

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 16 August 2023

Public Authority: London Borough of Lambeth

Address: Lambeth Town Hall
Brixton London
SW21 RW10

Decision (including any steps ordered)

1. The complainant has requested information from London Borough of Lambeth Council (LBLC) about a bid made to GLA to secure funding for a feasibility study for the redevelopment of land currently occupied by Tulse Hill adventure playground .
2. The Commissioner's decision is that LBLC has failed to carry out a reconsideration (internal review) under the EIR within 40 working days and therefore has breached regulation 11 of the EIR.
3. The Commissioner requires the LBLC to take the following steps to ensure compliance with the legislation.
 - Reconsider how it responded to the original request and inform the complainant of the outcome of that reconsideration in accordance with regulation 11 of the EIR.
4. The LBLC 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 Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. On 23 November 2022, the complainant wrote to the LBLC and requested information in the following terms:

“In the response to a previous FOI request (ref: IRN3503205), regarding plans to redevelop the land currently occupied by Tulse Hill Adventure Playground, you stated 'Regarding redevelopment plans, the Council submitted a bid to the GLA to secure funding to progress a feasibility study relating to the top boundary of the estate, primarily the site of the GLOWS building (former Housing Office) and potentially the APG and other sites on the boundary. If successful the feasibility study will fund a consultant team to look at the assets on the estate to help identify the best options going forward.' Can you please provide the bid submitted to the GLA for this feasibility study?”

6. LBLB responded to the request on 2 December 2022 and stated the following:

“This request is being handled under the Freedom of Information Act 2000.

This information is not held at the time of your request.

This is because bids are submitted via an online portal to the GLA, and it is not possible to extract a report from this system or to provide a link “

7. The complainant requested an internal review on 13 December 2023, but LBLC had not completed its review at the date of this notice.

Scope of the case

8. The complainant contacted the Commissioner on 26 April 2023 to complain about the way this request for information had been handled as they believed LBLC held more information within the scope of the request and, additionally, that that they had not yet received a response to their request for an Internal review.

9. On 12 May 2023, the Commissioner accepted the case for investigation without an internal review as it had already been more than 40 working days since the complainant had requested it.

10. On 2 June 2023, the Commissioner contacted LBLC to request they review their position of section 1(1) of FOI and provide further

supporting information on the identification of all relevant information within the scope of the request.

11. During the course of his investigation, the Commissioner considered whether the request should have been handled under the equivalent regulation of the Environmental Information Regulations ('EIR'). The Commissioner's rationale for this is discussed in more detail below. This issue was not raised by the complainant.
12. On 27 June 2023, the Commissioner contacted LBLC to state that as the requested information concerns a request for a copy of the funding bid to conduct a feasibility study on land, he now considered the most appropriate regime for the complaint would be environmental information as defined by regulation 2(1) of the EIR and asked LBLC to complete its reconsiderations and issue an Internal review within 10 working days.
13. LBLC has failed to respond to either the complainant or the Commissioner at the time of this notice.
14. The scope of the Commissioner's investigation is therefore to determine whether LBLC has complied with regulation 11 of the EIR.
15. For the avoidance of doubt, the Commissioner has not yet considered and therefore takes no position on whether LBLC was entitled to rely on section 1(1) of FOI or the equivalent regulation 12(4) (a) of the EIR (information not held).

Reasons for decision

16. Regulation 11¹ 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.

¹ <https://www.legislation.gov.uk/ukxi/2004/3391/regulation/11>

- (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.”
17. 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, LBLC has breached regulation 11 of the EIR.

Right of appeal

18. 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

19. 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.
20. 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

Michael Lea
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