

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

**Date:** 4 October 2018

**Public Authority:** Barnet London Borough Council  
**Address:** North London Business Park  
Oakleigh Road South  
London  
N11 1NP

**Decision (including any steps ordered)**

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1. The complainant has requested information from the London Borough of Barnet Council (the council) about alterations to a particular box junction. The council has disclosed some of the requested information and has stated that it holds no further information falling within the scope of the request.
2. The Commissioner's decision is that not all of the requests were valid EIR requests and of those which were valid, on the balance of probabilities, the council has now disclosed all of the information it holds. The Commissioner considers that some of the requested information was disclosed outside of the 20 working day statutory time frame and accordingly the council has breached regulation 5 EIR. She also considers that the internal review response was issued outside of the 40 working day statutory time frame and therefore the council has also breached regulation 11 EIR. Finally, the Commissioner is satisfied that the council is entitled to redact the names of junior staff from the disclosures of information it has made to the complainant on the basis of regulation 12(3) EIR.
3. The Commissioner does not require the public authority to take any steps.

**Request and response**

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4. On 10 August 2017, the complainant wrote to the council and requested information in the following terms:

*"1. The email below report the previous box junction at Cricklewood Lane complied with the relevant regulations. Can you please explain how the previous box junction complied when **Regulation 29(2) of TTSRGD 2002** state "the road markings shown in diagrams 1043 and 1044 shall convey the prohibition specified in Part 2 of Schedule 19"?*

*2. The law was clear that the box junction must comply with the approved diagram and the box junction that was marked at Cricklewood Lane did not. Where the box junction deviates from this approved diagram, Local Authorities must seek Department for Transport (DfT) consent. Please email a copy of the approval from DfT.*

*3. The email dated 09 August 2017 from the Highway reported that in order to improve traffic flow a new box junction was commissioned. As you may be aware for Local Authorities to approve such decisions a review must be carried out and presented to relevant parties in the Council such as the Strategic Director of Environment, Jamie Blake. Please email a copy of the traffic management survey report or any report undertaken to support the re-designed yellow box junction at Cricklewood Lane.*

*4. Please confirm when the survey or the report was commissioned.*

*5. Please confirm who (authorised person at Barnet Council) and when it was officially decided to proceed with the re-designed yellow box junction before it went out to tender.*

*6. Please confirm when it went out to tender and when the contractor was selected.*

*7. Please email internal correspondences regards to the re-designed yellow box junction as previously requested under the Freedom of Information Act."*

5. This request followed an earlier request dated 21 May 2017 (3657497) where the complainant asked Barnet to provide evidence of Department of Transport consent for the box junction as required by law where there is a deviation from code compliance.

6. The council replied to that request on 25 May 2017 advising that it held the requested information but that it was exempt under section 21 FOIA – information accessible to applicant by other means.
7. The council wrote to the complainant again on 22 August 2017, apparently in relation to a request it had received on 25 July 2017 but citing the reference number 3793498 rather than 3657497. Although the response made no mention of the request dated 10 August 2017, the reference number used suggested that it is the response to the request dated 10 August 2017. The Commissioner notes that this response set out the reason for the decommissioning the old box junction and commissioning the new one.
8. The complainant responded on 27 August 2017 setting out that his request dated 10 August 2017 had still not been addressed.
9. On 29 August 2017 the council wrote to the complainant acknowledging a review request for case reference 3793498, which it had received on the same date.
10. On 8 September 2017 the council wrote to the complainant again acknowledging a request for an internal review. It is unclear which request this relates to.
11. On 3 November 2017 the council issued an internal review response for reference 3832996. It set out its position that all of the information held had been disclosed. The letter explained that the next steps were to contact the Commissioner which the complainant did on 28 December 2017.
12. However, on 24 January 2018, before the Commissioner had instigated her investigation, the council again wrote to the complainant acknowledging his request for a review under reference 3793498 and setting out its position in relation to the request dated 10 August 2017.
13. In response to point one the council explained the purpose of the yellow box junction. For point two the council set out that the box junction complies with regulations and that no DfT approval was required prior to installation. As for point three and four, the council disclosed the traffic survey and set out that it was undertaken in December 2016. In response to point five, the council set out that the decision was taken at a meeting with the interim Strategic Lead Commissioner for Highways on 1 June 2017. Point six was addressed by advising that the work was undertaken by the Council's Term Contractor and not therefore put out to tender. With regard to point seven, the council explained that a meeting was held on 1 June 2017 where the matter was discussed and

that there was no internal correspondence relating to the re-designed yellow box junction.

