

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

Date: 5 September 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 related to a particular planning application.
2. The Commissioner's decision is that London Borough of Croydon ("the London Borough") failed to carry out a reconsideration (internal review) of the way it handled the request for information within 40 working days and also failed to respond to the request within 20 working days. It has therefore breached Regulations 11(4) and 5(2) of the EIR.
3. The Commissioner requires the London Borough to take the following steps to ensure compliance with the legislation.
 - Reconsider how it handled the original request and inform the complainant of the outcome of that reconsideration in accordance with Regulation 11 of the EIR.
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 Act and may be dealt with as a contempt of court.

Request and response

5. On 12 January 2018, the complainant contacted the London Borough via the whatdotheyknow.com website and requested information in the following terms:

"Please provide copies of all information regarding consultation on the above planning application [17/05708/FUL] and of all comments provided by consultees (statutory or otherwise)."
6. The London Borough issued its substantive response on 20 April 2018. It provided the complainant with some redacted information. It stated that the redacted information was exempt from disclosure under Regulation 13 (Third Party Personal Data).
7. On 13 May 2018, the complainant requested an internal review as he felt that the London Borough had not provided all the information within the scope of his request and that the London Borough's use of redactions was too extensive.
8. The London Borough did not acknowledge the request for an internal review until 27 July 2018 and had not informed the complainant of the outcome of its review at the date that this notice was issued.

Scope of the case

9. The complainant contacted the Commissioner on 15 July 2018 to complain about the way his request for information had been handled.
10. In line with her usual practice, the Commissioner wrote to the London Borough on 19 July 2018 to ask it to complete its internal review and inform the complainant of the outcome within 10 working days.
11. On the tenth working day, the London Borough responded to the Commissioner's correspondence to say that it had not logged the original internal review request at the time that it was made and it therefore required additional time to complete its internal review which it intended to complete by 16 August 2018. On 16 August 2018 it sent a further holding response stating that it required a further 4 working days to complete its review and on 22 August 2018 it sent another holding response to the complainant stating that it required an additional 10 working days to complete its review.
12. Whilst the Commissioner is keen to promote informal resolution where appropriate, in this case she considers that the London Borough has had

adequate time to consider how it handled the original response and to determine whether it needs to apply a new exception to the request.

13. The Commissioner has not yet investigated whether all the requested information has been provided, or whether the London Borough was entitled to withhold the information that it has done. She therefore takes no position, on either question, in this notice – which focuses solely on the procedural aspects of the way the London Borough handled the request.
14. The scope of this decision notice is to consider whether the London Borough has complied with Regulations 5(2) and 11(4) of the EIR.

Reasons for decision

Is the information environmental?

15. 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;*
16. The Commissioner has not seen the requested information but, as it is information relating to planning matters, she believes that it is likely to be information about “measures” affecting the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.

Timeliness of Response

17. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
18. 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."*
19. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
20. 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

Reconsideration (Internal Review)

21. Regulation 11 of the Regulations states that:
 - (1) *Subject to paragraph (2), 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.*
 - (2) *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.*
 - (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.*
 - (5) *Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*

- (a) *the failure to comply;*
- (b) *the action the authority has decided to take to comply with the requirement; and*
- (c) *the period within which that action is to be taken.*

22. From the evidence provided to the Commissioner in this case, it is clear that the London Borough has failed to notify the complainant, of the outcome of the internal review (or reconsideration) that he requested, within 40 working days and has therefore breached Regulation 11(4) of the EIR.

Other Matters

23. The Commissioner notes that this is the second decision notice which she has issued, to this public authority, involving this complainant, on the timeliness of internal reviews within a short space of time. She is also aware that the complainant has made numerous information requests to the London Borough and that the London Borough's handling of those requests has resulted in several complaints to her Office.
24. The Commissioner is keen to ensure that the London Borough devises and implements, at the earliest opportunity, such measures as it judges necessary to avoid her having to issue further decision notices considering similar matters.

Right of appeal

25. 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

26. 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.
27. 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
Team Manager
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Water Lane
Wilmslow
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