

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

Date: 24 September 2018

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

Decision (including any steps ordered)

1. The complainant requested information regarding vehicle crossovers in several specified streets.
2. The Commissioner's decision is that the London Borough of Bromley ("the London Borough") has failed to respond to the request within 20 working days and has therefore breached Regulation 5(2) of the Environmental Information Regulations ("the EIR").
3. The Commissioner requires the London Borough to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the EIR, to the request.
4. The London Borough must take these steps within 35 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 Freedom of Information Act and may be dealt with as a contempt of court.

Background

5. The request occurred as part of a chain of correspondence that the complainant had with the Council regarding the replacement of a vehicle crossing on a particular street. During the course of that correspondence, the Council attempted to justify its position by claiming

that the circumstances of this particular street were different to others in which similar work had been carried out.

Request and response

6. On 30 July 2018, the complainant wrote to the London Borough as part of her ongoing correspondence and requested information in the following terms:

"I would appreciate a copy of your records pertaining to [the] crossover or, if they no longer exist, a copy of the records that you are basing your assumption on as to how Repton Road can be different to Hillcrest Road and also Lancing Road."

7. The London Borough did not acknowledge the request and had failed to provide a substantive response by the date of this notice.

Scope of the case

8. The complainant contacted the Commissioner on 28 August 2018 to complain about the way her request for information had been handled.
9. In line with her usual practice, the Commissioner contacted the London Borough on 31 August 2018 to highlight the outstanding response. She requested that the London Borough respond to the request within 10 working days.
10. The London Borough responded to say that the correspondence had not been recognised (and therefore processed) as an information request. It promised to log the request and provide a response, but had yet to do so by the date of this notice.
11. The Commissioner considers that the fact that the response remains outstanding means that a decision notice is appropriate in this case.
12. The Commissioner considers that the scope of her investigation is to determine whether the London Borough has complied with Regulation 5(2) of the EIR.

Reasons for decision

13. Regulation 2(1) of the EIR defines environmental information as being 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)...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);*

14. The Commissioner has not seen the requested information but, as it is information relating to construction work affecting a streetscene, she believes that it is likely to be information about "measures" affecting the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.

15. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"

16. Regulation 5(2) states that such information shall be made available "*as soon as possible and no later than 20 working days after the date of receipt of the request.*"
17. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
18. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the London Borough has breached Regulation 5(2) of the EIR

Right of appeal

19. 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

20. 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.
21. 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

Andrew White
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF