

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 24 July 2014

Public Authority: London Borough of Haringey
Address: Civic Centre
High Road
Wood Green
London
N22 8LE

Decision (including any steps ordered)

1. The complainant requested information relating to parking enforcement. The Commissioner's decision is that the London Borough of Haringey has correctly withheld some of the requested information under regulation 12(5)(e) (confidentiality of commercial or industrial information) of the EIR. However, there is some information that has been withheld that the Commissioner requires to be disclosed.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the invoices from Wing Parking Ltd with the confidential pricing details redacted.
3. 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 the Act and may be dealt with as a contempt of court.

Request and response

4. On 8 May 2013, the complainant wrote to Homes for Haringey – an arms-length management organisation of the London Borough of Haringey – and requested information in the following terms:
 - 1) *Please supply a copy of the signed dated contract for estate parking enforcement between Homes for Haringey and Wing Parking Ltd.*
 - 2) *Please supply a copy of all invoices to and from Wing Parking Ltd for the contract in question 1 from 1st April 2012 to 31st March 2013.*
 - 3) *Please supply the number of parking charge notices issued under the contract in question 1 from 1st April 2012 to 31st March 2013.*
 - 4) *Please supply the figure for the income received from the parking charge notices issued under the contract in question 1 from 1st April 2012 to 31st March 2013.*
 - 5) *Please supply the number of vehicles removed under the contract in question 1.*
 - 6) *Please supply the income from vehicles removed under the contract in question 1.*
5. Homes for Haringey responded on 24 May 2013 as follows:
 - 1) Refused under section 43 of the Freedom of Information Act 2000.
 - 2) Refused under section 43.
 - 3) Disclosed the relevant information.
 - 4) Refused under section 43.
 - 5) Disclosed the relevant information.
 - 6) Refused under section 43.
6. The internal review subsequently requested by the complainant was issued by the London Borough of Haringey on 8 July 2013. It considered the request under the terms of the EIR rather than the Freedom of Information Act 2000. The London Borough of Haringey responded as follows:
 - 1) Provided a copy of the 2009 contract with the 2012 contract variation, with some schedules and appendices withheld under regulation 12(5)(e) of the EIR on the grounds that the information was commercially sensitive.
 - 2) Withheld all relevant information under regulation 12(5)(e) on the grounds that the information was commercially sensitive.

- 4) Disclosed the relevant information.
- 6) Disclosed the relevant information.

Scope of the case

7. The complainant contacted the Commissioner on 15 July 2013 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of the case to be whether the London Borough of Haringey is entitled under the EIR to withhold the redacted information for item 1 of the request and all invoices relating to item 2 of the request under regulation 12(5)(e).

Reasons for decision

Is the information environmental?

9. Regulation 2 of the EIR states that:

2. (1) In these Regulations –

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other 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;*

10. The Commissioner's view is that the parking enforcement work of Wing Parking Ltd is the result of a controlled parking zone implemented by the London Borough of Haringey and Homes for Haringey.¹ One of the stated aims of this controlled parking zone is to "reduce pollution", so the Commissioner considers that information about the enforcement of this controlled parking zone would relate to measures that are likely to affect the elements listed in section 2(1)(a), and to affect emissions as per section 2(1)(b) of the EIR.

Regulation 12(5)(e)

11. Regulation 12(5)(e) of the EIR states that:

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;

12. For the 12(5)(e) exception to be engaged, the Commissioner considers that the following conditions need to be met:

- Is the information commercial or industrial in nature?
- Is the information subject to confidentiality provided by law?
- Is the confidentiality provided to protect a legitimate economic interest?
- Would the confidentiality be adversely affected by disclosure of the information?

Is the information commercial or industrial in nature?

13. In order to engage regulation 12(5)(e) the information needs to either be commercial or industrial in nature. For information to be commercial in nature, it will need to relate to a commercial activity, either of the public authority or a third party.
14. The Commissioner has viewed the information that has been withheld by the London Borough of Haringey under regulation 12(5)(e). He notes that there are no invoices to Wing Parking Ltd, only those from Wing

¹ <http://www.haringey.gov.uk/parking/cpz>

Parking Ltd. Both the withheld schedules (and appendices) of the contract and the invoices relate to the London Borough of Haringey's parking enforcement service that it has outsourced to a third party. This service is contracted out through a commercial agreement, so it follows that the information is commercial in nature.

Is the information subject to confidentiality provided by law?

