

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 September 2014

Public Authority: Lewisham Council
Address: Second Floor
Lewisham Town Hall
Catford Road
London
SE6 4RU

Decision (including any steps ordered)

1. The complainant has requested information in connection with Lewisham Council's decision to dispose of its freehold interest in the land adjoining 'The Den' and leased to Millwall Football Club.
2. Lewisham Council has responded to the complainant's request by stating that some of the information is not held but of that which is held, some has been disclosed and the rest withheld under Regulations 12(5)(b) and 12(5)(e) of the EIR.
3. The complainant has made representations as to why she believes Lewisham Council has failed to comply with her request but to date has not received a substantive response.
4. The Commissioner's decision is that Lewisham Council has breached Regulations 5(2) and 11(4) of the EIR by firstly failing to respond to the complainant's request within 20 working days and secondly by failing to respond to the representations in her email dated 19 May 2014 within 40 working days or at all.
5. The Commissioner requires Lewisham Council to take the following steps to ensure compliance with the legislation.
 - Respond to the representations made by the complainant in her email dated 19 May 2014.

6. 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 Act and may be dealt with as a contempt of court.

Background

7. This Decision Notice should be read in conjunction with the linked Decision Notice under reference FER0554957.
8. Decision Notice FS50551446 relates to the complainant's initial request dated 6 March 2014 which was responded to by Lewisham Council (the council) on or about the 14 April. An internal review was requested on 19 May 2014 and the outcome is still outstanding.
9. Decision Notice FER0554957 relates to the new information requested by the complainant as part of internal review on 19 May which was not covered by the scope of the initial request dated 6 March 2014. The council's response to this new request is also outstanding.

Request and response

10. On 6 March 2014 the complainant wrote to the council and requested information in the following terms:
 1. *'With reference to the contract for the disposal of the Council's freehold interests in the land adjoining The Den - and leased to Millwall Football Club - to Renewal, what was the consideration payable (money or money's worth) and what were the principal terms and conditions of the disposal?'*
 2. *What were the reasons for the Overview and Scrutiny Panel "calling in" the original decision of the Council Cabinet to sell the Council's freehold interests in that land to Renewal?*
 3. *Why were the public and press excluded during the "call in" presentation from Cllr Liam Curran and Cllr Alan Hall to the meeting of the Mayor and Cabinet on Oct 2nd 2013, which finally confirmed the decision made on September 11th 2013 by the Council to sell the freehold interests in that land to Renewal?*
 4. *I should like to see the presentation made by Cllr Curran and Cllr Hall to the Deputy Mayor and Cabinet at that meeting. Why was it not*

disclosed to the public when there was an overwhelming public interest in the disclosure of the information?

5. *What due diligence has the Council carried out on Renewal and why does it believe that only Renewal can exclusively undertake the redevelopment of the Surrey Canal Triangle site?'*
11. The council responded on or about 14 April 2014. It disclosed the information requested in questions 2 and 3 of the complainant's request, stated that the information requested in question 4 was not held in a recorded format and withheld the information requested in questions 1 and 5 under Regulations 12(5)(b) and 12(5)(e) of the EIR on the grounds of prejudice to the course of justice and confidential confidentiality.
12. On 19 May 2014 the complainant submitted an internal review request by email in the following terms;
 1. *'While the Council may contend that some of this information is commercially confidential, it cannot be the case that ALL of the terms and conditions of the contract for the disposal of the land to Renewal are confidential. Please provide as much information as possible and indicate the nature of the information that you are choosing not to provide and explain why it is in the public interest to withhold such information. In particular, please explain why you consider that the public interest justifies the continued withholding of information on the consideration to be paid for the disposal of public assets, namely, the Council's freehold interests?'*
 2. *Please explain why disclosure would undermine the Council's commercial relationship with Renewal. Contracts have already been exchanged, so how would disclosure affect the relationship?*
 3. *Please state precisely how the contract protects the Club's interests and explain specifically how the use of a Compulsory Purchase Order is in the best interests of Millwall Football Club and the Millwall Community Scheme.*
 4. *You have disclosed none of the information that was discussed. I do not believe that ALL of it was "exempt information" and not in the public interest. Please disclose as much of the information as possible and state the nature of the information that has not been disclosed, explaining why disclosure is not in the public interest.*
 5. *The minutes of the meeting of Mayor & Cabinet of 2 October 2013 provide no information about the content of the verbal presentation*

that was made by Cllr Curran and Cllr Hall. Please provide the notes that were taken of the presentation.

