

Freedom of Information Act 2000 ('FOIA')
Environmental Information Regulations 2004 ('EIR')
Decision notice

Date: 20 May 2015

Public Authority: London Borough of Tower Hamlets

Address: Town Hall
Mulberry Place
5 Clove Crescent
London
E14 2BG

Decision (including any steps ordered)

1. The complainant has requested copies of datasets that provide information on the road adoption status of the highways and other related information. The Commissioner's decision is that the London Borough of Tower Hamlets was correct to refuse to provide the information under Regulation 6(1)(b) of the EIR as the information is already publicly available and easily accessible to the complainant in another form or format. He does not require any steps to be taken to comply with the legislation.

Request and response

2. On 19 November 2014, the complainant wrote to the London Borough of Tower Hamlets ('the council') and requested information in the following terms:

"1. Could you please provide copies of your datasets that provide information on the road adoption status of the highways within your area of authority?

2. If you are not able to provide copies of the datasets, could you please explain the reason why?"

3. If you are not able to provide copies of the datasets, could you please advise how we can make arrangements to come and view the information at your offices? Please advise the format the information will be presented in.
 4. If you are able to provide datasets, could you please advise the procedures you would like us to follow to gain copies on a monthly basis (under the assumption that this will show any changes you have made)?
 5. Could you please advise whether you have any other datasets available in relation to highways e.g. improvements, TROs, Rights of Way?"
3. The council responded on 20 November 2014 and refused to provide the requested information citing the exemption at section 21 of the FOIA and provided a link to the Local Land Charges section of its website.
 4. An internal review was requested on 20 November 2014. The council provided its internal review response on 25 February 2015. It said that the request should have been dealt with under the EIR but said that under Regulation 6(1)(b) it is not required to make the information available in the specified format as it is already publicly available and easily accessible to the applicant in another form. It also applied the exception at Regulation 12(5)(e).

Scope of the case

5. The complainant contacted the Commissioner on 26 February 2015 to complain about the way her request for information had been handled.
6. In its submission to the Commissioner, the council withdrew its reliance on the exception at Regulation 12(5)(e) and said that the exception at Regulation 12(4)(b) applies as the request is manifestly unreasonable.
7. The Commissioner has considered whether the council was correct to refuse to provide the information on the basis that it is already publicly available and easily accessible to the applicant in another form or format.
8. As the Commissioner has found that the provision at Regulation 6(1)(b) applies in this case he has not deemed it necessary to consider the exception at Regulation 12(4)(b).

9. The council informed the Commissioner that with regard to the further data sets held by the council in relation to highways, it can direct the complainant to the schedule of registers and information available at:

http://www.towerhamlets.gov.uk/lgs/601-650/610_local_land_charges_person.aspx
10. The Commissioner considers that the provision of the above link provides a response to point 5 of the request and that it is therefore not necessary to further consider the council's response to this part of the request as part of this decision notice.

Reasons for decision

Regulation 6 – Form and format of the information

11. Regulation 6(1) states that;

"Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

(a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publicly available and easily accessible to the applicant in another form or format."
12. The Commissioner considers that the use of the phrase 'particular form or format' means that a requester may specify not only the physical form but also how the information is configured or arranged within that form, ie the format. For example, in relation to electronic information the term 'format' is generally used to refer to a file type, such as PDF or Microsoft Excel or CSV, and so a requester may express a preference for one of these formats. In this case, the complainant has asked for copies of datasets.

13. The Commissioner's guidance on Regulation 6¹ states that the EIR Code of Practice² explains why a preference for a particular format must be considered:

"A public authority should be flexible, as far as is reasonable, with respect to form and format, taking into account the fact, for example, that some IT users may not be able to read attachments in certain formats, and that some members of the public may prefer paper to electronic copies." (Paragraph 22)

14. However, the duty to make the requested information available in the preferred form or format is not an absolute one. It is qualified by Regulations 6(1)(a) and 6(1)(b) in that a public authority does not have to meet the requester's preference if either it is reasonable for it to make the information available in another form or format or the information is already publicly available and easily accessible to the applicant.
15. The council considers that the provision at Regulation 6(1)(b) applies as the information is already publicly available and easily accessible to the applicant. It informed the complainant that the information is accessible by visiting the office or can be supplied for a charge in accordance with the charging schedule set out on its website.
16. In its submission to the Commissioner the council confirmed that the information requested is available in another format, which is that it is available for inspection on site at the council's offices.
17. The Commissioner notes that the council has a 'Schedule of registers and information available'³ document on the 'Local Land Charges: Personal Search' page of its website. The document refers to information on the road adoption status of the highways bring available from its Public Maintainable Highway Register and the Highways Department at its office at Anchorage House.