14. On 28 January 2018, the complainant wrote again to the council setting out his concerns regarding the response. He advised that he had already contacted the Commissioner about the request handling. His concerns focussed mainly on his assertion that the yellow box junction did not comply with appropriate regulations and he set out that his request was for all reports and minutes relating to the decommissioning of the old box junction and the re-design of the new one.
15. On 29 January 2018, the council declined to engage further with the complainant as he had referred the matter to the Commissioner and that they would await contact regarding the complaint.
16. The Commissioner notes that the correspondence from the complainant dated 28 January 2018 set out that his request was for all reports and minutes relating to the matter of the box junction but the Commissioner does not consider that his original request was for all reports and minutes but was in fact for internal correspondence.

### **Scope of the case**

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17. The complainant contacted the Commissioner on 28 December 2017 to complain about the way his request for information had been handled.
18. He set out that he did not accept that the council had provided all of the information nor had it answered or highlighted his points raised. These points were in relation to the box junction complying with regulations. Specifically, the complainant explained that he had evidence that Councillor Jack Cohen had been involved in the shortening of the box junction and therefore the council was withholding information so that the complainant would not get the requested information.
19. In support of his assertion about Cllr Cohen, the complainant provided a copy of part of a Liberal Democrat publication called Childs Hill News dated Summer 2017. As part of the 'Cricklewood Roundup' section, the publication reported that Cllr Jack Cohen and the team are working closely with residents groups in several areas, one of which was described as "*being instrumental in shortening the yellow box outside B and Q*" The publication did not refer to any specific communication with the council.
20. In setting out the scope of her investigation, the Commissioner wrote to the complainant explaining that it was not within her remit to determine if any alteration to the box junction complied with relevant regulations

and she would only consider whether his request had been handled in accordance with FOI/EIR.

21. The Commissioner also explained to the complainant that she did not consider his request at point one to be a valid request for information as it asks for an explanation and there is no requirement to provide an explanation in response to a request for information.
22. In relation to the request at point 2, the complainant was concerned that despite the council's reliance on section 21, he could not access the DfT approval.
23. Points three and four of the request had been addressed together in a previous response dated 24 January 2017 but the complainant asserted that the disclosure of the report did not provide the reason for decommissioning the previous box junction. The Commissioner set out that as the report requested had been disclosed, she could not consider the content of that report to determine if it met the complainant's needs. However, the complainant had asserted that this was not all of the recorded information held and accordingly the Commissioner set out that this would be considered as part of her investigation.
24. The information requested at parts five and six of the request had been disclosed and this would not be addressed as part of the investigation.
25. With regard to part seven of the request, the complainant again asserted that that the council was incorrect to state that it did not hold any information falling within the scope of this part of the request. The Commissioner's investigation will address this concern.
26. The Commissioner considers the scope of her investigation is to determine whether the council has, on the balance of probabilities, disclosed all of the information it holds falling within the scope of the complainant's request at points two, three and seven.

## **Reasons for decision**

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### Appropriate legislation

27. 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;*

28. The Commissioner considers that the alteration of a box junction falls squarely within regulation 2(1)(c) as it is a measure designed to impact on the flow of traffic which is likely to affect noise and emissions and therefore affect the elements and factors referred to in section 2(1)(a).
29. Regulation 5(1) states that: "a public authority that holds environmental information shall make it available on request."
30. Given that the Commissioner's investigation will address only three parts of the request, she considers it appropriate to address each in turn.
31. In respect of part two of the request, the complainant sought a copy of the DfT approval which, he asserts, was required in order to alter the box junction. Although the council initially relied on section 21 FOIA – information reasonably accessible to applicant by other means, and provided the complainant with a link, the council changed its position during the course of the investigation and set out that no information was held regarding DfT approval as this had not been necessary in order to make the changes to the box junction.
32. It is clearly not a matter for the Commissioner to determine whether or not DfT approval was required to alter the box junction but it is pertinent to the rationale behind the Commissioner's position.
33. It is clear that the complainant had considered that the requested information should be held and that it was held given the council's response relying on section 21 FOIA. The Commissioner notes that the link provided related to a generic 101 page document titled 'The Traffic Signs Regulations and General Directions 2016'.
34. In her initial request for a submission, the Commissioner had asked the council about its reliance on section 21 FOIA. Although in response it maintained that section 21 had been correctly applied, the council did

not address the question of DfT approval in the case of the Cricklewood Road box junction which was what had in fact been requested.

