

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 4 October 2021

Public Authority: London Borough of Bromley
Address: Civic Centre
Stockwell Close
Bromley
BR1 3UH

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

she may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference IC-49042-K9K0, for a decision whether a request for information made by the complainant to the London Borough of Bromley (the Council) on 24 November 2019, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. The complainant submitted the following request to the Council on 24 November 2019:

'I would be grateful if you would provide full details of the following:

- 1. the restrictions on demolition and redevelopment within Conservation Areas (CA) within Bromley with particular reference to the Elm Road CA in Beckenham;*
- 2. the manner in which the Elm Road CA status has been taken into account in the proposals for the relocation of Beckenham Library including the demolition of the existing purpose built facility submitted to the Renewal, Recreation and Housing Policy Development and Scrutiny Committee on 5 November 2019 (the minutes of the meeting indicate that an assurance that this had been done was given to Councillor Ian Dunn by the Assistant Director Culture and Regeneration (ADC&G));*
- 3. the discussions that have taken place with the Planning Department regarding the proposals for the scheme (again the minutes contain an assurance from the ADC&G that these were held); and*
- 4. how the land on which the current Beckenham Library sits came into the possession of the Council and any covenants or other restrictions which affect its use...*

...The start date will be dependent on the specific point: i.e. from 2005 for matters relating to Elm Road CA, from the date on which the current proposals in respect of the Beckenham Library demolition/redevelopment were instigated and as required for historical bequests/covenants. In all cases the end date of the range should be regarded as 3 November 2019'.

3. The Council provided the complainant with a response on 11 March 2020. In response to question 1 the Council explained that the restriction on demolition in Conservation Areas is not a local matter and is governed by the Planning (Listed Buildings and Conservation Areas) Act 1990. In response to question 3, the Council explained that correspondence which fell within the scope of this question was exempt from disclosure on the basis of regulation 12(4)(e) (internal communications) of the Environmental Information Regulations (EIR). The Council explained that it was not able to respond to questions 2 and 4 as it was awaiting a reply from the Culture and Regeneration department.

4. The complainant contacted the Council on 21 March 2020 and asked it to conduct an internal review of his response. He explained that he was not satisfied with the Council's response to questions 1 and 3 and that he was unhappy with the Council's failure to provide him with any response to questions 2 and 4.
5. The Council informed him of the outcome of the internal review on 15 April 2020. In relation to question 1, the Council explained that this was not considered to be a matter that is covered under the FOIA, but provided the complainant with an explanation as to how proposals for demolition or redevelopment within Conservation Areas are assessed through the planning process. It also provided him with a copy of the Supplementary Planning Guidance produced by the Council in relation to the Elm Road Conservation Area. In relation to question 2, the Council explained that this question could be answered by reviewing the documents to which it provided the complainant with links. In relation to question 3, the Council upheld the decision to withhold the information falling within the scope of this part of the request on the basis of regulation 12(4)(e) of the EIR. Finally, in relation to question 4 the Council directed the complainant to documents on its website concerning land ownership.
6. The complainant contacted the Commissioner on 3 August 2020 in order to complain about the Council's handling of his request. The Commissioner established with the complainant that his grounds of complaint were as follows:
 - He argued that the Council had not fully responded to questions 1 and 2 of his request.
 - He also disagreed with the Council's reliance on regulation 12(4)(e) of the EIR to withhold the information falling within the scope of question 3.¹
7. The Commissioner contacted the Council on 11 May 2021 and asked it to respond to a number of points so that she could consider this complaint. The Commissioner asked for a response to her letter within 20 working days.
8. The Council acknowledged receipt of the letter on 12 May 2021 and explained that, subject to any clarification being needed, the Commissioner would receive a response within 20 working days.
9. Having not received any further communication from the Council, the Commissioner contacted it on 24 June and on 14 July 2021 and asked it to update her on its progress in responding to her letter.

¹ The complainant did not seek to challenge the Council's response to question 4.

10. The Council responded on 20 July 2021 and apologised for the delay in replying. The Council explained that the Commissioner's letter of 11 May 2021 was still being looked into by the relevant department and the Council would be back in touch as soon as possible.
11. The Council eventually provided the Commissioner with a response to her letter of 11 May 2021 on 2 August 2021.
12. Having considered this response, the Commissioner contacted the Council on 5 August 2021 with a number of follow up queries. The Commissioner asked for a response within 10 working days.
13. Having failed to receive a response, the Commissioner contacted the Council on 1 September, 14 September and 21 September 2021 in order to chase up a response. The Commissioner has not received any response to these communications, nor indeed any response to her letter of 5 August 2021.

Information required

14. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that the Council shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information:
 - A full and complete response to the questions set out in her letter to the Council of 5 August 2021.²

Failure to comply

15. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

² A copy of this letter is attached to this notice.

Right of appeal

16. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can 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

17. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

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