

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 13 February 2025

Public Authority: London Borough of Brent
Address: Brent Civic Centre
Engineers Way
Wembley
HA9 0FJ

Decision (including any steps ordered)

1. The complainant requested information held by the London Borough of Brent (the council) about the management of traffic flow within a certain area.
2. The council considered the request under the Freedom of Information Act 2000 (FOIA), and provided the complainant with some information in response.
3. The Commissioner considers that the EIR is the correct information access regime in this instance.
4. The Commissioner has found that, on the balance of probabilities, the council did not provide all of the information held falling within scope of the complainant's request. Where information was provided, this was also not done within the statutory 20 working days.
5. Furthermore, the Commissioner considers that the council has failed to identify and respond to a new request for information set out within the complainant's internal review request.
6. The Commissioner has therefore found a breach of regulation 5(1) and regulation 5(2) of the EIR.
7. As the council failed to conduct an internal review within 40 working days, the Commissioner has also found a breach of regulation 11(4) of the EIR.

8. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response under the EIR to the complainant's request of 23 April 2024, either providing all of the information held, or issuing a valid refusal notice. This should take into account the clarification of the request provided by the complainant in their internal review request.
 - Consider the relevant parts of the complainant's internal review request that form a new request for information, and either issue a response that complies with regulation 5(1) of the EIR, or issue a valid refusal notice.
9. The council must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

10. On 23 April 2024, the complainant sent correspondence to the council which raised concerns about decisions reached about, and plans for, traffic flow around the area of Chamberlayne Road. The Commissioner has set out part of the complainant's correspondence below, which he considers to contain requests for information:

"Why is there such a reluctance to say who made the first and second decisions and provide the recorded reasons for this decision? If emergency powers were used for instance, this would require a demonstration that there is an urgent necessity for such measures, based on safety for example, which we can't see any evidence based justification for if there's no transparency. Please provide this information to us.

In addition, in order for this decision to withstand scrutiny whoever made the decision should have considered the impacts on other roads in the ward, not just the ones in Queens Park. A ward of two halves can't work for all residents, especially those that live in the neglected side of the ward which is now being turned into a bus corridor. What was actually considered leading up to the decision? It seems that the only factors taken into account have been the impacts on residents in the roads off the Queen's Park area, and no impact on residents in the wider ward.

We'd also like to see the traffic flow evidence to justify this second decision as well, as this hasn't been shared. In fact nothing has been shared with us, hence all our questions.

Also, what's been the cost of putting up all the road closure signs and why has this cost been incurred when the outcome could be that they will all have to be removed and thrown into the skip?

Finally, on this scheme, just a further point of clarification; the scope of the consultation is flawed. We have consistently raised this point and said that for the consultation to be meaningful to address concerns for the other forgotten side of the ward, i.e. Kensal Rise, the length of Chamberlayne Road should be included given that Chamberlayne Road has the worst traffic congestion and crashes in the whole ward. Consultants have clearly said that because only a small portion of Chamberlayne Road is in the scheme scope they will not consider or propose measures to reduce traffic on Chamberlayne Road.

Turning now to the key points we've raised about sorting out the chronic traffic issues on Chamberlayne Road, I'm disappointed to see you haven't responded to the two other key questions we raise.

What more are Kensal Rise area residents supposed to do to gain equal treatment with Queen's Park area residents? We have made representations over a number of years calling for action to stop drivers using our road as a through route, reduce the volume of buses, make the road safe for pedestrians and cyclists, reduce air and noise pollution (so we've presented quite a few more compelling reasons to implement traffic calming measures compared to suggesting that a rat-run shouldn't be tolerated). We recently submitted a petition to Cabinet signed by many, many people, so can you confirm i) that you find our arguments for traffic calming measures compelling and ii) what collective action you will be taking to deal with traffic issues on Chamberlayne Road, and iii) what actions will be taken to make Kensal Rise a healthy neighbourhood and so have parity with Queen's Park."

11. On 14 June 2024, the council provided its response, confirming that the complainant's correspondence had been dealt with as a request under FOIA. The council said that it considered that parts of the correspondence set out opinions and comments as opposed to a request for information, and that it was providing the information that had been requested that was held.
12. The council provided the complainant with an explanation of a consultation which took place in February 2023, the recommendations that followed, and the traffic scheme that was subsequently implemented in October 2023. The council also provided a map, and

further explanations of additional recommendations made in relation to the potential impact of the scheme on the surrounding area, and further actions that were subsequently taken in relation to the traffic flow and management.

13. The council said that, in response to the "request for traffic flow results", it was providing copies of traffic surveys carried out in November 2023, which it advised were used to assess the volume of traffic on the restricted streets.
14. The council also said that, in response to the "request for the costs", expenditure was in the region of £30,000 and this covered the costs of "signs, line marking works, public consultation and fees."
15. On 17 June 2024, the complainant requested an internal review. They said that the council had not provided the information that they had asked for, arguing that it had provided a summary rather than copies of the recorded information held. The complainant went on to set out further details of the information that they required.
16. The Commissioner has extracted the relevant details from the complainant's internal review request, and separated them into nine separate parts for ease of reference as follows:

Part 1: "To clarify. I would like you to provide me with the briefing documents, emails, correspondence internal and external between officers and councillors and residents, agendas, records of meetings and so on relating to decisions."

Part 2: "You haven't provided me with the date of the decisions or why made them either. Please provide this information."

Part 3: "You also say:

"It was also recommended at the time, that officers develop plans for mitigation measures to address concerns with potential emerging traffic issues affecting other streets off of Kingswood Avenue including Brookfield Avenue and if necessary, implement these quickly."