15. To meet this condition of the exception the information must be subject to confidentiality provided by law. This may include confidentiality imposed under a common law duty of confidence, a contractual obligation or be provided by statute.
16. There is no absolute test of whether information is confidential, nor a definition within the EIR. For this decision the Commissioner will consider information to be confidential if it appears that in reasonable circumstances the information would be confidential.
17. For this condition the Commissioner will consider the two pieces of withheld information separately: firstly, the schedules of the contract between Homes for Haringey and Wing Parking Ltd; and second, the invoices from Wing Parking Ltd. This is because in the view of the Commissioner, for this condition, there is a distinction between these pieces of withheld information and it would be best explained separately.
18. Regarding the withheld schedules of the contract, the Commissioner considers that this information is confidential in nature. The schedules give extensive detail on how the service is operated, and so contains information about how Wing Parking Ltd carries out its enforcement procedures and how it collects money from penalty charge notices. It also contains a schedule of rates which details the breakdown of the unit prices between Wing Parking Ltd and the London Borough of Haringey for penalty charge notices. The Commissioner would not expect this commercially sensitive information to be available in the public domain so the information is considered confidential by law.
19. Regarding the invoices, the Commissioner's view is that some of the information contained in the invoices is confidential but not all of it. The invoices contain brief descriptions of what enforcement work Wing Parking Ltd has carried out, such as a vehicle being towed or having its wheels clamped, along with the breakdown of the unit price it takes from the penalty charge notice.
20. It is clear that the unit prices for penalty charge notices of parking enforcement will be in the public domain as the charges are handed out regularly to individuals, but the London Borough of Haringey has made it clear that the breakdown of unit prices for these charges is commercially

sensitive and therefore confidential. The Commissioner considers that this is reasonable.

21. The complainant indicated to the Commissioner during the course of his investigation that he could see why he may not be entitled to confidential pricing information, but he argued that the remainder of the information on the invoices – such as the specific services Wing Parking Ltd were charging for – could not be considered as confidential. The Commissioner agrees with this, and notes that even after the sensitive pricing information is removed there still remains information that is of interest to the complainant that does not disclose any confidential practices or pricing details.
22. Much of this information is very basic and describes in simple terms the work carried out by Wing Parking Ltd. It does not go into detail about Wing Parking Ltd's parking enforcement procedures and does not appear to contain anything that could be considered sensitive about Wing Parking Ltd's operations. The Commissioner does not view this information as confidential and so does not consider that the exception 12(5)(e) applies to this non-pricing information.
23. Therefore, his decision is that these elements of the invoices are not confidential and do not engage the exception. Therefore they should not have been withheld from the complainant and the Commissioner's decision is that the invoices should be disclosed with the costing information redacted.
24. However, the Commissioner notes that the withheld schedules of the contracts and the specific costing information included in the invoices is information which is commercially sensitive and confidential. Therefore the Commissioner has gone on to consider the further conditions outlined at paragraph 12.

Is the confidentiality provided to protect a legitimate economic interest?

25. In order to satisfy this condition of the exception, disclosure of the withheld information would have to adversely affect a legitimate economic interest of the person (or persons) the confidentiality is designed to protect. The term person encompasses individuals as well as organisations, so this condition can mean the public authority in question or another party.
26. Furthermore, it is necessary to show that – on the balance of probabilities – harm would be caused to a legitimate economic interest, and not just that there is a potential risk that harm might occur to a legitimate economic interest. In this instance, the Commissioner accepts that it can be said that harm would occur if it is more likely than not.

27. The London Borough of Haringey has argued that harm would be caused both to Wing Parking Ltd as well as the residents of the London Borough of Haringey who benefit from its parking scheme.
28. Regarding Wing Parking Ltd, the London Borough of Haringey argued that analysis of the commercial and operational data withheld in both the invoices and the contract schedules would allow a competitor to gain an unfair economic advantage over Wing Parking Ltd. The London Borough of Haringey stated that Wing Parking Ltd tender for a number of contracts across London and other areas, and if a rival company knew this information it could approach Wing Parking Ltd's clients and propose an alternative that undermines Wing Parking Ltd's position. This was particularly important at the time of the request as the London Borough of Haringey was due to renew its contract the following year and was expecting Wing Parking Ltd to reapply.
29. The Commissioner considers that this is a valid argument, and accepts that disclosure of the withheld information would have an adverse effect upon Wing Parking Ltd's ability to be competitive in a free market against rival parking enforcement companies. The Commissioner considers that on the balance of probabilities this is more likely than not and so it can be said that confidentiality is provided to protect a legitimate economic interest. Therefore the exception applies.
30. Regarding the residents of the London Borough of Haringey who use the parking scheme, currently they have a free controlled parking service which allows them to park in the area without the need to pay for permits. The London Borough of Haringey stated that a disclosure of the withheld information about Wing Parking Ltd's operational and commercial practices would jeopardise the London Borough of Haringey's ability to negotiate a new parking contract on better or similar terms, which would affect the financial stability of the parking service. A likely consequence of this would be that the free parking service offered to residents would have to be scrapped, and a charge imposed on residents.
31. The Commissioner does not agree with the London Borough of Haringey's reasoning for this point. It is not evident that if Wing Parking Ltd's prices and operational information was known by its competitors they would all increase their prices. If anything, it seems that the best way for a rival company to gain the new parking enforcement contract would be to offer a lower price to the London Borough of Haringey, which would not have any adverse effect on the London Borough of Haringey's ability to offer a free parking service to residents. Therefore the Commissioner is not persuaded by this argument and does not consider that disclosure of the withheld information would have an adverse effect on the legitimate economic interests of the users of the London Borough of Haringey's free parking scheme.

32. However, as the Commissioner has found that confidentiality has been provided to protect the legitimate economic interests of Wing Parking Ltd, the fact that the London Borough of Haringey's other argument is rejected does not affect the application of the exception.

