

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

Date: 27 September 2024

Public Authority: London Borough of Southwark
Address: PO Box 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant requested from London Borough of Southwark (the Council) information relating to Snowfields Quarter Phase 1. The Council stated recorded information relating to the request is not held.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold recorded information within the scope of the request. He is satisfied the Council complied with its duty under regulation 5(1) of the EIR by virtue of the exception at regulation 12(4)(a) (information not held). Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

3. On 17 February 2024, the complainant wrote to the Council and requested information in the following terms:

"Please provide all records of any discussions with, or advice provided to, the landowner [name redacted] or their agents [name redacted], in relation to the proposals by [name redacted] architects for Snowfields Quarter Phase 1, during 2021."

4. On 13 March 2024 the Council responded under the EIR. It said it has no recorded information relating to the request, but said it could provide him with the Early Engagement Summary (EES).
5. On the same day, the complainant asked the Council to reconsider its response. He also asked for the EES and the pre-application submission.
6. On 15 March 2024 the Council apologised for the omission and provided the complainant with the related document - the EES. It also confirmed it does not hold any recorded information to cover his specific request for "any discussions with, or advice provided to, the landowner...". The Council explained that the pre-app submission is not a discussion or advice, as they are written records which the Council does not hold.
7. On 1 April 2024 the complainant asked for an internal review.
8. On 23 May 2024 the Council provided its review response and maintained its original position.

Reasons for decision

9. This reasoning covers why the Commissioner finds that the Council had complied with its obligations under regulation 5(1) of the EIR.

Is the requested information environmental?

10. As the information relates to planning proposals, the Commissioner believes that the requested information is likely to be information on a measure, affecting the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 5(1) – information held

11. Where there is a dispute over the extent of the information a public authority holds, the Commissioner must decide whether it is more likely than not that the public authority has identified everything it holds.
12. The complainant informed the Commissioner that he did not receive any records of discussions or advice provided. The complainant argued that "on the balance of probabilities (given the need for the Council to keep records of these discussions for its own purposes) it seems unlikely that these records do not exist."

13. The complainant further argued "given that one of the documents provided (the Early Engagement Strategy) related to a separate set of discussions with different parties a number of years later, it is possible that there has been some confusion within the Council about the information requested that has not been identified by the internal review."
14. In response to the Commissioner's investigation, the Council explained the searches it carried out upon receipt of the complainant's request. It said planning officers checked the two pre-application enquiry records recorded at that time.
15. With regard to any discussions "minutes or notes in our back office system" the Council confirmed there were no records or advice given to the landowner or their agent referred to in the complainant's request. Further checks and searches had been conducted, and the Council said this also produced no results for any information that falls within scope of the request.
16. The Council said searches were conducted on the planning department's back office system (Idox Uniform database) and their document management system where advice letters are stored. Shared drives where information can also be saved, had been checked. It added, all relevant key staff were consulted but resulted in nil return.
17. The Council confirmed that further checks and searches were carried out on receipt of the request using the search term 'Snowsfields'. Also, on the records held under pre-application references, but this resulted in nil return.
18. The Council said the information requested would have been held as electronic records if it was held. With regard to the question whether any recorded information was ever held relevant to the scope of the request but deleted/destroyed, the Council confirmed no information was held. It also said, as no information is held, it cannot advise on the retention period but its retention schedule states records relating to planning applications, should be held for 12 years (from the date of final decision).
19. The Council stated the only information it is able to provide in line with its duty under regulation 9 of the EIR, was the EES. This, it said, was sent to the complainant in March 2024.

The Commissioner's position

20. It is not the Commissioner's position to determine what information ought to be held by the Council in this matter, but rather what is held, and whether appropriate searches have been conducted.

21. The Commissioner considered the searches undertaken by the Council and the search term used. By checking the planning department's back office system, its document management system and shared drives where information can be stored/saved, the Commissioner is satisfied the Council conducted appropriate searches for the requested information.
22. In conclusion, the Commissioner determined that on the balance of probabilities, the Council does not hold information within the scope of the request. The Council has therefore complied with regulation 5(1) of the EIR.

Right of appeal

23. 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

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanna Marshall
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