¹ <https://ico.org.uk/media/for-organisations/documents/1639/form-and-format-of-information-eir-guidance.pdf>

² Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 no 3391) issued by DEFRA

³ <http://www.towerhamlets.gov.uk/idoc.ashx?docid=267a284d-4d60-4133-8ce5-fc342a732be2&version=-1>

18. The Commissioner asked the council to confirm that it has taken into account the particular circumstances of the complainant when deciding whether access is easily available. The council said that the complainant is to the best of its knowledge a commercial organisation and the ease of access to the data has to be considered in this context. It is the view of the council that it would not be unreasonable or difficult for the organisation to have someone attend the offices and view the data as any member of the public could. It also said that there has been no indication that the request for a particular format is due to a disability, transport or other access issue.
19. The Commissioner is of the view that information is easily accessible if a public authority is able to direct the applicant to where they can locate the same information that has been requested. The public authority has to be able to be reasonably specific as to the location of the information to ensure that it is found without difficulty and not hidden within a mass of other information.
20. The Commissioner asked the council to confirm whether the requested information is also available via its publication scheme. The council did not respond to this specific point. However, the Commissioner has viewed the council's publication scheme on its website and notes that it details that information on the maintenance of the roads and pavements in the borough can be inspected free of charge. The Commissioner's general view is that information will be reasonably accessible to the applicant, irrespective of their individual circumstances, if it is included in the public authority's publication scheme.
21. Given the above, the Commissioner considers that the council's provision of the information at its offices, and by virtue of it seemingly being including in its publication scheme means that it is publicly available and easily accessible to the applicant. He also notes that the council has explained to the complainant how she can access it.
22. The Commissioner therefore considers that regulation 6(1)(b) of the EIR applies and the council is not required to make the information available in the form and format requested.

Consideration of the additional duties in the FOIA in relation to datasets

23. The Commissioner asked the council whether it has considered the Commissioner's guidance on 'Datasets' (<https://ico.org.uk/media/for-organisations/documents/1151/datasets-foi-guidance.pdf>)? In particular, paragraph 97 which states:

"The Information Commissioner considers that the term "a particular form or format" in regulation 6(1) of the EIR can encompass a re-usable form. Public authorities should make the environmental dataset available in a re-usable form, so far as reasonably practicable.

Although there is no duty to license re-use under the EIR, we would also encourage public authorities to make the dataset available under a licence that permits re-use. Information that is accessible under the EIR may also be the subject of a re-use request under RPSI."

24. The council did not specifically respond to this point. However, the Commissioner fully acknowledges that the EIR, unlike the FOIA, does not impose a duty on public authorities to provide datasets in a reusable format and therefore the council in this case is not in breach of the legislation.

Local Land Charges Search

25. In its internal review response, the council said that the information could be supplied for a charge in accordance with the charging schedule set out on its website. The complainant has said that the council is assuming that she has a property to search against, which she doesn't, therefore she does not believe that the Land Charge service is appropriate.

26. For information on this issue, the Commissioner would like to draw attention to the following paragraphs of his guidance on 'Property searches and the EIR'⁴:

"When a local authority is asked to complete and guarantee the content of a CON29 form, we accept that this involves more than simply providing access to environmental information as required by the EIR. Because of this, the charging provisions in the EIR will not apply and local authorities are able to use the CPSR charging regime.

When a local authority is asked to provide access to underlying environmental information, so that a third party can answer the questions in the CON29 form themselves, the charging provisions in the EIR rather than the CPSR will apply."

⁴ <https://ico.org.uk/media/for-organisations/documents/1612/property-searches-and-eir.pdf>

27. Further information can also be found in the Commissioner's guidance on 'Charging for environmental information (regulation 8)'⁵.

⁵ <https://ico.org.uk/media/for-organisations/documents/1627/charging-for-environmental-information-reg8.pdf>

Right of appeal

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: 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.

Signed

Andrew White
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Wycliffe House
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