Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: **17 December 2014**

Public Authority: **Royal Borough of Greenwich**
Address: **The Woolwich Centre**
Wellington Street
Woolwich
SE18 6HQ

Decision (including any steps ordered)

1. The complainant requested information about a specific planning application. The Royal Borough of Greenwich (the 'Council') responded, providing the information it held with some minor redactions for personal information. The complainant considered that the Council held further information which it had not disclosed.

2. The Commissioner's decision is, on the balance of probabilities, that the Council has provided the complainant with all the information it holds relevant to the request. He also finds that the requested information constitutes environmental information and therefore should have been considered under the Environmental Information Regulations 2004 (EIR). By failing to recognise the request as a valid request and thereby failing to provide a response within 20 working days, the Council also breached regulation 5(2) of the EIR.

3. The Commissioner does not require the Council to take any remedial steps to comply with the legislation.

Request and response

4. On 1 July 2014 the complainant wrote to the Council and requested information in the following terms:

"I would like to request under the Freedom of Information Act of all correspondence relating to the planning application for the development at [address redacted], Ref 14/1179/F, including that deleted from personal folders but held backed up on the council computer system."

5. On 4 August 2014 the Council responded. It provided information within the scope of the request, redacted to remove *"any personal or unrelated information"*. Although the Council's response did not specify which exemption it had relied on to make these redactions, this aspect is covered in paragraph 26 of this notice.

6. The complainant requested an internal review on 8 August 2014 in which she expressed concern about the absence of any correspondence relating to an ex-Councillor about the planning application. The Council sent her the outcome on 29 August 2014. It advised that it was not aware of any correspondence involving the specified ex-Councillor in connection with this planning application. It addressed her questions about other correspondence and explained that the relevant planning decision notice was publicly available and thereby exempt (section 21 of FOIA).

7. Although the Council acknowledged that other documentation was publicly available, it enclosed a copy of what it referred to as the "site notice" and the "pink sheet". The Council advised the complainant that the 'pink sheet' is not correspondence but internal communication which can normally be inspected with the Council's files. It said it had enclosed a copy because it contained the only reference for what would be considered an "instruction" for a site notice. In addition, the Council gave the complainant a copy of the Development Control Delegated Report.

Scope of the case

8. The complainant contacted the Commissioner on 1 August 2014 to complain about the way her request for information had been handled; however it was not until 7 October 2014 that all the requisite documents were provided.

9. The complainant told the Commissioner that she considered the Council's response to be incomplete, specifically that:

"*the decision must have been made with printed notes of meetings and discussions, there is no notification of even the result to the applicant. Additionally on several occasions in the planning objections received, names and/or addresses have NOT been*

redacted, including my own, and since a FoI response is meant to be publicly available, this is unacceptable".

10. The Commissioner's investigation has therefore determined whether, on a balance of probabilities, the Council holds more information than it has provided in response to this request.

Reasons for decision

11. The Commissioner has first considered whether the requested information constitutes environmental information.

12. In this case the Council did not provide a response to this request. Instead, at the point when the Commissioner became involved, it said it had responded as part of an internal review in relation to another of the complainant's requests. The Commissioner has reviewed that internal review response and disclosures and notes that the Council handled the request under the FOIA.

13. During the Commissioner's investigation, the Council said that it considered the request of 1 July 2014 to fall under the EIR; however the Council did not provide any supporting arguments.

Regulation 2 - Is any of the information environmental?

14. Information is environmental if it meets the definition set out in regulation 2(1) of the EIR which states:

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other 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, 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;

(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)".

15. In the Commissioner's view, the information requested by the complainant constitutes environmental information under regulation 2(1)(c) as it concerns a measure. This is because the request asks for all information held about a particular planning application which is likely to affect several of the elements of the environment referred to in 2(1)(a).

16. The Commissioner has concluded that the requested information is environmental and that the Council should have handled the request under the EIR.

Regulation 5 – Duty to make available environmental information on request

17. Regulation 5(1) provides a general right of access to environmental information held by public authorities. Regulation 12(4) states that:

"For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that – (a) it does not hold that information when an applicant's request is received."

