

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 1 March 2023

Public Authority: London Borough of Hackney
Address: 1 Hillman Street
London
E8 1DY

Decision (including any steps ordered)

1. The complainant requested both the questions asked and the responses received from organisations that London Borough of Hackney ("LBH") consulted with about Low traffic Neighbourhoods (LTN's), specifically those from Disability back up, Age concern, Living streets, and London travel watch. LBH provided a response to the complainant's request, however, the complainant is not satisfied with the response, as they consider that LBH did not provide all the requested information.
2. LBH originally advised that the information was publicly available, citing regulation 6(1)(b) of the EIR. LBH also advised that it does not hold any further information in relation to the request, citing regulation 12(4)(a) of the EIR. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further information within the scope of the request and therefore, regulation 12(4)(a) of the EIR is engaged. The Commissioner also finds that LBH has breached reg 11(4) as it failed to provide its internal review response within 40 working days.
3. The Commissioner does not require LBH to take any further steps.

Request and response

4. On 25 March 2023, the complainant wrote to LBH and requested information in the following terms:

"Responses from organisations you consulted with about LTN's Specifically Disability back up, Age concern, Living streets, and London travel watch. These are the organisation you consulted with when I previously asked why Blue badge holders have not been given an exemption As a disabled person it is of great interest to me and I would also like to know which questions you put forward to these organisations."

5. LBH responded on 26 April 2022 and stated

"We can confirm that Hackney Council holds the information you requested. However we are withholding that information since we consider that the following exemption applies to it. Under Section 21 (2a) of the Freedom of Information Act information which is reasonably accessible to the applicant (even if it is accessible only on payment) is exempt. The responses to the recent consultations on Low Traffic Neighbourhoods are available online. These reports are available online, by navigating through to each scheme's page starting from here:

<https://hackney.gov.uk/menu#parking-and-transport>.

If you do not have access to the internet at home, you may be able to use facilities at your local library."

6. On 29 April 2022, the complainant wrote to LBH to request an internal review

7. Following an internal review the LBH wrote to the complainant on 2 August 2022. It stated that it had revised the information regime applicable to the request and was considering its response using the Environmental Information Regulations (EIR) 2004. LBH made a presumption in favour of disclosure and provided the complainant with further relevant information as to where the 'Consultation' information could be found.

8. A further exchange of correspondence by both parties between 2 August 2022 and 5 August 2022 failed to resolve the matter.

Scope of the case

9. The complainant contacted the Commissioner on 9 August 2022 to complain about the way his request for information had been handled.
10. The complainant remains dissatisfied, believing that LBH holds further information on zoom meeting minutes and email correspondence relevant to the consultation process for LTN's which hasn't been published on LBH's website or included in the consultation documents.
11. The Commissioner has first considered under which information legislation the Council should have considered the request. His investigation has then focussed on whether, on the balance of probabilities, the Council holds any further information within the scope of the request.

Reasons for decision

Is the requested information environmental?

12. Information is 'environmental information' and must be considered for disclosure, if held, under the terms of the EIR rather than the FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.
13. 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;
 - (c) measures (including administrative measures), such as policies, legislation, plans, programs, 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.
14. As this request is for information relating to consultations on Low Traffic Neighbourhood schemes whose aim is to change the layout and use of low volume and quieter roads to pedestrian areas, the Commissioner believes that the requested information is likely to be on the

implementation of environmental policies and measures and therefore for procedural reasons, has assessed this case under the EIR.

Regulation 12(4)(a) – information not held

15. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request if it is not subject to an exception.
16. LBH holds information relevant to the request, which it has published on its website. Its position is that it holds no further information. Under regulation 12(4)(a) of the EIR, 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.
17. LBH provided the complainant with the link to the consultation documents published on its website and also provided the location and page number within the documents that contained any responses received from the organisations of interest to the complainant. LBH also confirmed that if there was no information, this indicated that the relevant organisation had not responded.
18. In its submissions to the Commissioner, LBH confirmed that it believed the original searches and responses had been fully sufficient to meet the requirements of this information request and that all information had been provided to the complainant.
19. However, LBH undertook further searches for feedback received including any minutes of online meetings held and not previously notified within the files on its networked computer and also of all incoming and outgoing communications on its email systems using the following search terms "Disability Backup", "Travelwatch", "Living Streets" and "Age Concern" and no further information was identified.
20. LBH also confirmed that all correspondence would be in electronic format only and that as far as it was aware there had been no deletions of information.
21. Having considered all the circumstances, the Commissioner is satisfied that LBH has made reasonable searches of its records and that on a balance of probabilities, LBH does not hold any further information within the scope of the request and that regulation 12(4)(a) is therefore engaged.

Procedural Matters

Regulation 11 – representations and reconsideration

22. Regulation 11 of the EIR states that:

“(3) The public authority shall on receipt of the representations and free of charge—

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.”

23. From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days, the Council has breached regulation 11(4) of the EIR

Right of appeal

24. 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

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

25. 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.
26. 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

Roger Cawthorne
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