Would the confidentiality be adversely affected by disclosure of the information?

33. Although this is a necessary element of the exception, once the first three elements are established the Commissioner considers it is inevitable that this element will be met.
34. The Commissioner's view is that the exception applies to the withheld information in the schedule of the contracts and also to the pricing information contained within the requested invoices. He is satisfied that confidentiality which is designed to protect a legitimate economic interest would be adversely affected by disclosure of the withheld pricing and operational information for the reasons stated above. As the Commissioner accepts that disclosure of confidential information into the public domain would damage the legitimate economic interests of Wing Parking Ltd, therefore the exception is engaged.
35. As the exception is engaged the Commissioner must consider the public interest test to determine whether it favours maintaining the exception or disclosing the information.

The public interest test

36. Under regulation 12(2) of the EIR and public interest test should apply a presumption in favour of disclosure, and the Commissioner has been mindful of this whilst reaching his decision.

Factors favouring maintaining the exception

37. The Commissioner considers that there is an argument in favour of protecting Wing Parking Ltd's legitimate economic interest in providing parking enforcement services to the London Borough of Haringey. This interest would be adversely affected by disclosure of the withheld pricing and operational information, and would damage its ability to compete in a free market. In the Commissioner's view this argument carries significant weight.
38. There is also a public interest argument in the London Borough of Haringey being able to withhold commercially sensitive information. It has been shown that there would be an impact on the third party if the information was disclosed and such instances would likely deter some other third parties from applying to carry out public services if there was a strong chance that sensitive information would be disclosed without significant justification. This would be likely to reduce the number of

applicants for the renewal of this contract – as well as future contracts put to tender by the London Borough of Haringey – and thus reduce the competition for terms that are favourable to the London Borough of Haringey and its residents.

39. The timing of the request is also significant. The London Borough of Haringey stated that it would be tendering its contract for parking enforcement relatively soon after the request was received. The Commissioner considers that disclosure of the information at this sensitive time would be likely to impact upon both London Borough of Haringey's and Wing Parking Ltd's ability to conduct future negotiations for the parking enforcement contract.
40. The scheme was described by the London Borough of Haringey as a 'zero profit' scheme. This means that it does not put any funds from its budget into running the scheme, and that it does not make any profit from the enforcement work carried out by Wing Parking Ltd. If it does receive any money after Wing Parking Ltd has taken its share then it uses it to help keep the scheme running. The Commissioner considers that this shows the scheme is less reliant on public money and more on penalty charges from individuals who have breached parking regulations. This reduces the public interest for accountability of public spending as the actual amount of public money spent on running the scheme is not considerable.
41. The Commissioner considers that the London Borough of Haringey has already provided a substantial amount of information regarding its parking enforcement services. It has provided the majority of the 2009 contract and the contract variation of 2012, as well as the income made from penalty charge notices. To some extent the legitimate public interest in knowing about the London Borough of Haringey's parking enforcement practices has been met, which lessens the weight given to any argument about transparency as a significant amount of information about the service has already been provided.

Factors favouring disclosing the withheld information

42. There is a public interest argument in disclosing information to promote transparency and accountability. Whilst this argument does not attract significant weight due to the relatively small amount of public money being spent on the scheme, there is a need for transparency and accountability to ensure that the scheme is being run properly and that penalty charge notices are being issued correctly. However, this would apply only to the operational data as there is nothing in the pricing data to show whether Wing Parking Ltd is issuing penalty charge notices correctly.

43. As the contract for the London Borough of Haringey's controlled parking zone was due for renewal at the date of the request there would necessarily be some debate about the service and whether it could be improved upon. By releasing this information it would better inform the public of the detail of the service being provided by Wing Parking Ltd and so increase the information available in the public debate about parking enforcement in the area.
44. There is also a general public interest argument in disclosing environmental information, and the Commissioner considers that the intention behind the EIR was to ensure that as much environmental information is disclosed as reasonably possible.

Balance of the public interest test

45. The Commissioner has given due consideration to the public interest arguments in favour of the withheld information being disclosed. There is a public interest in promoting accountability of the parking enforcement service, and allowing residents to arrive at informed views about the service offered by Wing Parking Ltd.
46. However, the Commissioner's view is that the reasons for maintaining the exception outweigh those for disclosing the information. The exception is engaged for a significant purpose and the Commissioner considers this must be given due weight. Further, there is a strong argument in allowing the London Borough of Haringey to carry out its functions effectively and this would be greatly supported by not adversely affecting the legitimate economic interests of one of its contracted partners. This is afforded additional weight given the contract was due for renewal soon after the date of the request and Wing Parking Ltd were intending to be involved in the process.
47. The Commissioner's decision is that the exception applies to both the withheld schedules of the contracts as well as the pricing information on the invoices. As the public interest test favours maintaining the exception, the Council was correct to withhold this information.
48. However, the Commissioner found that a proportion of the information on the invoices was not sensitive pricing or operational information and therefore does not engage regulation 12(5)(e). The Commissioner requires the London Borough of Haringey to disclose this information to the complainant.

Right of appeal

49. 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: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

50. 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.
51. 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

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