

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 25 September 2024

**Public Authority:** Lewisham Homes Limited  
**Address:** Old Town Hall  
Catford Road  
Catford  
London  
SE6 4RU

#### **Decision (including any steps ordered)**

---

1. The complainant submitted a request to Lewisham Homes Limited (Lewisham Homes) for information relating to fly-tipping.
2. The Commissioner's decision is that the complainant's request had more than one objective reading and therefore Lewisham Homes was under a duty to clarify the scope of the request. The Commissioner therefore finds that Lewisham Homes breached regulation 9 of the EIR by not providing adequate advice and assistance.
3. The Commissioner does not require any steps as a result of this decision notice.

#### **Background**

---

4. The complainant originally submitted their request to Lewisham Homes, who, at the time, were an arm's length management organisation, and their own public authority for FOIA purposes.
5. However, in October 2023, Lewisham Homes came back under the control of London Borough of Lewisham (the council) and no longer exists as a separate public authority.

## Request and response

---

6. On 18 August 2023, the complainant wrote to Lewisham Homes and requested information in the following terms. For ease of reference, the Commissioner has numbered the parts of the request:

“1. Under the Freedom of Information Act I respectfully request all data relating to reports of fly-tipping (or littering/rubbish disposal) across the Crossfields Estate in Deptford, that have been provided to Lewisham Homes by residents or others from 2010 to the present date.

2. Please also provide details of all recorded action taken by Lewisham Homes and/or Lewisham Council in response to reports as above for the same time period - including any instances of identification of those responsible and what sanctions were taken (such as fines or prosecutions).

3. Please provide details of all recorded measures taken by Lewisham Homes and/or Lewisham Council to eliminate or reduce levels of fly-tipping taking place on Crossfields Estate from 2010 to the present date.”

7. On 14 September 2023, Lewisham Homes provided its response in which it provided some data related to fly tipping.
8. Upon receiving this response, the complainant asked Lewisham Homes to conduct an internal review on 22 September 2023. On 16 November 2023, the council provided an internal review response, on behalf of Lewisham Homes, and answered the complainant's queries.

## Scope of the case

---

9. The complainant contacted the Commissioner on 26 January 2024 to complain about the way their request for information had been handled.
10. After contact by the Commissioner, the council provided a revised response on 28 May 2024, based on information held by Lewisham Homes at the time of the request.
11. Upon receiving this revised response, the complainant expressed concern that they had not received all the information requested, as they had not received the information the council held, in relation to parts two and three of the request.

12. The Commissioner then approached the council regarding the complainant's concern, and the council maintained that the information request was submitted to Lewisham Homes and not to the council.
13. The complainant informed the Commissioner that they intend to continue in their application for the council to be "compelled to provide the requested information."
14. The Commissioner therefore considers that the scope of his investigation is to determine whether the scope of the request should have been clarified, and therefore whether Lewisham Homes should have provided advice and assistance.

## Reasons for decision

---

### Is the requested information environmental?

15. 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).

16. As the request is for information relating to fly tipping, the Commissioner believes that the requested information is likely to be information on measures as defined in regulation 2(1)(b). For procedural reasons, he has therefore assessed this case under the EIR.

### **Regulation 9-Advice and assistance**

17. Regulation 9 of the EIR states:

- (1) A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
- (2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall-
  - (a) Ask the applicant as soon as possible and in any event no later than 20 working days after the date of the receipt of the request, to provide more particulars in relation to the request; and
  - (b) Assist the applicant in providing those particulars.
- (3) Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.

18. The EIR Code of Practice<sup>1</sup> covers various options for advice and assistance.

19. The complainant's main concern is that they had not been provided with the information held by the council, for parts two and three of the request.

---

<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/2013835/eir-regulation-16-code-of-practice.pdf>

20. In response to this, the council maintains that the request was never submitted to them, and that it was the responsibility of Lewisham Homes to clarify that "any information that may have been held by Lewisham Council at the time of the request was not in scope."
21. In the above-mentioned Code of Practice, it states that if the authority, to whom the initial request was made, believes that some or all of the information is held by another public authority, then the authority should consider what is the most helpful way of assisting the applicant with their request.
22. The Code of Practice further explains that in most cases, this will either be through
  - Contacting the applicant and informing them that the information requested may be held by another public authority;
  - Suggesting that the applicant re-applies to the authority that is believed to hold the information;
  - Providing them with contact details for that authority;
  - If the public authority receiving the request and the authority holding the information are perceived as being linked, explaining to the applicant the difference between the two authorities.
23. In the circumstances of this case, the Commissioner acknowledges that in parts two and three of the request, the use of the words 'and/or' would indicate that the complainant was seeking information also held by the council.
24. Therefore, he considers that it would have been reasonable for Lewisham Homes to clarify the scope of the request with the complainant, and to explain that some of the information requested was held by the council.
25. Doing so at the time of the request, would have allowed the complainant to submit a request to the council for any information they hold, within scope of the request, and avoided the delays the complainant has experienced.
26. Although the Commissioner considers that this was a breach of the duty to advise and assist under regulation 9, he does not consider it proportionate to order a remedial step, as the public authority no longer exists. The complainant has now been alerted to the fact that they can make a fresh request to the council, for any information they hold within the scope of the request, should they wish to do so.

## **Right of appeal**

---

27. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**