

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

Decision notice

Date: 14 November 2011

Public Authority: Transport for London
Address: 6th Floor
Windsor House
42-50 Victoria Street
London
SW1H 0TL

Decision (including any steps ordered)

1. The complainant requested information about the status of a piece of land, Transport for London's (TfL) arrangement to clean it and its relevant cleaning policies under the Freedom of Information Act ('the FOIA'). TfL didn't respond in 20 working days and then took even longer to provide all the requested information. The complainant referred the delays to the Commissioner ('the Information Commissioner').
2. The Commissioner considers that part of the information was environmental information and fell to be considered under the Environmental Information Regulations ('the EIR').
3. He finds TfL's failure to provide that information in 20 working days was a breach of Regulation 5(2). For the rest of the information, the Commissioner finds that TfL breached of section 10(1) of the FOIA by not providing it within 20 working days.
4. As the information has been provided, the Commissioner requires no remedial steps to be taken in this case.

Request and response

5. On 5 July 2011 the complainant referred to a specific piece of land and requested the following information from TfL:

In respect to the land in question could you please let me have the following information:

1. A copy of the sections of your Framework agreement with [Named company redacted] covering the removal of litter and refuse.

2. A copy of your cleansing strategy for London Underground out of station areas.

3. What were the last 3 occasions when the land was cleaned.

4. Is TfL responsible for the narrow strip off to the right of the steps (as viewed from [road redacted]) up to the car park at the back of the advertising hoarding.'

6. The complainant wrote a number of reminders and TfL did not issue its response until 30 August 2011. It provided the information for requests [1] and [2] and explained that it owned the land for request [4]. For request [3], it explained its policy and that it would refer the request about the last three occasions to the relevant department. After a further chaser from the complainant, TfL then answered question [3] on 30 September 2011.

Scope of the case

7. On 29 September 2011, the complainant contacted the Commissioner to complain about the way his request for information had been handled. He initially explained that his concern was the delays that he had experienced and the failure to receive the information for request [3].
8. During the course of the investigation, the information for request [3] was provided. The complainant explained that he remained concerned about the delays that he had experienced and the Commissioner agreed to issue a Decision Notice about them.
9. The Commissioner considers that the request asked for some information that was Environmental Information and some that was not. The request raises matters that need to be considered under both pieces of legislation and this will be reflected in his reasons for decision.

Reasons for decision

10. The first question to be asked is whether the information requested constitutes environmental information under the EIR. This question matters as information that is environmental information must be considered under the EIR and not the FOIA.
11. Regulation 2(1) of the EIR defines what 'environmental information' consists of. The relevant part of the definition are found in 2(1)(a) to (c) which state that it is as any information in any material form 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) and (b) as well as measures or activities designed to protect those elements...'

12. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor etc in question. In other words, information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.
13. The Commissioner considers requests on a case-by-case basis to decide whether the request concerns information on a measure which is or is not likely to affect the environment.
14. In this case the Commissioner considers that some of the information was environmental information, but some was not. He will now explain why.

15. He considers that the information requested in [1] and [2] constitutes environmental information. This was information about the ongoing agreement that it had with a contractor about how to clean certain land. The Commissioner considers that these two pieces of information constituted a measure (a policy) and an activity (the organisation of the cleaning) that affected the state of the land and landscape [in regulation 2(1)(a)]. These elements of the request should be considered under the EIR.
16. However, he considers that the information about the historic status of the land (requests [3] and [4]) is not environmental information. This is because in his view it doesn't constitute a measure or an activity which affects the state of the land or landscape and no link can be made between Regulation 2(1)(c) back to 2(1)(a). In addition, the information does not satisfy the definition of environmental information in any other way. As such these elements of the request should be considered under the FOIA.
17. As noted above, the procedural issues are at the heart of this complaint. The Commissioner will consider each piece of legislation in turn.

Requests [1] and [2] – the EIR

18. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of request.
19. The complainant submitted his request for information on 5 July 2011. TfL did not provide the complainant with the requested information until 30 August 2011. Consequently the Commissioner finds that TfL has breached regulation 5(2) of the EIR, by not providing this information to the complainant within 20 working days.
20. He notes that TfL have recognised this breach and apologised for it.

Requests [3] and [4] – the FOIA

21. Section 1 of the FOIA requires that where a request is received by an authority it should respond to the requestor confirming whether it holds relevant information. If it does, it is also required to consider whether that information should be disclosed to the complainant.
22. Section 10(1) of the FOIA also requires an authority to comply with section 1(1) within 20 working days. This includes the obligation to provide the relevant recorded information when it is not exempt.

23. The Commissioner finds that TfL's failure to provide the information for requests [3] and [4] was a breach of section 10(1) of the FOIA.
24. The Commissioner requires no remedial steps to be taken in this case as the complainant has acknowledged that he has received all the information that he has requested.

Right of appeal

25. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

26. 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.
27. 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

**Pamela Clements
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Information Commissioner’s Office
Wycliffe House
Water Lane
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SK9 5AF**