

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 2 May 2024

Public Authority: Royal Borough of Greenwich
Address: The Woolwich Centre
35 Wellington Street
Woolwich
SE18 6HQ

Decision (including any steps ordered)

1. The complainant has requested information from the Royal Borough of Greenwich (the Council) in relation to its communications with the emergency services regarding its neighbourhood management project. The Council advised that it did not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Council did not hold information at the time of the request and regulation 12(4)(a) of the EIR is applicable.
3. The Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

4. On 28 August 2023, the complainant wrote to the Council in the following terms:

"Please provide me with information regarding your liaison with emergency services regarding the West and East Greenwich neighbourhood management project currently at stage two of your consultation exercise.

In your response, please provide:

Copies of all correspondence to emergency services, namely the London Fire Brigade, London Ambulance and Metropolitan Police in relation to the West and East Greenwich neighbourhood management project

Copies of all correspondence from emergency services, namely the London Fire Brigade, London Ambulance and Metropolitan Police in relation to the West and East Greenwich neighbourhood management project

Copies of any minutes from meetings held with any emergency services representatives in relation to the West and East Greenwich neighbourhood management project.

Copies of any internal discussions via email, memo or notes regarding telephone calls or online meetings with emergency services representatives in relation to the West and East Greenwich neighbourhood management project."

5. The Council responded on 9 October 2023 and stated:

"We continue to engage with Emergency Services (London Fire Brigade, London Ambulance and Metropolitan Police) in relation to the West and East Greenwich Neighbourhood Management Project.

At present we do not hold this data."

6. The complainant requested an internal review on 9 October 2023 and reiterated their request specifically asking why information was not held if the Council, as stated:

"continue to engage with Emergency Services."

7. The Council responded on 6 November 2023 and upheld its original response.

Reasons for decision

8. This reasoning covers whether the Council is correct when it says that it did not hold any information at the time of the request.

The complainant's position

9. The complainant considers the Council should hold information within the scope of their request or if information was not held, then it should confirm no engagement had taken place prior to 17 October 2023.
10. The complainant argued that: "If you have not engaged with emergency services, please state this in your response as part of the internal review process. If you have engaged with emergency services, please state when and provide the information as previously requested."
11. As part of their submissions to the Commissioner, the complainant stated they had received a response from the London Fire Brigade as part of a separate FOI request pertaining to the same subject. This showed that the council first wrote to the emergency services on 17 October 2023. Consequently, they queried how the council could continue to liaise with emergency services on 6th October if they hadn't even started by that date?

The Council's position

12. In its submissions to the Commissioner, the Council maintained its position that it did not hold any information at the time of the request. It explained that as part of its 'Business as usual' activities, the Council liaises with emergency services on a regular basis in order to ensure that they were all kept up-to-date with regard to the direction being considered for the Neighbourhood Management Project(s), and to help prevent any relevant information being missed as part of the formal consultation process, thus providing the opportunity to raise any concerns and help to address these at the earliest possible opportunity within the process.
13. The Council further explained that the contact with emergency services was on an ongoing ad hoc basis and not held as formal meetings or conversations, therefore minutes and notes were not taken/required at that stage. Only when the formal approaches and processes are being engaged, with meetings arranged and attended, were official minutes and notes taken to record the relevant information as required.
14. It was also explained that the neighbourhood project(s) have been ongoing since 2020 and although the name and direction may have

changed over time, its focus remained the same. The Council believe this may have added to confusion around information disclosed to the complainant and misunderstandings during the Commissioner's investigation.

15. The Council also acknowledged that its use of the phrase 'continue to engage' was potentially misleading in these circumstances.

The Commissioner's position

16. The Commissioner notes that the complainant considers the Council should hold information within the scope of the request or if not, it should be able to explain why it did not hold any information. However, it is not within the Commissioner's remit to determine what information should be held, but only to consider if a public authority has complied with the legislation regarding the information it does hold.
17. It is clear to the Commissioner that, at the time of the request, the Council would not hold any information as the formal engagement with the emergency services had not started.
18. He also considers that when a Council is going about its day-to-day business, there would be liaisons with numerous organisations including but not limited to the emergency services. These interactions would not all be deemed as formal, needing minutes and/or notes to be taken and therefore there would be no requirement to hold information for the purposes of FOIA.
19. The Commissioner is not required to prove beyond doubt that the Council do or do not hold information but can only make a decision based on the civil standard of the "balance of probabilities" that information within scope of the request is more likely than not held.
20. Therefore, the Commissioner's decision is that on the balance of probabilities, the Council did not hold any information in scope at the time of the request and regulation 12(4)(a) is applicable.

Other matters

21. The Council's responses were unclear and caused confusion for both the complainant and the Commissioner during his investigation. It also raised suspicions with the complainant that the Council, at best were not forthcoming with information and potentially at worst not being truthful.

22. The Commissioner considers that if the Council had been more open and direct from the start, the complainant may have understood at an early stage why the Council did not hold the information requested.
23. Although FOIA does not expect explanations to be provided, there is nothing to prevent it in appropriate circumstances. This is just such a case where if the Council response had stated no information was held because formal consultation with the emergency services had not yet started, it is highly unlikely the case would have escalated further.

Right of appeal

24. 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

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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