35. It was only when the Commissioner asked the council to be more specific in explaining its reliance on section 21 FOIA in relation to the request for information that the council set out that it had then consulted the department who had managed the alterations and had been advised that DfT approval had not been sought as it was not required.
36. Whilst it is unclear why the council did not refer to the relevant department and set out its position from the outset that DfT approval was not required, it is clear that the requested information is, in these circumstances, unlikely to be held.
37. If DfT approval had been required and was held, there would appear to be no reason why this would not have been disclosed as it would of course demonstrate the very compliance the complainant considers to be necessary. Withholding information in these circumstances would be nothing short of perverse.
38. If DfT approval is necessary but as the council submits, is not held, then it remains the case that the requested information is not held but that the lack of the requisite approval is not a matter for the Commissioner.
39. It is of course open to the complainant to pursue this aspect through more appropriate channels such as the Local Government Ombudsman. What is clear to the Commissioner is that on the balance of probabilities, the council does not hold any information relating to DfT approval for the alteration of the particular box junction.
40. In relation to part three of the request, the council set out to the Commissioner that officers had confirmed that there was no traffic report prepared. The submission set out that the FOI officer had, following the Commissioner's letter, met with key officers who led on the project and that the relevant case file and their own email accounts had been checked.
41. The relevant search term used was 'Cricklewood box junction'. The council confirmed that information would be held electronically only and that no officer was aware that any recorded information had been deleted or destroyed. The council advised that one officer involved in the project had left and that in line with policy, his emails had been deleted. Clearly it is impossible to say definitively whether these may have held additional information falling within the scope of the request.

42. It explained, in its submission, that following the traffic survey which took place in December 2016, some options were discussed and it was agreed by officers in the Highways department that the preferred option was to shorten the box. On 1 June 2017 this option was agreed. The Council's Term contractor was contacted on 5/6 July 2017 and the work carried out on 15 July 2017.
43. The council set out to the Commissioner that it could provide the complainant with copies of those email discussions (with officers' names redacted) if it were considered helpful. The emails were subsequently disclosed to the complainant. As these clearly fell within the scope of the request, they should have been disclosed in response to the request and therefore within 20 working days, the Commissioner considers that the council has breached regulation 5 EIR.
44. The emails were disclosed to the complainant during the course of this investigation and following this disclosure, the council wrote to the Commissioner on 24 August 2018; it set out that it had now disclosed all located correspondence relating to the alterations to the Cricklewood box junction. This correspondence further set out that the council had also now disclosed two traffic survey reports which the complainant would not have previously seen. Again, this disclosure was outside of the statutory 20 day time frame for responding. The Commissioner has not seen these traffic survey reports.
45. Although a traffic survey undertaken in December 2016 had been disclosed to the complainant, it is his position that the one side of A4 disclosed to him does not constitute the survey in its entirety.
46. Given the complainant's position that the lack of any dates and the lack of headers and footers on the one page traffic survey document suggested that the survey was an extraction that had been put on to a word document. The council was asked directly whether the one page of A4 disclosed to the complainant constituted the entire survey, the council stated that it did.
47. Again, in respect of the traffic survey, the main issue for the complainant appears to be whether the council followed the correct procedure prior to altering the junction but consideration of that issue does not fall within the Commissioner's remit.
48. Whilst she cannot say whether the process followed was correct, it certainly appears that the process did not involve significant recording of any information and the information which has been disclosed in response to point three of the request is a combination of one document disclosed on request and two further documents identified as a result of this investigation.

49. The Commissioner had also asked if any sort of report had been produced in relation to the shortening of the box junction to which the council responded that it had not.
50. With regard to point seven of the request, the council set out that as with point three of the request, relevant searches for recorded information had been carried out. It acknowledged that whilst there may be other emails relating to camera installation, these were outside the scope of the request. The council set out that it would be happy to disclose these emails. The Commissioner considers that it is open to the requester to make a fresh request for this information should he consider it appropriate.
51. The council set out again that one staff member had left and his email account deleted. However, the Commissioner considers that in respect of the request for internal correspondence, she would have expected emails which had been received from or sent to someone else (i.e. from the previous employee to someone else or to the previous employee from someone else) would have been identified from any search undertaken by the council which included relevant inboxes of staff still with the council.
52. In her initial request for a submission, the Commissioner set out her concerns that there was no internal correspondence relating to the shortening of the box junction as she would have thought that it would be necessary to provide an audit trail for accountability purposes. With that in mind, the initial submission asked the council to confirm that it held no internal correspondence whatsoever about the alteration to the box junction.
53. As the response detailed that there were in fact emails of discussions following the traffic survey of December 2016, it is clear that the council did hold some information falling within the scope of the request. The council has confirmed to the Commissioner that those emails have now been disclosed to the complainant.
54. Following these further disclosures, the Commissioner wrote to the complainant setting out her position that on the balance of probabilities, the council had now disclosed all of the information held. The complainant replied, setting out concerns about information relating to correspondence surrounding Councillor Cohen's involvement. The Commissioner agreed to go back to the council again on this issue.
55. Responding to the Commissioner, the council set out once more that it holds some further recorded information in relation to correspondence with Councillor Cohen about the box junction. The Commissioner wrote

to the council setting out that it should either disclose any information falling within the scope of the request or should refuse to disclose it relying on relevant exceptions under the EIR. The council disclosed the information it held redacting the names of junior staff.

