

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

Date: 23 June 2022

Public Authority: London Borough of Lambeth
Address: Lambeth Town Hall
Brixton Hill
London
SW2 1RW

Decision (including any steps ordered)

1. The complainant has requested information on the procurement of a developer for a housing estate redevelopment. The London Borough of Lambeth ('the Council') disclosed some information but withheld tender documents under section 43 (Commercial interests) of FOIA. It also said that it did not hold some of the information described in the request.
2. During the Commissioner's investigation, the Council recognised that the request should have been dealt with under the EIR and it disclosed more information, with redactions for commercially sensitive information (regulation 12(5)(e)) and personal data (regulation 13). It maintained that it did not hold some of the information described in the request (regulation 12(4)(a)).
3. The complainant did not dispute the application of the non-disclosure exceptions, but he was dissatisfied that the Council had not responded to his request in this way at the outset.
4. The Commissioner's decision is that the Council breached regulation 5(2) of the EIR by failing to disclose information within 20 working days of receipt of the request. It also breached regulations 14(2) and 14(3) of the EIR, by failing to specify the EIR exceptions it was relying on when refusing the request, within 20 working days.
5. The Commissioner requires no steps as a result of this decision.

Request and response

6. On 4 January 2021, the complainant wrote to the Council and requested information in the following terms:

“Can you please provide me with the following information in relation to works carried out by Conran and Partners on both the Trinity Rise/Ropers Walk site and the Cressingham Gardens masterplan (post termination of Mott Macdonald's contract):

1. The procurement strategies.
 2. The tenders submitted by all tenderers. I am happy to receive these with commercially confidential information redacted.
 3. The dates on which all tenders were submitted.
 4. The tender opening pro-forma. Can you please indicate who from Homes for Lambeth witnessed the opening of the tenders.
 5. Any tender clarification correspondence or queries between Homes for Lambeth and the tenderers.
 6. The tender report recommending the appointment of Conran and partners.”
7. The Council responded on 16 February 2021, as follows:
1. It provided a weblink to Council policies and it also referred the complainant to the relevant section of a document that it attached.
 2. It said the information was exempt from disclosure under section 43 of FOIA.
 3. It referred the complainant to information in an attached document.
 4. It referred the complainant to information in an attached document.
 5. It said it did not hold the requested information.
 6. It referred the complainant to information in an attached document.
8. The complainant requested an internal review on 23 February 2021, regarding the first four points of the request:
1. He said the Council's response linked to a procurement **policy** and not a procurement **strategy**. He asked either that the strategy be provided or that the Council confirm that one did not exist.

2. He reiterated that tenders could be disclosed with exempt material redacted, and referred the Council to a previous request¹ in which the ICO had ordered disclosure of what he considered to be very similar information.
 3. He said that the Council's response did not state when the tenders were returned and he asked that this information be provided.
 4. He said that the Council's response did not provide the tender opening pro-forma or state who witnessed the opening of the tenders and he asked that this information be provided.
9. The Council responded on 22 March 2021 and said only that it considered its original response to the request had been correct.

Scope of the case

10. The complainant contacted the Commissioner on 9 April 2021 to complain about the way his request for information had been handled. He disagreed with the Council's handling of the first four points of his request, for the reasons stated in his internal review request.
11. During the Commissioner's investigation, the Council withdrew reliance on section 43 of FOIA and decided that the request should have been dealt with as a request for environmental information, under the EIR.
12. The Council confirmed that it did not hold the information requested at part (1) of the request. It disclosed the information requested at part (2), with redactions made for commercially sensitive information and personal data. It provided further information in respect of parts (3) and (4).
13. The complainant accepted the revised response, but he was dissatisfied that the Council had not responded to his request in this way at the outset.
14. The analysis below therefore considers the Council's compliance with regulations 5 (Duty to make available environmental information) and 14 (Refusal to disclose information) of the EIR.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2614107/fer0719128.pdf>

Reasons for decision

Is the information environmental information?

15. Environmental information must be considered for disclosure under the terms of the EIR. Regulation 2(1)(c) of the EIR defines 'environmental information' as any information on:

"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 [regulation 2(1)](a) and (b) as well as measures or activities designed to protect those elements."

16. The request in this case is for information relating to regeneration, planning and land use. The Commissioner is satisfied that the request is for information on a measure, or measures, likely to affect the state of soil and land (regulation 2(1)(a)). The Commissioner therefore considers that the request fell to be dealt with under the EIR.

Regulation 5 - Duty to make available environmental information on request

17. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that it should be made available "...as soon as possible and no later than 20 working days after the date of receipt of the request".

18. The complainant submitted the request on 4 January 2021. The Council disclosed some information on 16 February 2021. The remaining information was disclosed during the Commissioner's investigation, in May 2022.

19. By failing to disclose environmental within 20 working days of receipt of the request, the Council breached regulation 5(2) of the EIR.

Regulation 14 – Refusal to disclose information

20. Regulations 14(1) and (2) of the EIR state that where a public authority intends refusing a request for environmental information it must issue a refusal in writing, within 20 working days of receipt of the request. Regulation 14(3) states that the refusal should specify the reasons for non-disclosure, including any non-disclosure exception relied on.

21. The Council responded to the request more than 20 working days after it received the request, and it refused the request citing reasons under FOIA.

22. By failing to inform the complainant, within 20 working days, that it was relying on non-disclosure exceptions under the EIR to refuse parts of the request, the Council breached regulations 14(2) and 14(3) of the EIR.

Other matters

23. The Commissioner is sympathetic to the complainant's disappointment with the Council's handling of his request. The Commissioner recently advised the Council on the correct handling of a very similar request for information from the complainant. Had the Council followed the approach agreed in that case, this request might have been dealt with to the complainant's satisfaction, and his complaint informally resolved, in the early stages of the Commissioner's investigation. As it was, the Council only revised its approach in line with the similar request when prompted to by the Commissioner, some way into the investigation. The Commissioner further notes that during his investigation, the Council repeatedly failed to engage properly with the questions put to it and the actions it was asked to take.
24. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"² strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"³.

² <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

³ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF