

Environmental Information Regulations 2004 (EIR)

Decision Notice

Date: 10 December 2014

Public Authority: London Borough of Waltham Forest

Address: Waltham Forest Town Hall
Forest Road
Walthamstow
E17 4JF

Decision (including any steps ordered)

1. The complainant has requested the definitive map of the borough and all information which backs up the map. The London Borough of Waltham Forest ('the Council') provided access to the current definitive map and statement and provided copies of paperwork associated with the work carried out by the consultants it employed to produce the map. However the Council has not provided all of the requested background information from applicants and consultants employed by the Council which backs up the definitive map.
2. During the course of the investigation the Commissioner determined that the Council wrongly handled the request under the Freedom of Information Act 2000 (FOIA).
3. After revisiting the request under EIR the Council chose to rely on Regulation 12(4)(b) of the EIR in refusing to provide all of the further background information which backs up the definitive map, arguing that compliance with the request would be manifestly unreasonable on the grounds of costs.
4. The Commissioner's decision is that the Council has correctly applied Regulation 12(4)(b) of the EIR.
5. The Commissioner does not require the Council to take any steps.

Request and response

6. On 10 December 2013 the complainant requested information of the following description:

'I want to see the definitive map of public footpaths of all the borough together with all the relevant information that backs up that map.'

7. On the same day the Council responded and stated that the matter was not being dealt with under the FOIA. It advised that the request could be fulfilled by emailing the appropriate person to arrange an appointment to view the map.

8. On the same day the complainant reiterated his wish for the matter to be considered under the FOIA and provided further clarification of the request to the Council stating that he wanted *'all additional information that went to make up this map from applicants and consultants employed by the council.'*

9. On the same day the Council acknowledged the request as a freedom of information request and invited the complainant to email the appropriate officer in order to arrange an appointment to view the map.

10. On 12 December 2013 the complainant submitted a request to view the maps stating that:

'I want to see the following and make copies of necessary:

- 1) The definitive maps for the public footpaths for all the borough.*
- 2) The definitive statements for all these public footpaths that accompanied these maps*
- 3) The register including all its parts of application made for definitive map changes, including those applications made and not determined, regardless of when the application was received; all as required by the law.'*

11. On 10 January 2014 the Council responded to the request and confirmed that it held the information requested. It advised that it had made arrangements for the complainant to view the Definitive Map and Statement of Public Rights of Way and the Register of Applications to modify the Definitive Map and Statement. It also enclosed paperwork associated with the work carried out by the consultants employed by the Council to produce the Definitive Map and statement 2008.

12. On 12 January 2014 the complainant contacted the Council to express his dissatisfaction with the response and with the information he had viewed following his visit to the office. In his internal review request the

complainant listed various pieces of information from applicants and consultants which backs up the Definitive Map. The complainant argued that this was covered by his initial request and had not been provided to him.

13. On the 10 February 2014 the Council provided its internal review decision. It advised that its initial response was upheld as the complainant was given access to the Definitive Map and statement 2008 (current version) and the register of applications under section 53(5) of the 2005 regulations. It explained it had also supplied various pieces of paperwork associated with the work carried out by the consultants employed by the council to produce the Definitive Map and Statement 2008.
14. The Council therefore did not provide the information listed by the complainant in his internal review request.

Scope of the case

15. The complainant contacted the Commissioner on 23 April 2014, to complain about the way his request for information had been handled. The complainant argued that he had not been provided with all the information he requested.
16. The complaint has also raised a number of concerns regarding the accuracy of the information held by the Council, its compliance with the law concerning definitive maps and concerns that information requested should be publically available for inspection. However these concerns are outside the remit of the Information Commissioner and have not been considered as part of this investigation.
17. During the course of the investigation the Council confirmed that it held an extensive amount of additional background information from applicants and consultants that backs up the Definitive Map and Statement. However this has not been provided to the complainant.
18. Following confirmation that further information relevant to the complainant's request was held the Commissioner invited the Council to reconsider its response. The Commissioner also informed the Council of his view that the information constitutes environmental information and therefore the request should have been handled under the EIR.

19. The Council confirmed that it wished to apply regulation 12(4)(b) of the EIR in refusing the request as it considered that compliance with the request would be manifestly unreasonable on the grounds of costs.
20. The scope of this case has therefore been to determine whether the Council handled the complainant's request dated 10 December 2013 in accordance with the EIR. Specifically, whether the Council is correct in applying regulation 12(4)(b) of the EIR refusing to provide all the additional background information that backs up the definitive map and statement.

Reasons for decision

21. Regulation 2(1) of the EIR defines what 'environmental information' consists of. The relevant part of the definition are found in 2(1)(a) to (c) which state that it is as any information in any material form on:

'(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, costal 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. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc. in question.
23. The Commissioner notes that the requested information relates to maps of public footpaths. He has considered whether this information can be classed as environmental information, as defined in Regulation 2(1) (a)–(f), and he has concluded that it can for the reasons given below.

24. In this case the subject matter of the withheld information relates to land/landscape and advice which could determine or affect, directly or indirectly, policies or administrative decisions taken by the Council.
25. The Commissioner considers that the information, therefore, falls within the category of information covered by regulation 2(1)(c) as the information can be considered to be a plan affecting or likely to affect the environment or a measure designed to protect the environment. This is in accordance with the decision of the Information Tribunal in the case of *Kirkaldie v IC and Thanet District Council* (EA/2006/001).
26. In the circumstances of this case the Commissioner has found that although the Council originally considered this request under FOIA it is the EIR that actually apply to the requested information.

Regulation 12(4)(b)

27. Following its reconsideration of the request under EIR the Council relied on Regulation 12(4)(b) of the EIR which states that:

'For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(b) the request for information is manifestly unreasonable'

28. The purpose of the exception is to protect public authorities from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation, in handling information requests and can be used:
 - when the request is vexatious; or
 - when the cost of compliance with the request is too great.
29. In this case the Council wished to apply Regulation 12(4)(b) on the basis that the cost of compliance with the request is too great.
30. In assessing whether the cost or burden of dealing with a request is 'too great', public authorities will need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable. This will mean taking into account all the circumstances of the case including:
 - the nature of the request and any wider value in the requested information being made publically available;
 - the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue;

- the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services; and
 - the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.
31. The Council provided its arguments to the Commissioner estimating that it would take more than 53 hours to comply with the request which it considered to be a conservative estimate. At a cost of £25 per hour for staff time this equates to a minimum cost to the Council of over £1,300. This estimate was based on the following:
- **Locating documents** – 4 Hours (including accessing maps and documents held at the local museum)
 - **Retrieving documents and extracting relevant information from electronically held documents** – 33 Hours 20 Minutes (based on 1 minute to locate and extract approximately 1,300 emails and 650 files held on PC)
 - **Retrieving documents and extracting relevant information from paper documents** – 15 Hours 45 Minutes (based on 30 seconds to locate and extract information from 8 envelope folders containing approximately 150 pages of documents in each, 2 ring binders containing approximately 120 pages of documents in each and 3 lever arch files containing approximately 150 pages of documents in each)
32. In the Commissioner's view, even if the Council's estimate of the time to comply with the request was halved it would still exceed 18 hours and therefore place a significant burden on the Council in terms of the cost of dealing with the request.

Public Interest Test

33. The Council argued that the public interest in maintaining the exception to protect the Council from a disproportionate burden and strain on resources outweighs the public interest in disclosing the information. The Council expressed its view that the complainants request is wide, non-specific and unreasonable and there was no wider value in all the requested background information which backs up the definitive map being made publically available.
34. The Council also advised the Commissioner that the London Borough of Waltham Forest is a densely populated urban area with a relatively small network of public rights of way, as such there are no full time staff

dedicated to such issues. The Council therefore argues that compliance with the complainant's request will divert other staff engaged in highway maintenance.

35. However the Council again reiterated that it is happy to provide any specific documentation if the request is narrowed and clarified.
36. The Commissioner accepts the Council's position that there is no wider value in the requested information being made publically available and agrees that the public interest in the provision of the information is outweighed by the burden on the Council's resources in complying with the request in terms of both distracting staff from delivering other services and the cost in locating and extracting the information.
37. The Commissioner is therefore satisfied that compliance with the request would be manifestly unreasonable on the grounds of costs and the Council is entitled to rely on Regulation 12(4)(b) in refusing to provide all of the additional background information which backs up the definitive map.

Other Matters

38. The Commissioner notes that the Council has in part attempted to deal with this request informally as a normal course of business request. It has therefore offered the complainant the opportunity to view some of the outstanding information or identify the specific documents he requires.
39. The Commissioner notes that the Council considered that it had satisfied the request with its initial response and has since been helpful in providing advice and assistance to the complainant to outline the outstanding information which it holds.
40. The Council wrote to the complainant on 29 April 2014 and provided him with a report prepared by the consultants dated February 2007, which summarises all of the documents held by the Council in relation to its rights of way network. The Council invited the complainant to specify which documents he would wish to see or to be given copies of. The Council also advised the complainant that it can refuse a request where it would take longer than 18 hours to comply with a request. However the Council did not state that it was formally applying an exemption to the request. Indeed in its initial response and at internal review the Council informed the complainant that it provided him with all the information he had requested.

41. The Commissioner therefore reminds the Council that its refusal notice must state the exception being relied upon and explain the reasons for the decision, including the details of any public interest test and refers it to his guidance on the matter:

https://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Detailed_specialist_guides/refusing_a_request_under_the_eir.ashx

Right of appeal

42. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

43. 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.
44. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

**Rachael Cragg
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