

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

Date: 3 March 2020

Public Authority: London Borough of Lambeth
Address: P.O. Box 734
Winchester
S023 5DG

Decision (including any steps ordered)

1. The complainant has requested information relating to work orders, reports and associated documents in respect of a particular property. The London Borough of Lambeth ("LBL") provided him with some information but argued that it held no further information. It failed to conduct an internal review. There was further correspondence between the parties and further information was supplied but, following this, LBL argued that it held no more information within the scope of the complainant's request. The complainant focussed on requiring hard copies of the information held.
2. The Commissioner's decision is that LBL holds no further information within the scope of the complainant's request in the format specified – namely hard copies documents of a specific description.
3. No steps are required.

Request and response

4. On 14 April 2018 the complainant requested information of the following description:

"Re: [Specific domestic address] ...

In order that I might reconcile my service charge account, I should be grateful if you would provide me with the following documentation, going back to the year 2000, namely:

Section 20 Notices,
Repair Work Orders,
Roof Reports
Any other relevant reports.”

5. On 3 May 2018, LBL responded. It provided him with some information but it said “You have requested copies of Section 20 Notices issued to the property going back to 2000. To my knowledge, we are only required to provide you with documents we have on our files dating back 6 years. I have checked our records and within the last 6 years, I could only find 2 Notices, under Scheme 8018 and 10012. I have enclosed copies of these Notices, as requested.”
6. The complainant requested an internal review on 19 October 2018 following correspondence with the Commissioner. LBL did not respond to the request for internal review.

Scope of the case

7. The complainant has been in correspondence with the Commissioner regarding this specific request and earlier related requests over a period of several years. He contacted the Commissioner about this request on 11 December 2018 to advise that he had not received any response to his internal review request. There followed a further extended exchange of correspondence between the Commissioner and the complainant, the Commissioner and LBL and LBL and the complainant. There were several attempts to resolve outstanding issues informally. There was a period over the summer 2019 when the complainant was out of the country and there were no exchanges on this matter. On 7 January 2020, LBL contacted the Commissioner to advise that it was providing certain work orders to the complainant. However, it explained that it held no information prior to 2008. It had, in earlier correspondence, explained this point in further detail and it remains disputed by the complainant.
8. The Commissioner has considered whether LBL holds any information within the scope of the complainant’s request beyond what it has already disclosed to him.

Reasons for decision

9. For ease of future reference, this notice will refer to the following information as the "remainder". That is: information described in the request which has not already been disclosed.
10. Firstly, the Commissioner has considered whether the remainder would, if held, be environmental information caught by the EIR. The question of whether it is held or not is considered to the same standard under FOIA or EIR, that is, to the civil standard or "on the balance of probabilities".
11. 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)...as well as measures or activities designed to protect those elements;*
 - (d) reports on the implementation of environmental legislation;*
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c);*
and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
12. In the Commissioner's view, at least some of the remainder, if held, would be information about measures affecting a built structure. The Commissioner has also concluded that some of the remainder, if held, would not be environmental information because it would be too far removed from that definition. Because of the likelihood that the request is for both environmental and non-environmental information and because the test of whether it is held or not is the same under EIR and FOIA, the Commissioner is considering this matter solely under FOIA.

13. The Commissioner also recognises that it could be argued that some of the remainder, if held, might include the requester's own personal data. If so, it would be excluded from FOIA and access to it would be considered under data protection legislation. Again, the Commissioner has concluded that it is far from clear whether any of the remainder, if held, would be personal data. In reaching this conclusion, she has had regard to her own guidance.¹ The remainder, where held, would be about LBL's work on property which it is responsible for which appears to affect property owned by the requester.
14. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
 - (b) if that is the case, to have that information communicated to him.*
15. As indicated above, where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.
16. That said, the Commissioner did consider whether, as the complainant alleges, there has been a deliberate attempt to block access to the remainder. This would be subject to criminal sanction under section 77 of the FOIA.² While the complainant had clearly had difficulties in accessing some of the requested information and while LBL had revised its position as to what it held and did not hold during the course of the parties' interaction, the Commissioner concluded that there was insufficient evidence to indicate that there was an ongoing criminal offence.
17. In cases where a dispute arises over the extent of the recorded information that was held by a public authority, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to

¹ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/what-is-personal-data/what-is-personal-data/>

² <http://www.legislation.gov.uk/ukpga/2000/36/section/77>

explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.

18. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
19. As indicated, the complainant has been in dispute with LBL for some considerable time. The matter almost went to court but it appears the parties came to terms. The complainant has sought, since then, to clarify what works have been done which have impacted on his property and for which he might still be liable. He has a number of concerns about work which he has been required to pay for but which, in his view, has already been either paid for or written off.
20. There was some communication between the parties where LBL made attempts to explain charges that had arisen and what the corresponding paperwork was. The Commissioner was hopeful that the parties could come to terms informally. However, for reasons which are not clear, LBL concluded that following this dialogue, the complainant no longer wanted information which was caught by the scope of the request. The complainant was concerned about this and was reluctant to engage in further dialogue directly with LBL as a consequence.
21. Towards the end of the investigation, the complainant focussed his attention on particular work orders and reports dating from 2008. LBL disclosed a set to the complainant. Four of these work orders, dated between 2010 and 2017 included the phrase "INSPECTION; PROVIDE TYPED REPORT ON DEFECTIVE ROOF ...".
22. The Commissioner sought an explanation from LBL of the phrase "provide typed report" which indicated that there was a physical report. LBL reiterated that all its "paperwork" regarding repairs was done electronically and that the phrase referred to was automatically generated when a particular code was entered in respect of a job identified as necessary. It said that the code used was an industry standard code and, when entered onto a form electronically, the same phrase would appear regardless of which Council used it. In short, it was arguing that although the language appeared to be that of physical papers, the processes it related to were electronic. It also explained that the work orders it had provided to the complainant were, in fact, print outs from an otherwise wholly electronic tracking process. It had not "found" the work order documents, as such. Instead, they formed part of its electronic service management systems and it had printed them out to supply to him. It further explained that it took four to five minutes to print each one but, having received a further list from the complainant, it was happy to print them out for him.

23. It would appear, therefore, that it holds work orders within the scope of the request but only in so far as it has these as part of its service repairs information system which is wholly electronic. Similarly, references to reports within such work orders are, in effect, legacy language that is generated where industry standard codes are used. That said, the Commissioner is satisfied that LBL has searched its records to identify whether such a report (or reports) is held in paper form.
24. It is clear that the complainant remains firmly of the view that there are work orders in paper form and that LBL has recently found them. Its delay in doing so, in his view, indicates bad faith on their part.
25. From the outset, the complainant has insisted that the information is held in hard copy form and seeks to access information in this format. The Commissioner is satisfied that LBL does not hold the work orders in hard copy form and, on the balance of probabilities, is satisfied that there is no typed report in hard copy form. She is further satisfied that LBL is prepared to print off from its system any work orders or other information that the complainant identifies but notes his continued focus on hard copies which she is satisfied that LBL does not hold.
26. For the avoidance of doubt, the Commissioner's view is that a preference for the form and format of information should be provided at the time of the request. This is explicitly set out in FOIA and, even if the information were caught by EIR, the Commissioner thinks that the same standard applies to the EIR. This was upheld by the First Tier Tribunal (Information Rights) in *W J Bunton v Information Commissioner (EA/2011/0058, 9 March 2012)*
27. The Tribunal in that case also said "We reject the Appellant's submission that a request under FOIA and EIR should properly be regarded as an on-going process rather than a single event".³

Conclusion

28. The Commissioner has concluded that, on the balance of probabilities, no further hard copy information is held although she notes LBL's willingness to provide it should it be found. The Commissioner notes that the complainant does not appear to have strong evidence that hard copy versions of the requested information are actually held which counters LBL's assertion that it does not hold such records and why it does not

³ <https://ico.org.uk/media/for-organisations/documents/1163/means-of-communicating-information-foia-guidance.pdf> (see page 5) and <https://ico.org.uk/media/for-organisations/documents/1639/form-and-format-of-information-eir-guidance.pdf> (see page 5)

hold such records. She recognises that the relationship between LBL and the complainant has completely broken down and it is difficult to determine what was discussed or explained in verbal conversations between the parties. She has considered whether LBL has deliberately blocked access to the requested information and has concluded that there is insufficient evidence to support this.

29. The Commissioner would observe that she has had some difficulty in reaching a decision in this case. Had LBL been more transparent as to how it holds its records much earlier in the process, it would have been far easier for the Commissioner to reach her view.

Other matters

30. The Commissioner would note that LBL's initial response to this request included an unhelpful and incorrect statement. In that response LBL said "we are only required to provide you with documents we have on our files dating back 6 years". It is simply not the case under FOIA or EIR that a public authority is only obliged to search in its files for information dating back six years from the date of the request. The timeframe for this request was clearly wider than six years prior to the date it was submitted. LBL has acknowledged to the Commissioner that it was in error in this regard.

Right of appeal

31. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. 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

Jonathan Slee
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