

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

Decision notice

Date: 12 November 2024

Public Authority: London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant requested information relating to a planning application. London Borough of Croydon (the Council) provided information falling within the scope of the request but the complainant argued that it would hold additional recorded information.
2. The Commissioner has investigated whether the Council holds further information within the scope of the request (regulation 5 (duty to make available environmental information on request) of the EIR).
3. The Commissioner's decision is that the Council does not hold further information within the scope of the request and therefore complied with regulation 5(1) of the EIR. However, he finds a procedural breach of regulation 5(2).
4. The Commissioner requires no steps as a result of this decision.

Request and response

5. On 14 February 2024, the complainant wrote to the Council and requested information under the EIR. A detailed preamble provided context to the request:

“Having been consulted on the access proposals submitted under planning application [reference redacted], on [date redacted] 'Highways Development' responded as follows:

“[...]”.

Residents are concerned that even if these proposals may now be considered 'viable', that does NOT guarantee that they would be SAFE [for all highway users], if/when implemented].

- Please provide copies of any information relating to those discussions (between the Highways Department and 'planners') which resulted in the apparent [and very important] change of opinion.

- Please provide a copy of any Road Safety Audit (any stage) covering the arrangements that were 'approved' by the Planning Committee on [date redacted]”.

6. The Council provided its substantive response on 15 April 2024. It provided information to the complainant, with redactions applied. It cited Regulation 13 (personal information) in respect of those redactions.
7. The complainant did not dispute the application of Regulation 13 to the information that was provided. However, they did express concern about the amount of information that was provided. They also told the Council:

“The copy of the Highways Response on [reference redacted] is incomplete.

Please provide a FULL copy of that Response. [If any officer name is redacted or removed, please explain why that is]”.
8. Following an internal review of the matters raised by the complainant, the Council wrote to the complainant on 15 May 2024.
9. With respect to the complainant’s concern that some of the information provided was incomplete, the Council confirmed that the copy of the Highways Response it had disclosed was complete.

Scope of the case

10. The complainant contacted the Commissioner to complain about the handling of their request for information. Their complaint comprised three aspects, namely personal data, incomplete information and missing information.

11. With respect to personal data, they told the Commissioner:

"Since the latest information relies on 'hearsay', provided [by] the Highway Development Control Officer, I believe that the NAME of that officer should have been included. This officer's role would NOT be 'junior' and WOULD be public-facing".

12. The Commissioner is aware that the Council told the complainant:

"On receiving your request for an Internal Review, I contacted the Highway Development Control Manager...".

13. In light of the above, the Commissioner has interpreted the personal data aspect of the complaint to be that the complainant considers that the name of the officer who was contacted regarding the request for internal review should be provided.

14. As the officer was contacted after the request was responded to, the Commissioner considers that any such recorded information that may be held by the Council falls outside the scope of the request for information dated 14 February 2024.

15. With respect to the other aspects of their complaint, the complainant told the Commissioner:

"I cannot believe that page 4 of the document provided is the 'complete' Response from Highways Development on planning application [reference redacted]".

16. They told the Commissioner that other such Responses contained more information.

17. The complainant also considered that the Council should hold information in relation to the discussions between the Highways Department and 'planners'.

18. The analysis below considers whether the Council complied with its duty under regulation 5 of the EIR.

Reasons for decision

Regulation 5 – Duty to make available environmental information on request

19. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."

20. Regulation 5(2) of the EIR states that:

“Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.”

21. In cases such as this, where there is some dispute as to the amount of information falling within the scope of the request, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

22. In other words, in order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority holds any further information which falls within the scope of the request.

23. In applying this test, the Commissioner will consider the results of the searches undertaken by the public authority and/or other explanations offered as to why no further information is held.

24. Mindful of the complainant's concerns about missing and incomplete information, the Commissioner asked the Council to respond to a number of questions regarding whether it had located all the relevant information falling within the scope of the request.

25. For example, he asked the Council:

- With regard to the Highways Response on [redacted], what searches have been carried out to check no further information was held within the scope of the request and why would these searches have been likely to retrieve any relevant information?
- With regard to discussions between the Highways Department and planners, what searches have been carried out to check no information was held within the scope of the request and why would these searches have been likely to retrieve any relevant information?
- Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?

26. The Commissioner also asked the Council to address the complainant's concern that the Highways Response in this case appears to contain fewer sections than other Highways Responses.

27. Responding to the Commissioner, the Council explained that it had conducted thorough searches on its SharePoint project folders - where all planning responses are filed - and carried out a full Outlook email search.

28. With respect to discussions between Highways and the Planning department, it explained:

“These discussions were verbal discussions in the office environment between Highways and planning department and were not recorded which happens at various times within any working day to assist and gain a better understanding of each project/application”.

29. With regard to the observation that the Council appears to hold more recorded information on some Highways Responses than others, the Council responded:

“This is solely depended [sic] on the size, type and number of applications per project”.

30. The Council also confirmed that no recorded information, relevant to the scope of the complainant’s request, had been deleted or destroyed.

31. The Commissioner recognises that the complainant believes that further information should be held and should have been disclosed.

32. However, in view of the Council’s responses, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold further recorded information within the scope of the request.

Procedural matters

33. The Commissioner notes that while the complainant submitted their request on 14 February 2024, the Council did not provide its substantive response until 15 April 2024.

34. Accordingly, the Commissioner has recorded a breach of regulation 5(2) of the EIR.

Right of appeal

35. 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

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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