

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

Date: 26 October 2018

Public Authority: London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant has requested specific information about a waste management scheme provided by a specific firm.
2. The Commissioner's decision is that London Borough of Croydon (the London Borough) has failed to respond to the request within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Issue a substantive response, under the EIR, to the request. To the extent that the requested information is held the public authority must disclose it or issue a refusal notice in relation to any information it wishes to withhold.
4. 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

5. On 17 June 2018, the complainant wrote to a local Councillor and requested information in the following terms:

"I would be most grateful if you could answer my questions below.

1. *Was there a resident (council tax payer) consultation on the implementation of this scheme? Indeed, why was there not a consultation with the Clean & Green Street Champions, the local eyes, ears and doers, of which I am one?*
2. *As a two person household, can I have the option of a much smaller bin than the 240L paper/cardboard one? If not, why not?*
3. *You offer me the opportunity to keep my two plastic waste boxes and if I don't want them to take them to the recycling centre. I don't want them, they are yours, they have Croydon Council written on the side and I do not appreciate them being dumped on my property. When will the council arrange collection of these boxes?*
4. *You say that I will have space for the new bins because I will no longer need space for the old boxes. The boxes have a combined capacity of 130L (65L if put inside each other). The two new bins a combined capacity of 420L. Why does the council believe that 420=130?*
5. *The council says it cares for the environment. 'Environment' also encompasses a look and feel that gives pleasure from living in an area. Can you give me a few reasons why the residents will enjoy the sight of rows of bins lined up outside houses and bins scattered across pavements on collection days?*
6. *You state that there will be £5m of savings. I would like to understand where this comes from in the light of the huge cost of the new bins.*

Please accept this email as a formal request, under the Freedom of Information Act, for sight of the new ... contract which covers this new residents' waste bin scheme. Having answered my questions I would be most grateful if you could forward this email to your FOIA Office for action."

6. The Councillor responded on 17 June 2018 stating that they would forward the complainant's request to the relevant team within the London Borough. This correspondence was copied to an officer of the London Borough.
7. The London Borough did not acknowledge the request and, when the complainant chased a response on 23 August 2018, the Councillor responded, with an officer of the London Borough copied into the message, in the following terms:

"The request is with the appropriate Director of service...who will reply ASAP".

Scope of the case

8. The complainant contacted the Commissioner on 31 August 2018 to complain about the way his request for information had been handled.
9. The Commissioner contacted the London Borough on 17 September 2018 to highlight the outstanding response and request that a response be issued, to the request, within 10 working days.
10. The public authority responded to say that it had no record of receiving the request and asked the Commissioner for further information. The Commissioner provided the London Borough with a full copy of the complainant's request on 20 September 2018. However neither the Commissioner nor the complainant have received any further response from the London Borough.
11. The Commissioner considers the fact that the response remains outstanding, despite her intervention, means that a decision notice is appropriate in this case.

Reasons for decision

12. Regulation 2(1) of the EIR defines environmental information as being information 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;

13. The Commissioner has not seen the requested information but has considered the wording of the request and notes that it is for information relating to a waste management programme. Therefore she believes that it is likely to be information about measures and activities likely to affect factors affecting the elements of the environment. Accordingly the Commissioner is satisfied that the request ought to have been handled under the provisions of the EIR.
15. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
16. Regulation 5(2) states that such information shall be made available *"as soon as possible and no later than 20 working days after the date of receipt of the request."*
17. The Commissioner does not consider that the complainant's original email to his councillor constituted a valid request for information under the EIR. This is because the request was made to the Councillor rather than the London Borough. However, the Councillor transferred the request to the London Borough (by copying in an officer). The Councillor effectively submitted the request on the complainant's behalf and therefore the London Borough was required to treat it as a valid request and respond to it. In any event the Commissioner provided the London Borough with a further copy of the request on 20 September 2018.
18. Since the public authority has not to date responded to the request, it is clear that the public authority did not respond to the request within 20 working days. Accordingly the Commissioner finds that the Council has failed to comply with regulation 5(2) of the EIR.
19. The Commissioner is further disappointed that the London Borough has not responded to her correspondence of 20 September 2018. Public authorities are required to comply with the provisions of the EIR, and the Commissioner expects that public authorities will also engage with her case officers when complaints are received.

Right of appeal

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
Website: 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF