

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

Date: 16 April 2024

Public Authority: London Borough of Bexley
Address: Bexley Civic Offices
2 Watling Street
Bexleyheath
Kent
DA6 7AT

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Bexley (the Council) seeking a copy of a traffic management order. The Council responded under FOIA and confirmed that it held two orders falling within the scope of the request and said that there would be a charge of £34.00 for providing each one.
2. The Commissioner's decision is that request should have been considered under the EIR rather than FOIA. He has also found that under the EIR, the Council is not entitled to seek to levy any charge for disclosing the requested information because it has not published a schedule of charges under the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant under the EIR, that does not seek to levy a charge under regulation 8.
4. The public authority must take these steps within 30 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. The complainant submitted the following response to the Council on 16 October 2023:

"I would like to request a copy of the traffic management order for the loading restrictions on Hadlow Road, Sidcup. Please could this be provided in PDF format, with searchable / selectable text, and inclusive of all schedules.

Please note, this request is for the traffic order in its entirety, not only the part of the order relevant to the location mentioned above. Please do not provide any sort of "extract" that is anything less than the full document."

6. The Council responded on 17 October 2023 and explained that this request was being handled under FOIA. It went on to explain that:

"In accordance with the Council's Fees & Charges, there is a charge of £34.00 for a copy of traffic management orders. The requested information for Hadlow Road is covered within 2 orders, so a charge of £68.00 would apply. We would require payment in advance for these to be provided, and I am happy to raise an invoice to you for this sum, if you confirm that you are happy to receive this invoice and provide your address details."

7. The complainant contacted the Council on the same day and asked it to conduct an internal review of this decision. The complainant noted that given the subject matter of his request, this should be processed under the EIR rather than FOIA. The complainant also argued that the Council could not charge for environmental information simply because it levies commercial charges under other statutory schemes. The complainant cited the Commissioner's guidance in support of this point.¹ The complainant also noted that the Commissioner's guidance explained that a public authority could only charge for information if it had published

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/charging-for-information-under-the-eir/#legislation>

and made available to requesters a schedule of charges and when these would be applied in line with regulation 8(8) of the EIR.

8. Having failed to receive a response, the complainant contacted the Council on 15 November 2023 regarding the outstanding internal review. The Council acknowledged receipt of this email on 16 November 2023.
9. However, the Commissioner understands that to date the Council has not informed the complainant of the outcome of the internal review.

Scope of the case

10. The complainant contacted the Commissioner on 15 December 2023 about the Council's handling of his request.

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. Although he has not seen the information falling within the scope of the request, namely copies of two traffic management orders, the Commissioner has previously issued decision notices where he has found that traffic management orders are measures affecting the elements of the environment and that such information falls under regulation 2(1)(c) of the EIR.²

Regulation 8 – charging

13. Regulation 8(1) of the EIR provides that a public authority may charge a requester for making environmental information available.
14. However, this is subject to regulation 8(8) of the EIR. This regulation provides that the public authority shall publish and make available to requesters a schedule of its charges and information on the circumstances in which a charge may be made or waived.
15. The Commissioner's guidance³ on charging for making environmental information available explains:
- "You can charge for environmental information only if you publish a schedule of charges and details of when you may or may not charge".⁴
16. The Commissioner recently issued a decision notice to the Council in which the requester in that case also sought a copy of a traffic management order.⁵ In that case the Council also responded under FOIA and explained that it could comply with the request but that a charge of

² For example see paragraphs 12-14 of decision notice IC-228374-W5Z4, <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4025244/ic-228374-w5z4.pdf>

³ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/guide-to-the-environmental-information-regulations/receiving-a-request/#what-should-we-do-when-we-receive-a-request-for-environmental-information-15>

⁴ This position is supported by the Tribunal's findings at paragraph 119 of Leeds City Council v Information Commissioner (EA/2012/0020 & 0021) https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i982/20130322_Decision_inc%20PTA%20Ruling_EA20120020-21.pdf

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4028097/ic-260963-c0r0.pdf>

£16.50 was required in line with its 'fees and charges schedules' regarding traffic management order booklets.

17. In that case the Commissioner established that the Council did not have a schedule of charges under the EIR. This was on the basis of correspondence provided to him by the requester which they had exchanged with the Council. More specifically, the requester had submitted an information request to the Council seeking a copy of its schedule of charges for the purposes of the EIR. The Council responded on 20 October 2023 confirming that it did not have a schedule of such charges.
18. In view of this, the Commissioner concluded in the previous decision notice that as the Council did not have a schedule of charges, it could not seek to levy any charge for making the requested information available under the EIR.⁶
19. The Commissioner sees no basis to reach a different finding in this present case. The complainant submitted his request on 16 October 2023. By the Council's own admission on 20 October 2023, it did not have in place a schedule of charges for purposes of the EIR, a clear prerequisite as per regulation 8(8) of being able to charge for information under that legislation.
20. Therefore, in this case the Commissioner has also concluded that the Council was not entitled to levy any charge for making the requested information available.

⁶ Paragraphs 31 and 32.

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.

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF