

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

**Date:** 9 November 2015

**Public Authority:** London Borough of Lambeth  
**Address:** Town Hall  
Brixton Hill  
Lambeth  
SW2 1RW

**Decision (including any steps ordered)**

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1. The complainant has requested building control information for a specific property and this was provided by the London Borough of Lambeth within 18 working days. The complainant contends that the information was not made available "as soon as possible". The Commissioner's decision is that there has been no breach of the time limits in Regulation 5(2).

**Request and response**

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3. On 21 July 2015, the complainant made the following request for information within an email entitled '128 FERNDALE ROAD, LONDON, SW4 7SA':  
  
"Please can you send us building control information for the above property."  
  
4. The council provided the requested information on 14 August 2015.

**Scope of the case**

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5. The complainant contacted the Commissioner on 28 July 2015 to complain about the way his request for information had been handled. He was concerned that the council is not following the guidelines of the

EIR in relation to charging and timescales as he said it will expedite the information to a period of three to five working days in return for a £25 fee but otherwise will take the full 20 working days to provide information.

6. The Commissioner has considered whether the council has breached regulation 5(2) by taking 18 working days to respond to the request.
7. The issue of whether the council has breached regulation 8 by charging a fee for an expedited search has been considered separately in the decision notice for case reference FER0591184.

## **Reasons for decision**

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### **Regulation 5 Duty to make available environmental information on request**

8. Regulation 5(1) 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.
9. The complainant has said that the council are consistently able to return a 'Council Search' in less than 5 working days (and provided an LLC1 example), that it can offer an appointment to collect Land Charges within 24-48 hours, but he is made to wait 20 working days for building control information unless the expedited fee is paid.
10. The Commissioner's guidance on 'Time limits for compliance'<sup>1</sup> states that whilst the duty to respond 'as soon as possible' will always be linked to the obligation to comply 'no later than 20 working days after receipt of the request', it should be treated as a separate requirement. Therefore an authority will need to both respond as soon as possible and within 20 working days. The 20 working day limit should be regarded as a 'long stop', in other words the latest possible date on which the authority can comply. An authority which complies close to, or on, the final day of the 20 working day limit ought to be able to both account for, and justify, the length of time taken to meet the obligation concerned.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1622/time-for-compliance-eir-guidance.pdf>

11. In this case the Commissioner asked the council to explain how the request was responded to as soon as possible; to account for, and justify, the length of time taken to provide the information requested; and to explain whether requests for building control information under the EIR are dealt with differently to 'expedited' searches.
12. The council said that in cases such as this, where a customer is requesting property information, the requests are sent directly to Building Control, who manage the request. It said that Building Control log the request and send an acknowledgement to the customer confirming receipt. Requests are then placed into a queue which officers work through in date order and the queue is monitored to ensure that the statutory deadline of 20 working days is met. It explained that the search itself can take between 1 and 5 hours, depending on the complexity of the request, and that carrying out searches and communicating the results to the requestor is dependent on the total work commitments the service area has at the time (i.e. work other than carrying out searches) which means that a search may not be carried out immediately when a request is received. The council also said that in any event the 20 working day statutory time limit is met for all EIR requests for property information and the number of cases in the system will determine how quickly within the 20 days the request will be met.
13. In relation to whether requests for building control information under the EIR are dealt with differently to 'expedited' searches, the council said that where a £25 fee has been paid for an expedited search the information is provided to the customer within 5 working days but otherwise the process for locating, retrieving and extracting the information is exactly the same as a non-expedited search.
14. As stated in the aforementioned guidance, in the decision notice for case reference FER0348473<sup>2</sup>, the Commissioner said that;  
  
"The test of whether a public authority has complied "as soon as possible" is a subjective one, because it could be argued that if the Council set aside all of its other tasks and focuses solely on complying with the request, a response could be sent very promptly. However, the Commissioner accepts that a public authority is entitled to balance its duties under the EIR with its other responsibilities and commitments. He also accepts that it was appropriate for the Council

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<sup>2</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2010/562646/fer\\_0348473.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2010/562646/fer_0348473.pdf)

to delegate the task of searching relevant records to staff that have experience and knowledge of this area. He considers that the Council therefore complied with this request as quickly as possible particularly given its obligations to comply with a wide range of responsibilities.”  
(para 32)

15. Although the council said that the time to respond to a request is dependent on other work commitments, it didn't explicitly state what those are. However, the Commissioner is aware that building control departments are usually responsible for handling building control applications and inspection requests, as well as other functions such as conducting local land searches and responding to enquiries. He accepts that any public authority is entitled to prioritise its workload to satisfy the range of demands made on it by stakeholders.
16. As stated earlier, the complainant believes that the council has not complied as quickly as possible because responses to 'Council Searches' are provided more promptly. He provided an example of an LLC1 form. The Commissioner understands that the complainant is referring to an 'official search' of the Local Land Charges Register, which all local authorities are required to generate, maintain and update under the Local Land Charges Act 1975, and are entitled to charge for under the Local Authorities (England) (Charges for Property Searches) Regulations 2008 ('the CPSR'). The Commissioner notes that the request in this case, being a request for building control information under the EIR, is not in fact directly comparable to a request for an official search and considers that the council is entitled to have different processes in place for dealing with the different requests.
17. The complainant also said that the council can offer an appointment to collect Land Charges within 24-48 hours. Again, the Commissioner notes that the request in this case, being a request for building control information under the EIR, is not in fact comparable to visiting an office to collect Land Charges information and again considers that the council is entitled to have different processes in place for dealing with the different requests.
18. Taking all of the above into account, the Commissioner does not consider that there is any evidence that the council did not comply with this request as promptly as possible. Consequently, he finds that the council has not breached regulation 5(2).

## Right of appeal

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19. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. 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.
21. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**