

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

**Decision Notice**

**Date:** 16 November 2018

**Public authority:** Royal Borough of Kensington & Chelsea  
**Address:** The Town Hall  
Hornton Street  
London  
W8 7NX

**Decision (including any steps ordered)**

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1. The complainant has requested information from the Royal Borough of Kensington and Chelsea (the Royal Borough). The Royal Borough has failed to respond to the request; therefore the Commissioner's decision is that the Royal Borough has failed to comply with section 5(2) of the EIR.
2. The Commissioner requires the Royal Borough to take the following steps to ensure compliance with the legislation.
  - Issue a substantive response to the request under the EIR. To the extent that the requested information is the personal data of the complainant the Royal Borough is not required to consider it for disclosure under the EIR.
  - To the extent that the Royal Borough holds the requested information, it must disclose this to the complainant. If it wishes to withhold any information, it must issue a refusal notice in relation to the information it wishes to withhold and disclose the remainder.
  - If any of the requested information is not held the Royal Borough should issue a refusal notice stating that this portion of the requested information is not held.
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 FOIA and may be dealt with as a contempt of court.

## Request and response

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4. On 9 February 2018 the complainant requested the following information from the Royal Borough:

### **Information Requested (7<sup>th</sup> April 2015 to 4<sup>th</sup> July 2017)**

#### **74. Council and complainant communications and records:**

- (i) *All communications, records, and records of communication between the complainant and the Council in relation to the Property and / or the Notice and / or the Legal proceedings;*
- (ii) *All communications, records and records of communications between elected members and Council Officers (current or former) in relation to the Property and / or the Notice and / or Legal proceedings; and*
- (iii) *The records of all meetings and / or site visits comprising any one or more Council Officers and / or elected councillors and / or the complainant, in relation to the Property and / or the Notice and / or Legal proceedings;*

#### **75. Acoustic recordings and EHO field notes**

- (iv) *All records and communications in relation to the acoustic recordings in respect of the Property and / or the Notice;*
- (v) *All records and communications in relation to all environmental health officers' field notes including that of the first officer, [name redacted] said to have visited the complainant's property for 4 minutes at midday (12.36pm) on 14<sup>th</sup> April 2014 when the complainant was not home;*

#### **76. Appointment of counsel and legal advice**

- (vi) *Legal advice given by counsel [names redacted] to the Council in respect of the Property and/ or the Notice and / or the Legal proceedings;*
- (vii) *Records and communications held by the Council in respect of the termination of [name redacted] services and the decision not to appoint another barrister;*

#### **77. Maternity Leave**

- (viii) *Records and communications involving Council Officers in relation to pending maternity leave of a council witness. Specifically:
  - (a) *why a twelve month adjournment was being sought;*
  - and*
  - (b) *why, in the event the witness concerned was able to attend on the date in question.**

5. The Royal Borough initially advised the complainant that it was handling her request entirely under the subject access provisions of the Data Protection Act 1998 (the DPA).

## Scope of the case

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6. The complainant contacted the Commissioner on 10 April 2018 to complain that she was dissatisfied with the way the Royal Borough handled her request.
7. The Commissioner initially considered the complaint under section 42 of the DPA, which governs how complaints about an individual's personal data are considered. It is entirely separate from the complaints process set out at section 50 of the FOIA. The Commissioner advised the complainant on 9 October 2018 that the Royal Borough was likely to have complied with its obligations under the DPA.
8. The complainant subsequently asked the Commissioner to investigate whether the Royal Borough had handled her request in accordance with the FOIA/EIR.
9. In light of the above the scope of the Commissioner's investigation in this case was to consider whether the Royal Borough had complied with the requirements of the FOIA/EIR.

## Reasons for decision

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### Access regime

10. The Commissioner is of the opinion that the Royal Borough ought to have considered the complainant's request under the EIR as well as the DPA. Regulation 5(3) of the EIR excludes the applicant's personal data from that access regime, but the Royal Borough was also obliged to consider whether it held any relevant information that is not the applicant's personal data.
11. The Commissioner notes that the Royal Borough's submission to her case officer dated 11 September 2018 indicated that some of the requested information was not the personal data of the complainant. The Royal Borough did not clarify how it had responded to the complainant in respect of the information that was not her personal data.
12. The Commissioner wrote to the Royal Borough on 25 October 2018 to request that it respond to the complainant's request under the EIR.

13. However the complainant did not receive any further response from the Royal Borough. Nor did the Commissioner receive an acknowledgement or other response to her correspondence.

### **Duty to respond and time for compliance**

14. Regulation 5(1) of the EIR states that, subject to any exceptions, environmental information must be made available on request. Regulation 5(2) requires that the information be made available promptly, and in any event no later than 20 working days after the date of receipt of the request.
15. Despite the Commissioner's intervention, the Royal Borough has failed to respond to the complainant's request under the EIR. It has neither disclosed the requested information nor provided a valid refusal notice.
16. The Commissioner therefore finds the Royal Borough in breach of regulations 5(1) and 5(2) of the EIR.
17. The Commissioner is extremely disappointed that the Royal Borough failed to respond to, or even acknowledge receipt of, her correspondence in this matter. There is no evidence to suggest that her correspondence was not received by the Royal Borough, since she has communicated with the Royal Borough using the same email address regarding other cases.
18. The Commissioner recognises the pressures that public authorities may be under, but she nevertheless expects that authorities will engage with her case officers. Failure to do so means it is more likely that an adverse decision notice will be issued, resulting in increased demands on the authority and the Commissioner alike.

## 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 123 4504  
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 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**  
**Sarah O’Cathain**  
**Senior Case Officer**

**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**