18. Irrespective of the legislative regime, the task for the Commissioner here is to determine whether, on the balance of probabilities, the Council holds any further information relevant to the request to than it has already identified. Applying the civil test of the balance of probabilities is in line with the approach taken by the Tribunal when it has considered the issue of whether information is held in past cases.

19. The Commissioner asked the Council to explain the extent of the search undertaken in relation to this request. In reply the Council stated that it had searched the documents that held the information which related to the request, which included case files, email accounts of the relevant

planning officers and the planning applications database. It said that information is likely to be held in both manual and electronic form. The Council later confirmed that all the information would be held electronically.

20. The Council provided the Commissioner with the search terms it had used to search the Council's computers, whilst however confirming that no searches had been carried out on personal laptops.

21. The Council confirmed that there is both a business purpose and statutory requirement for it to hold the requested information, namely to maintain the Statutory register and planning application files.

22. In addition, the Council explained that the decision on this particular planning application was made under delegated authority and that the decision does not involve minute taking. It said that a delegated officer's report is prepared for the meeting and the merits of the application are then discussed with the Chief Planning Officer. Once the decision has been made, the Decision Notice is produced and sent to the applicant. Consultation respondents are subsequently advised of the Council's decision. The Decision Notice serves as the meeting record for that particular planning application. There is no other recorded information.

23. In this case, the Council confirmed that it sent the complainant a copy of the 'pink sheet', the Development Control Delegated Report (the 'delegated report'), and a copy of the granting of planning permission decision notice in response to her request. The Commissioner has reviewed unredacted versions of the information provided to the complainant.

24. The Council gave conflicting accounts to the Commissioner, in that it initially said the delegated report was not provided to the complainant because it is held on its website. It then said that if a specific request were to be made for this report, it would be disclosed to the requester. The Commissioner therefore asked the Council why it would provide this report if it is publicly available, when it could instead rely on section 21 (information reasonably accessible to applicant by other means).

25. In reply, the Council advised that the delegated report is not held on its website and is not a published document. It said that the report had been disclosed to the complainant to show how the Council had made its decision.

26. The Commissioner asked the Council about the redactions it had made to the information provided to the complainant in response to her request. The Council explained that it had made redactions for third party personal information under section 40(2), such as the personal

email address. The complainant did not raise these redactions as part of her complaint so the Commissioner has not considered them further.

27. Although the complainant has expressed concerns about the provision of names and addresses, including her own, in the planning objections she was provided with, the Commissioner is satisfied that the planning objections were not provided to the complainant in response to this request. They were instead provided to the complainant in response to her request of 26 June 2014 which is the subject of decision notice FER0550084. The complainant did not complain about this issue in relation to her 26 June 2014 request and it does not relate to this request. The Commissioner has therefore declined to consider it any further.

28. In any event, the Commissioner asked the Council about the release of the addresses, for which the Council replied *"We apologise for that oversight, the Council will ensure that redactions are done correctly for all future requests under both Freedom of Information and Environmental Information Regulations 2004."*

29. In this case, the Commissioner is satisfied, on the balance of probabilities, that the Council has provided the complainant with all the information it holds relevant to her request.

30. Regulation 5(2) of the EIR states that information should be made available: *"as soon as possible and no later than 20 working days after the date of receipt of the request".* In this case, the response was provided 25 working days after receipt of the request. The Commissioner finds that the Council breached regulation 5(2) of the EIR in this regard.

Other matters

31. As well as finding above that Council is in breach of the EIR, the Commissioner has also made a record of the delay and the failure to recognise and deal with the request as a request in the first instance. As above, this may form evidence in future enforcement action against the Council should evidence from other cases suggest that there are systemic issues within the Council that are causing delays/failure to recognise valid requests.

32. The Commissioner would also remind the Council to handle future requests for information under the correct legislative regime.

33. In this case, the Commissioner has found some of the Council's responses to his investigation to be unclear and contradictory, which has

resulted in him having to make additional checks and thereby caused delays to his investigation.

34. It may be that the Council's planning application procedures allow for names and addresses to be published as part of the planning processes. However, the Council should ensure that it does not disclose third party personal information in response to future requests, where it does not have the authority to do so.

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: 0300 1234504
    Fax: 0870 739 5836
    Email: GRC@hmcts.gsi.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.

Signed .....

Jon Manners
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