extrapolate the specific thread of complaint usually associated with freedom of information requests. This has been further complicated by the public authority's attempt to deal with the requests in the normal course of business and not follow the specific steps related to freedom of information requests. The complainant was unable to isolate a specific complaint but simply wished the Commissioner to investigate the fact that the requests had allegedly been ignored, or at least, not substantially answered.
9. The Commissioner is considering the outcomes to parts i) to v) of the request made on 5 August 2006.

Findings of fact

10. The 'Edmonton Partnership Initiative' was a multi phased regeneration programme across three sites in Edmonton. The initiative was a broader aspiration to improve the housing, shopping, transport, environment, community, social and economic conditions in Edmonton.

The Barbot estate is a housing project delivered under the Edmonton Partnership Initiative regeneration project.

11. As a result of submissions from the complainant, the Commissioner identified six different complaints between the parties requiring their own investigation. This has generated a substantial amount of cross referenced and interrelated correspondence.

Chronology

12. As stated above, due to the involved and related nature of the complaints involving these parties there is a large volume of correspondence. The Commissioner does not consider it necessary or beneficial to detail each of these communications but has instead chosen to highlight those relevant for consideration in this case.
13. The interrelated nature of the complaints and correspondence has led to confusion as to which of the numerous requests had been answered. The

Commissioner was not helped by the complainant being unable to clearly identify which requests had been dealt with.

14. The initial request was made on 5 August 2006. The public authority responded to the complainant, as stated in paragraphs 5, 6 and 7 however, it did not confirm whether it held recorded information.
15. Following intervention by the Commissioner, the public authority in a letter dated 12 March 2009 confirmed to the complainant that no recorded information was held in relation to parts i), iii) and v) of his request. The letter also confirmed that there is no contractual right of entry available to the council on the particular property and informed him to refer any enquiries regarding the amenity space to the developers.

Analysis

16. Information relating to liability for communal areas falls within the EIR as the information itself need not be environmental, it is sufficient for the information to be on an issue which is environmental.

Request i)

17. The Commissioner is satisfied that information is not held in relation to the request. If a right of entry over the property existed then it would be reasonable for the complainant to expect that information was held in a recorded form. However, the public authority has subsequently confirmed that it has no interest in the land and therefore no rights of entry. The complainant has offered no evidence to the contrary therefore on the balance of probabilities it is reasonable to accept that no recorded information is held by the public authority.
18. Any written question put to a public authority is technically a freedom of information request as recorded information could exist which answers the questions. The Act does not require public authorities to answer questions generally, only if they already hold the answers in recorded form. The public authority provided an answer to the question in the spirit of providing advice and assistance. However, this was only communicated to the complainant following intervention by the Commissioner and over 19 months after the date of the request.

Request ii)

19. The Commissioner is satisfied that recorded information is not held in relation to the request. The public authority did confirm to the Commissioner that it holds recorded information in the form of Section 38 of the Highway Act Agreement and Bonds and that this forms the basis of the information supplied to the complainant in the response to his request. However, the Commissioner does not view the statutory tool upon which the answer to the question was based as recorded information of the description specified in the request and sees no merit in this

being provided. The complainant has been provided with the information he required, namely an answer to his specific question.

Request iii)

20. The Commissioner is satisfied that recorded information is not held in relation to the request. The public authority has confirmed that it holds no recorded information of the description specified. It has also confirmed that it will not be adopting the areas stated in the request, which has been further evidenced by the public authority directing the complainant to the developers for enquiries regarding the amenity space, and provided a reason why, i.e. as they provide no highway purpose. In view of this, and the fact that the complainant has offered no specific evidence to the contrary, it is reasonable for the Commissioner to accept that, on the balance of probabilities, no recorded information is held by the public authority.
21. Again, any written question put to a public authority is technically a freedom of information request as recorded information could exist which answers the questions. The Act does not require public authorities to answer questions generally, only if they already hold the answers in recorded form. The public authority provided an answer to the question although this was done outside of the statutory time limit for dealing with requests.

Request iv)

22. The Commissioner is satisfied that recorded information is not held in relation to the request. The public authority has confirmed that it holds no other plans than those previously supplied to the complainant which show the 'recreational/play areas and communal areas' collectively as amenity land. There is no planning requirement to establish different areas and the complainant has offered no evidence to suggest that a more detailed plan exists. Therefore, it is reasonable for the Commissioner to accept that, on the balance of probabilities, no recorded information is held by the public authority.
23. The Commissioner acknowledges that the Act does not require public authorities to create a record in order to answer a request and recognises that information was provided as part of their general service offered to residents within their borough. However, this was only communicated to the complainant approximately 6 months after the date of the request.

Request v)

24. The Commissioner is satisfied that recorded information is not held in relation to the request. As the public authority are not adopting the areas there can be no associated maintenance payments. If a council charge for maintenance and cleaning existed then it would be reasonable for the complainant to expect that information was held in a recorded form. However, the public authority has confirmed that no recorded information of the description specified is held and that it will not be maintaining the areas referred to in the request, which has been further evidenced by the public authority directing the complainant to the

developers for enquiries regarding the amenity space. The complainant has offered no evidence in opposition. Therefore, it is reasonable for the Commissioner to accept that, on the balance of probabilities, no recorded information is held by the public authority.

25. Again, any written question put to a public authority is technically a freedom of information request as recorded information could exist which answers the questions. The Act does not require public authorities to answer questions generally, only if they already hold the answers in recorded form. The public authority provided an answer to the question although this was done outside of the statutory time limit for dealing with requests.

The Decision

26. The Commissioner's decision is that the public authority did not deal with part i) of the request for information in accordance section 1(1)(a) and section 10(1) of the Act in that it did not inform the complainant that no recorded information was held within the statutory time limit.

The Commissioner's decision is that the public authority did not deal with parts ii) - v) of the request in accordance with regulation 14 (3)(a), by virtue of regulation 12(4)(a), and regulation 14 (2) of the EIR, in that it did not inform the complainant that no recorded information was held within the statutory time limit.

Steps Required

27. The Commissioner requires no steps to be taken.

Right of Appeal

28. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 7th day of May 2009

Signed

**Gerrard Tracey
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

General Right of Access

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Environmental Information Regulations 2004

Regulation 12(4)

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

Regulation 14(2)

The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 14(3)

The refusal shall specify the reasons not to disclose the information requested, including-

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).