I'm not clear as to why you haven't provided me with the records of these plans and all the papers that record these decisions? Please provide them."

Part 4: "Also as highlighted below, can you provide me with all records, documents, and correspondence etc, that the Council holds in relation to these questions:

- i) That you find our arguments for traffic calming measures compelling and
- ii) What collective action you will be taking to deal with traffic issues on Chamberlayne Road, and
- iii) What actions will be taken to make Kensal Rise a healthy neighbourhood and so have parity with Queen's Park."

Part 5: "You should be providing me with all records that the Council holds about action you will or will not take about traffic issues on Chamberlayne Road and the traffic calming measures the KRRRA submitted, and what action you are or are not taking to make Kensal Rise a healthy neighbourhood. If you have records saying that the Council or Councillors do not want to take action in relation to Chamberlayne Road, then you are required to disclose them to me. For clarification, these records should be provided from February 2023 to 23 April 2024."

Part 6: "The traffic data doesn't include any dates as to when the survey was undertaken or by whom. Can you clarify who carried this out and when?"

Part 7: "Paragraph 2.3 of the report you attach says "Following further discussions with ward councillors and officers' assessments of traffic surveys...." Can you therefore provide me with records of these further discussions as these are within scope of my request."

Part 8: "Paragraph 3.21 states that:

"Ward Councillors – supported the proposals."

Can you please provide me with the information which sets this out, i.e., emails, written records setting out the ward councillors' support."

Part 9: "Can you provide me with the reasoning as to why the equalities impact analysis didn't consider any impacts on any other parts of the ward except these particular streets that were to be closed."

17. As far as the Commissioner is aware, the council did not respond to the complainant's request for an internal review.

Scope of the case

18. The complainant contacted the Commissioner after the council failed to respond to their internal review request. They have said that the council

has failed to provide the information that they had requested, and that some of the information that it did provide was not what they asked for.

19. The Commissioner will decide:

- Whether the FOIA, or the EIR, is the correct information access regime.
- Whether, on the balance of probabilities, the council holds further information falling within scope of the complainant's request.
- Whether the council should have considered any part of the complainant's internal review request as a new request for information.
- Whether there have been any procedural breaches as a result of any delays in the council's responses to the complainant's request.

Reasons for decision

Is the requested information environmental?

20. The council advised the complainant that it had considered their correspondence as a request under FOIA.
21. Regulation 2(1) of the EIR defines environmental information as, among others, 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) and (b) as well as measures or activities designed to protect those elements."

22. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
23. The Commissioner has considered the nature of the information sought by the complainant, which relates to road closures and activities relating to the management and reduction of traffic flow in certain areas. In the Commissioner's opinion the information is likely to be information about measures and activities that will affect or are likely to affect elements and factors set out in regulation 2(1)(a) and 2(1)(b) above.
24. The Commissioner therefore considers that the EIR is the correct information access regime in this case, and that the council was not correct to have considered the request under FOIA.

Regulation 5 – duty to make environmental information available on request

25. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available upon request. Under regulation 5(2), authorities should do this within 20 working days.
26. In order to be able to comply with regulation 5(1) of the EIR, it is imperative for the public authority to establish a single objective reading of the request; this will then allow the public authority to identify what information has been requested, and provide an appropriate response. If any part of the request is not clear, the public authority should seek further clarification from the requester.
27. Having had regard to the full content of the complainant's correspondence of 23 April 2024, the Commissioner has had some difficulty identifying with any certainty all the relevant parts which the complainant intended to be requests for specific recorded information. As a result, in the circumstances of this case, the Commissioner considers that it would have been appropriate for the council to have contacted the complainant for further clarification about what they required before providing its response to the request.
28. In any event, the Commissioner considers that sufficient clarification about what the complainant required was then set out within their internal review request. This includes confirmation that they wanted copies of recorded information, rather than the explanations and summaries provided by the council.
29. The Commissioner considers that it is not unreasonable to assume that the council used recorded information that it holds when providing the explanations, summaries and short answers in response to some parts of the complainant's request. Given this, the Commissioner considers it

is more likely than not that, on the balance of probabilities, the council holds further recorded information falling within scope of the request.

30. It is also the Commissioner's view that some of the information described within the complainant's internal review request does not fall within scope of their request of 23 April 2024, and therefore should have been dealt with as a new request for information by the council. For example, some of the information that the complainant asked for relates to the documents provided by the council in its response to their request of 23 April 2024. At least some of this information is, in the Commissioner's opinion, likely to fall outside the scope of their original request.
31. Given the above, the Commissioner has determined that, on the balance of probabilities, the council failed to consider all of the information held relevant to the complainant's original request of 23 April 2024. Where it did provide information, the council failed to do so within 20 working days.
32. In addition, the council also failed to respond to what the Commissioner considers to be a new request for information contained within the complainant's internal review request of 17 June 2024.
33. In light of the above, the Commissioner has found a breach of regulation 5(1) and regulation 5(2) of the EIR.

Regulation 11 – representations and reconsideration

34. Under regulation 11(4) of the EIR, a public authority must provide an internal review response as soon as possible and no later than 40 working days after the date of receipt of the request for a review.
35. The complainant contacted the Commissioner to advise that the council had not responded to their internal review request of 17 June 2024.
36. When contacting the council to confirm that the case had been accepted for investigation, the Commissioner also asked the council to provide a copy of any internal review response it had now provided to the complainant. As council did not make any further contact, the Commissioner does not consider it to be unreasonable to assume that the council has failed to provide the complainant with a response to their internal review request.
37. In light of the above, the Commissioner concludes that the council has breached regulation 11(4) of the EIR.

Right of appeal

38. 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

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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