

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 May 2023

Public Authority: London Borough of Islington
Address: Islington Town Hall
Upper Street
London
N1 2UD

Decision (including any steps ordered)

1. The complainant has requested a copy of a report supplied to the Council's Environmental Health Officer by a local business and copies of related communications. The London Borough of Islington ("the Council") initially responded under FOIA and stated that the requested information was not held, reversing its position at internal review and providing the complainant with a copy of the requested correspondence but stating that the remainder of the information was withheld under section 41(1)(information provided in confidence). During the course of the Commissioner's investigation the Council reconsidered the request under the EIR and amended its position to withhold the requested information under regulation 12(5)(d)(confidentiality of proceedings).
2. The Commissioner's decision is that the information falling within scope of the request does not engage regulation 12(5)(d).
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.

- Disclose the requested report to the complainant¹.
4. 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.

Request and response

5. On 2 January 2023, the complainant wrote to the Council and requested information in the following terms:

"A full copy of the report into the Extraction and Chilling Equipment of [BUSINESS NAME AND ADDRESS REDACTED] as supplied to [NAME REDACTED] the Senior Environmental Health Officer, Public Protection and Regulatory Services, Environmental Department, Environmental Pollution, Policy and Projects Team, Islington Council,

- Which was used as the basis of the decision for works informed to the above pub to be carried out as a result of the Licensing Committee Meeting [DATE REDACTED]

In addition and related to this, please provide a copy of the communications of these works from Islington Council to the Pub above and any return correspondence in this matter.

These documents will be used as evidence in an upcoming hearing before the Magistrate Court in Highbury."

6. The Council responded on 28 January 2023. It stated that the Council did not own the requested information and that it could be requested from the business. The Council did not address the complainant's request for copies of communications.
7. Following an internal review the Council wrote to the complainant on 15 February 2023. It provided the complainant with copies of the requested communications and apologised for omitting them in its original response, however stated that the report requested was exempt from disclosure under section 41(1) of FOIA, as the information had been

¹ The Commissioner accepts that the Council can redact personal data from the report as it is exempt on the basis of regulation 13(1)(personal data), ie the name of the individual who commissioned the report and the names of those involved in producing it.

provided to the Council in confidence with the agreement that it would not be shared. The Council stated that the report was owned by the local business.

Scope of the case

8. The complainant contacted the Commissioner on 22 February 2023 to complain about the way their request for information had been handled. The complainant explained that the contents of the report they were requesting covered the issue of noise emissions from the extracting and chilling equipment, and had been commissioned by the local business in order to comply with a licensing condition. The Commissioner therefore considers the appropriate legislation to consider the request under is the EIR and this is explained in greater detail from paragraph 12 below.
9. The Commissioner wrote to the Council asking it to reconsider the request under the EIR. On 17 March 2023 the Council provided the Commissioner and the complainant with a fresh response stating that it was withholding the requested report with reliance on regulation 12(5)(d) of the EIR.
10. The Commissioner considers the scope of the investigation to be whether the Council is entitled to rely on regulation 12(5)(d) to withhold the requested report.

Reasons for decision

Is the requested information environmental?

11. 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;

- (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
12. The Commissioner has viewed the requested report and believes that it is information on a factor, namely noise, affecting or likely to affect the elements of the environment as referred to in (a). For procedural reasons, he has therefore assessed this case under the EIR.
13. More particularly, the Commissioner considers that this information relates, not just to the elements of the environment, but to "emissions" affecting or likely to affect the elements of the environment.²
14. The Commissioner's guidance on regulation 12(9) explains that the term 'emission' in relation to the EIR generally covers the by-product of an activity or process that affects the elements of the environment. On review of the requested report, the Commissioner understands that it is about noise levels produced by a mechanical plant installed at a business premises and its impact on nearby noise sensitive properties. The Commissioner therefore considers that the requested report meets the definition of information about emissions, as detailed in his guidance.

Regulation 12(9)

15. Regulation 12(9) of the EIR states:

"(9) To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be

² [Information on emissions \(regulation 12 \(9\)\) \(Environmental Information Regulations\) | ICO](#)

entitled to refuse to disclose that information under an exception referred to in paragraphs 5(d) to (g).”

16. Regulation 12(9) gives special status to information relating to emissions. If the information relates to emissions a public authority cannot rely on regulation 12(5)(d) to withhold it.
17. The Commissioner notes that the requested information is a report into noise emissions and that the entire focus of the report, rather than particular sections, is about this matter. Consequently, the Commissioner is satisfied that regulation 12(5)(d) cannot be engaged to withhold any part of the document. The Council has not claimed an alternative exception under the EIR to withhold the information.

The Commissioner's decision

18. The Commissioner's decision is that the Council is not entitled to rely on regulation 12(5)(d) to withhold the requested information.
19. The Commissioner requires the Council to take the steps outlined at paragraph 3 above.

Other matters

20. The Commissioner would like to remind the Council of the importance of determining the correct access regime to apply when considering an information request.

Right of appeal

21. 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

22. 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.
23. 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
SK9 5AF