

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 October 2022

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

#### **Decision (including any steps ordered)**

---

1. The complainant has requested copies of the recordings of Brixton Neighbourhood Construction Forum ("BNCF") meetings held on behalf of Lambeth Council ("the council") by its developers Muse Developments, from April 2020 to September 2020. The council refused the request and advised the complainant that they did not hold this information, citing Regulation 12(4)(a) of the EIR.
2. The Commissioner's decision is that the public authority is not entitled to rely on regulation 12(4)(a) as from information provided, it is clear Muse Developments who arranged the BNCF meetings, hold information on behalf of the council and must produce this information to the council to support requests under both FOIA and the EIR.
3. The Commissioner requires the council to take the following steps within 35 days:
  - Issue a fresh response to the complainant, either confirming disclosure of the requested information, or providing a substantive reason to withhold the information under the EIR.

## Request and response

---

4. The complainant contacted the Information Commissioner's Office for advice in January 2022, and then made the following request to the council on 15 February 2022:

"I sent the following (below) to [name redacted] of Muse developments on September 7, 2021.

As you know Muse Development's is delivering the YNTH Project " on behalf of Lambeth Council" as the YNTHN web-site states. After considerable obfuscation, Muse is refusing to send me the recordings I requested, even those of the meetings I attended. Again, as you know, these meetings were a requirement of the planning approvals given on this project.

I have been sent the recordings of the 2021 BNCF meetings.

Will Lambeth Council now instruct Muse to send me the recordings I have requested and if not will, you please state your reasons. This issue has dragged on for a long time and if possible, I would, appreciate a speedy response.

Can you please send me asap the recordings of the OMH BNCF meetings held on:

- Apr 24, 2020
- Apr 27, 2020
- Jun 12, 2020
- Jun 15, 2020
- Sep 15, 2020
- Sep 23, 2020"

5. The council responded on 17 March 2022, they advised they did not hold the information and indicated an officer of the council would contact Muse Developments to obtain the information.
6. The complainant did not receive the information and received no response to a request for an internal review, despite the intervention of the Commissioner's office.
7. The council finally issued a formal refusal notice on 28 July 2022, citing regulation 12(4)(a) maintaining they did not hold the information.

## Reasons for decision

---

8. The following analysis sets out why the Commissioner has concluded that the public authority was not entitled to rely on the exception cited.
9. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information "to the extent that it does not hold that information when an applicant's request is received".
10. The Commissioner, through the course of this investigation, has been informed that the recordings of meetings not provided are held, but by the council's partner, Muse Developments.
11. The council provided the Commissioner with details of the agreements between the council and Muse Developments, and the arrangements put in place for the BNCF meetings.
12. It is the Commissioner's view that the information provided clearly outlines that Muse Developments was acting on behalf of the council with regard to the information requested. Furthermore, it is indicated in their agreement dated 11 April 2014, clause 18, p. 53; that Muse Developments will support and provide information, if not already held by the Council, relating to FOIA and EIR requests.
13. Therefore, the Commissioner has determined that in this case Muse Developments holds the information on behalf of the council at the time of the request.

## Right of appeal

---

14. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

15. 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.
16. 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 .....**

**Phillip Angell  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**