

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

Decision notice

Date: 28 June 2018

Public Authority: London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant requested information about two specific planning applications.
2. The Commissioner's decision is that the London Borough of Croydon ("the London Borough") failed to respond to either request within 20 working days and has therefore breached Regulation 5(2) of the Environmental Information Regulations ("the EIR").
3. The Commissioner requires the London Borough to take the following steps to ensure compliance with the legislation.
 - Issue a substantive responses, under the EIR, to both requests.
4. The London Borough 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

Request 1

5. On 27 January 2018, the complainant contacted the London Borough via the whatdotheyknow.com website and requested information in the following terms:

"The letter from case officer to applicant [Aventier] dated 13 October 2017, refers to a '... previous pre-application query (Ref:17/00985/PRE) at this site. ...' .

"At the Committee meeting on 25 January 2018, the applicant's agent confirmed that there had been two, pre-application submissions.

"Please provide any information relating to the first, pre-application submission [17/00985/PRE], including but not restricted to copies of what was submitted by the applicant, any consultee comments, the minutes of any meeting[s] and the officer's advice letter[s] or email[s]."

6. The London Borough did not acknowledge the request until 27 February 2018. It apologised for the delay and said that the request was *"still receiving attention and we are urgently chasing the answering department for a response."*
7. The London Borough had failed to provide a substantive response to this request by the date of this Notice.

Request 2

8. On 26 March 2018, the complainant contacted the London Borough, again via whatdotheyknow.com, and made a further request for information in the following terms:

"Planning Application 18/00648/HSE

"Please provide copies of all information held regarding the above planning application and the Council's consideration of it.

"I acknowledge that the documentation submitted by the applicant is available on the Council's website and so could be omitted here, but to include it would help provide the 'full picture', in one place.

"The information provided should include, but not be restricted to, copies of the following:

- ALL consultation (objection) letters/emails, which should include the TWO I sent myself on 1 and 7 March 2018,
- notes from case officer's site visit, and
- the full case officer's report WITH recommendation."

9. The Council acknowledged this request on 3 April 2018 but had not issued a substantive response at the date of issuing this Notice.

Scope of the case

10. The complainant contacted the Commissioner on 14 May 2018 to complain about the way his requests for information had been handled.
11. In line with her usual practice, the Commissioner contacted the London Borough on 15 May 2018 to highlight the outstanding response. She requested that the London Borough respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
12. The Complainant contacted the Commissioner on 4 June 2018 to request a decision notice considering the London Borough's compliance with the EIR.
13. During the course of her investigation of this complaint, the Commissioner received correspondence from the London Borough in relation to a separate complaint. This correspondence explained that the London Borough had recently changed the email address for its main FOI mailbox – which the Commissioner had used to send her correspondence of 15 May.
14. Whilst not excusing the delay in responding to the original request, the Commissioner considered it reasonable to send further chasing correspondence, on 11 June 2018, to the London Borough's new FOI mailbox – extending the deadline for a further 10 working days.
15. Despite this revised deadline, the London Borough had still failed to respond to either request at the date of issuing this notice.
16. The scope of the Commissioner's investigation was to determine whether the London Borough has complied with Regulation 5(2) of the EIR.

Reasons for decision

17. 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;*
18. The Commissioner has not seen the requested information but, as it is information relating to Planning, she believes that it is likely to be information about "measures" affecting (or likely to affect) the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.
19. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"
20. Regulation 5(2) states that such information shall be made available "*as soon as possible and no later than 20 working days after the date of receipt of the request.*"
21. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
22. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the London Borough has breached Regulation 5(2) of the EIR.

Other Matters

23. During the course of this investigation, the Commissioner has become aware that the London Borough has changed the main FOI mailbox which it previously used to receive FOI requests and to which the Commissioner sent her correspondence.
24. The London Borough is, of course, entitled to do this – however it should take adequate steps to inform those wishing to make requests for information of the revised process for doing so. The evidence that has been presented to the Commissioner in this and other cases she has dealt with involving the London Borough is that the old mailbox is still accepting correspondence and not always generating automated responses.
25. The Commissioner would remind the London Borough that, if the old mailbox is still accepting correspondence, she would consider any request made, via that mailbox, to have been received by the London Borough.

Right of appeal

26. 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

27. 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.
28. 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

Ben Tomes
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