

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

Decision Notice

Date: 18 October 2010

Public Authority: London Borough of Barnet
Address: Building 4
North London Business Park
Oakleigh Road South
London.
N11 1NP

Summary

The complainant requested information relating to complaints made to the public authority's environmental health department about a specific property. The public authority failed to provide information requested within the statutory timescale, and also failed to notify the complainant of its internal review decision within the statutory timescale and therefore breached regulation 5(2) and regulation 11(4) of the Environmental Information Regulations 2004. The public authority failed to cite the correct exception when refusing information as 'not held' by it and therefore also breached regulation 14(2) and 14(3)(a). The information held by the public authority has been provided to the complainant and the Commissioner requires no steps to be taken.

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 17 August 2009 the complainant wrote to the London Borough of Barnet making the following request for information:

"On how many occasions did the London Borough of Barnet's Environmental Health Department receive complaints (including requests for attendance and/or inspection, regardless of whether such attendance and/or inspection was actually carried out or not) in respect of the following categories of environmental problem emanating from, or claimed to be caused by the occupants of [a specified address]

(1) during the period 1.Oct.1983 to 31.Dec.2003

(2) during the period 1.Jan.2004 to 31.July.2009

(categories):

(a) noise nuisance (of any type);

(b) water escapes;

(c) blocked and overflowing drains;

(d) blocked and overflowing sewers."

4. The complainant did not receive a response and wrote again on 28 September 2009, pointing out that a period longer than the 20 days allowed for response had elapsed and requesting the public authority to expedite a reply and provide an explanation for its failure to comply with section 10 of the Act.
5. On 20 November 2009, having not received any response, the complainant wrote to the public authority complaining that it had failed to respond to his request for information.
6. The public authority acknowledged this letter on 24 November 2009, stating that it considered the request to be for environmental information and therefore it was treating his letters of 28 September and 20 November 2009 as representations under regulation 11 of the EIR for an internal review, which it was required to provide within 40 working days. It indicated that it envisaged providing a response within 20 working days.

7. On 4 June 2010 the public authority wrote again to the complainant with the outcome of the internal review it had carried out. It apologised for the delay in responding to his initial request for information, and his request for review. The public authority explained that it did not hold records of complaints in the relevant categories prior to 1998 and was therefore unable to provide the information requested for the period 1 October 1983 to 31 December 1997. It provided information in all the requested categories for the period 1 January 1998 to 31 December 2003 and 1 January 2004 to 31 July 2009.

The Investigation

Scope of the case

8. On 11 March 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - He had not received a response to his request for information, and the public authority had failed to provide him with its internal review, despite its undertaking to notify him within 40 working days.

Chronology

9. The Commissioner telephoned the public authority on 22 April 2010 and was informed that it would respond the following day with copies of its correspondence with the complainant. The Commissioner understood this to include a copy of the public authority's response to the complainant's request for information.
10. On 5 May 2010 the Commissioner wrote to the public authority reminding it that he had not received anything further from it, and requesting a copy of its response to the complainant's request, plus a copy of the internal review, if that had now been provided to the complainant.
11. The public authority replied on 6 May 2010, indicating that it anticipated providing the complainant with its internal review by 'the end of next week' [14 May 2010] and that it would send the Commissioner a copy of that internal review.
12. The Commissioner wrote to the complainant on 6 May 2010, asking him to confirm that, apart from the letter of 24 November 2009, he had

received no other correspondence from the public authority relating to his request. The complainant replied on 13 May 2010, confirming that the only correspondence received had been the public authority's letter of 24 November 2009.

13. The Commissioner wrote to the public authority on 1 June 2010, informing it that the complaint was being progressed to the next stage.
14. The public authority acknowledged the Commissioner's letter, confirming that it had received the complainant's request of 17 August 2009 and that, aside from its letter of 24 November 2009, no other correspondence had been sent to the complainant on the subject of his request for information, although it had been in contact with him about other matters.
15. On 4 June the public authority sent its internal review response to the complainant, in which it disclosed the information it held relevant to his request.
16. The Commissioner telephoned the complainant on 23 June 2010 to discuss his complaint in light of the disclosure provided to him at internal review. The complainant indicated that he accepted that the public authority did not hold the information prior to 1998 and that his complaint was therefore about the delays in the public authority's response. The Commissioner agreed with the complainant that the delays would be formally recorded in a Decision Notice.

Analysis

Substantive Procedural Matters

Regulation 5

17. The complainant submitted a request for information to the public authority on 17 August 2009, and received information in response to that request on 4 June 2010, a period of 201 working days. By its failure to provide information held within the statutory time limit, the public authority breached regulation 5(2).

Regulation 11

18. The complainant submitted representations to the public authority about its lack of response to his request on 20 November 2009. This was acknowledged by the public authority on 24 November 2009. The

outcome of its internal review was not communicated to the complainant until 4 June 2010, a period of 133 working days. By its failure to complete its internal review within 40 working days, the public authority breached regulation 11(4) of the EIR.

Regulation 12

19. The public authority has stated that it does not hold information prior to 1998. The complainant accepts that this information is not held and does not wish to pursue this. The Commissioner has therefore not considered that aspect of the public authority's response further, but notes that under the EIR the correct approach to be taken in circumstances where information is not held, is to issue a refusal citing the exception provided by regulation 12(4)(a). This was not done.

The Decision

20. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The information requested by the complainant, which was held by the public authority, has been disclosed to him.

21. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- By delaying the disclosure of information held by it beyond the statutory timescale, the public authority breached regulation 5(2) of the EIR.
- By delaying the communication of its consideration of the complainant's representations, the public authority breached regulation 11(4) of the EIR.
- By failing to issue a refusal notice in respect of regulation 12(4)(a) within 20 working days, the public authority has breached regulation 14(2) of the EIR.
- By failing to state the exception relied upon, above, the public authority has breached regulation 14(3)(a)

Steps Required

22. The Commissioner requires no steps to be taken.

Right of Appeal

23. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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 sent.

Dated the 18th day of October 2010

Signed

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

Legal Annex

R.5 Duty to make available environmental information on request

Regulation 5(1) provides that –

'Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.'

Regulation 5(2) provides that –

'Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.'

Regulation 5(3) provides that –

'To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.'

Regulation 5(4) provides that –

'For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.'

Regulation 5(5) provides that –

'Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to a standardised procedure used.'

Regulation 5(6) provides that –

'Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.'

R.11 Representations and reconsideration

Regulation 11(1) provides that –

'Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.'

Regulation 11(2) provides that –

'Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.'

Regulation 11(3) provides that –

'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.'

Regulation 11(4) provides that –

'A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.'

Regulation 11(5) provides that –

'Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of -

(a) the failure to comply;

(b) the action the authority has decided to take to comply with the requirement; and

(c) the period within which that action is to be taken.'

R.12 Exceptions to the duty to disclose environmental information

Regulation 12(1) provides that –

'Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

an exception to disclosure applies under paragraphs (4) or (5); and

in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.'

Regulation 12(2) provides that –

'A public authority shall apply a presumption in favour of disclosure.'

Regulation 12(3) provides that –

'To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.'

Regulation 12(4)(a) provides that –

'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...'

R.14 Refusal to disclose information

Regulation 14(1) provides that –

'If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.'

Regulation 14(2) provides that –

'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) provides that –

'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).'

Regulation 14(4) provides that –

'If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.'

Regulation 14(5) provides that –

'The refusal shall inform the applicant -

(a) that he may make representations to the public authority under regulation 11; and

(b) of the enforcement and appeal provisions of the Act applied by regulation 18.'