56. The Commissioner noted that this information included a reference to the traffic survey setting out that "comments/opinions" had been sent to the client. Having asked the council to consider if this in fact meant that further information was held. The council has explained that there is nothing further held and that the officer who sent the email with the reference to "comments/opinions" has left the organisation as have two of the copy recipients and these email accounts cannot be accessed. However, the council has set out that it is satisfied that all information it holds within the scope of the request has now been disclosed. It has reiterated that no information has been destroyed or deleted.
57. It is clear therefore that following the Commissioner's involvement, the council had located further information which it subsequently disclosed. Having provided assurances at that point that it had then disclosed all of the information held, the council then located yet further information falling within the scope of the request; this information has now been disclosed
58. On each occasion when the council has located information, it has asked the Commissioner if she wishes the further information to be disclosed. She considers that the council has a duty under regulation 5 EIR to make available environmental information on request. This process does not allow for an authority to drip feed information to a requester following consultation with the Commissioner.
59. The Commissioner has made every effort to achieve informal resolution in this case but this has been thwarted by the actions of the council which appeared either unwilling or unable to address the request in accordance with the EIR.
60. However, in light of this final submission from the Commissioner, she considers that on the balance of probabilities, the council has now disclosed all of the information it holds within the scope of the request.
61. Finally, the Commissioner is also satisfied that the council is entitled to redact the names of junior staff from the disclosures of documents made to the complainant on the basis of regulation 12(3) of the EIR. This provides that to the extent that requested information includes the personal data of which the applicant is not the data subject the personal data shall not be disclosed otherwise that in accordance with regulation 13. In order to determine whether a public authority may disclose personal data under the regulation 13 of EIR, the public authority must

determine whether such disclosure would contravene any of the data protection principles in the Data Protection Act 1998<sup>1</sup>.

62. The Council has argued that the disclosure of the junior staff names would breach the first data protection principle which states that:

*'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

- (a) at least one of the conditions in Schedule 2 is met, and  
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

63. The relevant condition in this case is the sixth condition in schedule 2 which states that:

*'The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject'.*

64. The council argued that individuals working for the council have a reasonable expectation of privacy and do not expect that the council would disclose their names or contact details in response to an information rights request, especially as they are relatively junior and not in public facing roles. It explained that its redaction policy states that officers' names and contact details under the level of Assistant Director will generally not be released. All of the posts redacted from the disclosures made to the complainant are under the Assistant Director level.

65. The Commissioner is satisfied that the names of junior staff which the council redacted clearly constitute their personal data. Furthermore, she acknowledges that it is accepted custom and practice for public authorities to redact the names of junior staff from any disclosures under EIR and in light of this disclosure of the redacted information would be against their reasonable expectations and thus breach the first data protection principle. Such information is therefore exempt from disclosure on the basis of regulation 12(3) of the EIR.

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<sup>1</sup> On 25 May 2018 the General Data Protection Regulation and Data Protection Act 2018 came into force. However, in line with the provisions contained within the Data Protection Act 2018 under FOIA for any request where a public authority has responded before 25 May 2018 the DPA 1998 applies.

## **Other matters**

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66. The Commissioner considers that Barnet has failed to handle this request, and the ensuing investigation, appropriately. Whilst she does not intend to detail each and every instance which has caused concern, she would point out the following: the council has created confusion by its use of a variety of reference numbers on correspondence; the timeliness of responses; sending a response to the complainant but addressing it to a different individual; failing to adhere to the time limits in the EIR and failing to adhere to the time limits for providing the Commissioner with submissions and responses. She notes too that the submissions and responses to the Commissioner's questions have often been far from comprehensive with the Commissioner requiring further clarification.
67. Whatever the reason for the poor handling of this case, the Commissioner would ask the council to ensure that in future it handles requests appropriately and responds to requests from her office for submissions in a timely and comprehensive matter. Any public authority should be able to respond to a request for a submission within the allotted time and should need only one opportunity to set out its position in relation to the handling of a request. Even having been afforded several opportunities to 'get it right' this has not happened in this case.

## Right of appeal

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68. 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 7395836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

69. 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.

70. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
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