6. *What were the terms of the brief to Bond Dickinson for the provision of the legal advice that you say is legally privileged? What was the nature of the legal advice provided by the Council's Head of Law? Please explain why disclosure would have an adverse effect on the course of justice.*
7. *In your answer to question 5 you provide no information about the due diligence carried out on Renewal. It is surely in the public interest to disclose some of that information? Please disclose as much as possible and explain the nature of the information that has been withheld. You refer four times in your answer to the economic interests of the Council. Please explain why the economic interests of the Council are not in the public interest.'*
13. The council acknowledged the review request in an email dated on 21 May 2014 and stated that it would endeavour to respond in 20 working days.
14. In the absence of a response the complainant wrote to the council again on 27 June 2014 asking when she might expect one.
15. The council replied on 1 July 2014 stating that it was dealing with the request as a matter of urgency and would respond as soon as possible.
16. The complainant wrote to the council once again on 10 July 2014 enquiring as to when she might receive a response to her internal review request dated 19 May 2014 but has not received a reply.
17. At the date of this decision Notice the council has not responded to the complainant.

Scope of the case

18. The complainant contacted the Commissioner on 13 August 2014 to complain about the way her request for information had been handled. In particular, the council's failure to respond to her internal review request dated 19 May 2014.
19. The scope of this Decision Notice is therefore limited to the complainant's internal review request dated 19 May 2014 of her original information request dated 6 March 2014.

20. In so far as the internal review request dated 19 May 2014 raises new questions not covered by the original information request, these are dealt with by the linked Decision Notice under reference FER0554957.

Chronology

21. The Commissioner contacted the council by telephone on 15 September 2014 to enquire as to when it would respond to the complainant's email dated 19 May 2014.
22. The council stated that its Legal Department was drafting a response for consideration and approval but was unable to provide the Commissioner with a definite date as to when this would be issued to the complainant.

Reasons for decision

The Environmental Information Regulations 2004 (the EIR)

23. The council has dealt with the request under the EIR on the basis that the information requested is 'environmental'.
24. The complainant has not disputed the application of the EIR to her request.
25. The Commissioner is satisfied that the information requested is environmental as it is information on a measure affecting or likely to affect the elements of the environment, namely land, under Regulations 2(1)(a) and 2(1)(c) of the EIR.

Regulation 5(2) of the EIR

26. Under Regulation 5(2) of the EIR a public authority has to respond to a request within 20 working days.
27. In this case the council took 27 working days to respond to the complainant's request dated 6 March 2014 and thereby breached Regulation 5(2) of the EIR.

Regulation 11 of the EIR – Representations and Reconsideration

28. Regulation 11(1) of the EIR states that an 'applicant may make representations to a public authority in relation to the applicant's

request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request'.

29. Regulation 11(2) of the EIR states that 'representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement'.
30. Regulation 11(3) of the EIR states that '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'.
31. Regulation 11(4) of the EIR states that 'a public authority shall notify the applicant of its decision under paragraph 11(3) as soon as possible and no later than 40 working days after the date of receipt of the representations.
32. In this case the complainant submitted her representations as to why she believed the council had failed to fully comply with her initial information request on 19 May 2014. This was 4 months ago and since then, apart from a couple of brief acknowledgements, she has not received the council's detailed response.
33. As more than 40 working days has elapsed since the complainant submitted her representations in the form of an internal review request, the council has breached Regulation 11(4) of the EIR.
34. The Commissioner now requires the council to respond to the representations made by the complainant on the 19 May 2014 in accordance with this this Decision Notice.

Right of appeal

35. 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

36. 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.

37. 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

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