

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

Decision notice

Date: 15 February 2016

Public Authority: Royal Borough of Greenwich
Address: Town Hall
Wellington Street
Woolwich
London
SE18 6PW

Decision (including any steps ordered)

1. The complainant requested from the Royal Borough of Greenwich ("the Council") information about the financial contributions to improving air quality being made by a developer as a result of the redevelopment of a particular site.
2. The Commissioner's decision is that the Council did not provide the information for the first part of the request within 20 working days of the request and so breached regulation 5(2) of the EIR. It also did not confirm that no information was held regarding the final part of the request within 20 working days of the request and so breached regulation 14(3) of the EIR.
3. The Council has now provided the information covered by the first part of the request and confirmed that it does not hold information for the final part of the request. The Commissioner therefore does not require it to take any further steps to ensure compliance with the legislation.

Request and response

4. On 7 August 2015, the complainant wrote to the Council and requested information in the following terms:

"According to Greenwich Time (page 4 28/7/15) TWO schemes were passed which together will bring in half a million pounds towards improving air quality in the borough. The Council Leader was quoted on this. One scheme was definitely the cruise liner terminal which has a high profile. The other must be the former Matalan car park on Bugsby Way, although this is not stated. The application numbers relevant are 15/1653/V and 13/2016/F As a resident of this filthy part of the borough under FOIA legislation I want to know:

- how much the developers of the former Matalan site have contributed to this half million total*
- see the Borough's air quality strategy documents*
- have a full breakdown of how the Matalan site money will be spent in the Woolwich Road area to improve air quality. If no plans are in place I want details of the meeting at which this issue will be discussed"*

5. The Council responded on 4 September 2015. It provided the complainant with links to three documents which were available on its website.
6. On 4 September 2015, the complainant requested an internal review. This was partly on the basis that the Council had not responded to the final part of her request.
7. The Council confirmed receipt of the complainant's request for an internal review on 7 September 2015 and stated that it was being dealt with under FOIA.
8. The Council provided the complainant with the outcome of its internal review on 30 September 2015. It informed the complainant that it believed that her request was for environmental information and therefore should be considered under the EIR, rather than as it had previously stated under FOIA. It stated that the information requested was already in the public domain and that the complainant had been provided with links which would allow her access to the information that she had requested. It went on to say that under the EIR, it was not compelled to provide her with information that was already in the public domain.

Scope of the case

9. The complainant contacted the Commissioner on 4 October 2015 to complain about the way her request for information had been handled.
10. The Commissioner considered whether the Council had complied with the EIR in responding to the complainant's request.

Reasons for decision

Regulation 5 – Duty to make available environmental information on request

11. In its initial response to the complainant's request, the Council provided links to documents on its website which it indicated would allow her to access the information she had requested.
12. During the course of the Commissioner's investigation, the complainant pointed out that two of the links that the Council provided did not work. The Council subsequently provided the complainant with links that allowed her to access the information related to the first part of her request.
13. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request. Regulation 5(2) requires that the information is made available as soon as possible and no later than 20 working days after the date of receipt of the request. By not providing the complainant with the information that she requested in the first part of her request within 20 working days of receipt of the request the Council breached regulation 5(2).

Regulation 14 – Refusal to disclose information

14. In its initial response to the complainant's request, the Council did not specify whether it had considered the request under the EIR or FOIA. At the internal review stage, it confirmed to the complainant that her request had initially been considered under FOIA but that it now viewed her request to be for environmental information and so had considered it under the EIR.
15. In her request for an internal review, the complainant pointed out that the Council had not responded to the final part of her request. During the course of the Commissioner's investigation, the Council confirmed that it did not hold any information falling within the scope of this part of

the request. It should therefore have cited the exception in regulation 12(4)(a) (information not held when the request was received).

16. Under regulation 14(2) of the EIR, a public authority is required to issue a refusal notice no later than 20 working days after the date of receipt of the request. Under regulation 14(3), any refusal should specify any exceptions being relied on by the public authority.
17. The Council failed to inform the complainant in its refusal notice that her request was for environmental information, and therefore fell to be considered under the EIR, and also failed to state which exceptions it believed were applicable under the EIR. It therefore breached regulation 14(3).

Other matters

18. The Commissioner has noted that the Council initially considered the complainant's request under FOIA, rather than the EIR. When the Council receives requests relating to matters such as planning and improving air quality, the Commissioner would expect anyone responding to such requests to initially consider whether they are requests for environmental information under the EIR. The Council needs to ensure that any of its staff handling requests are aware of the types of information that may constitute environmental information under the EIR and, if the requested information does constitute environmental information, how to properly respond to such requests.
19. In relation to the first part of the complainant's request, for details of how much for developers of the former Matalan site had contributed to improving air quality, the Council was entitled, as it did, to provide the complainant with a link to publicly available document where it believed the relevant information could be found. However, in some cases, such as this one where the complainant simply requested a figure, it might prove more straightforward and less time consuming for the Council to just provide the requester with the information that has been requested.
20. In relation to the final part of the complainant's request, for a breakdown of how the money provided by the developers would be spent in the Woolwich Road area to improve air quality and, if no plans were in place, details of the meeting at which this issue would be discussed, the Council initially informed her that the relevant breakdown could be found in the section 106 agreement, to which it had provided a link. Following the Commissioner's involvement, it took a significant amount of correspondence with the Council to establish that it held no information regarding this part of the request. This not only resulted in significant frustration for the complainant but also wasted a considerable

amount of the complainant's and the Commissioner's staff's time, not to mention the time of staff at the Council, before the true position was established.

21. The Commissioner expects that the Council will be much more careful in future in its handling of requests to identifying specifically what information has been requested and whether it actually holds that information. In addition, it needs to ensure that its responses are clearly written so that requesters are left in no doubt as to the true position.

Right of appeal

22. 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

23. 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.
24. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF