

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

Decision Notice

Date: 20 March 2019

Public Authority: London Borough of Ealing
Address: Perceval House
14-16 Uxbridge Road
Ealing
W5 2HL

Decision (including any steps ordered)

1. The complainant requested photographs relating repair works undertaken inside a specific property. The Council provided some information, but this was not the requested information. Following the Commissioner's intervention the Council provided the complainant with the requested information.
2. The Commissioner's decision is that the public authority has complied with the complainant's request, but only did so following the Commissioner's intervention. Since the requested information was not disclosed within the statutory time for compliance the Commissioner finds that the public authority failed to comply with section 1(1)(a) and section 10(1). The Commissioner does not require any steps to be taken.

Request and response

3. By way of background, the complainant is in dispute with the Council regarding noise complaints and subsequent repair work undertaken on a neighbouring property. The complainant has made a number of requests for information to the Council.
4. The complainant submitted the following request to the Council on 4 April 2018:

"During 2014, Ealing Council undertook repair work to flooring in between [specified address]. There were over 300 photos taken as evidence of completion of the work to the property. However, I have seen approximately 30 photos. Please share the full suite of photos.

If these are not shared then please describe (in detail) the nature of the photos that were not deemed to be necessary/worthy of sharing and explain why these were not relevant to the repair work undertaken within the property. If irrelevant please account for why these were taken in the first instance."

5. The complainant contacted the Commissioner on 23 May 2018 to complain that the Council had not responded to his request. On 23 May 2018 and 11 June 2018, the Commissioner contacted the Council to remind it of its obligations under the FOIA and EIR.
6. The complainant contacted the Council again on 25 July 2018 since he had not yet received a response. At this stage the complainant clarified his understanding that there were approximately 500 photographs.
7. The Commissioner wrote to the Council again on 13 September 2018, reiterating that the Council was required to respond to the request.
8. On 20 September 2018 the Council provided the complainant with 111 photographs. It explained that it was withholding some photographs on the basis that they contained information which would identify personal possessions of the tenant, as well as the workers undertaking the repairs. The Council stated that these photographs were exempt by virtue of regulation 13 of the EIR.
9. The complainant contacted the Council on 20 September 2018, asking it to confirm that the photographs provided related to the repair works conducted in 2014. The complainant sent a further email later that day, saying that if the Council had not provided him with the emails from 2014 then it should do so.

Scope of the case

10. On 26 September 2018 the complainant contacted the Commissioner to complain about the way the Council handled his request. The complainant was of the opinion that the Council had failed to provide him with the information he requested.

11. The complainant provided the Commissioner with copies of correspondence between his solicitor and the Council dating from 2016. This correspondence indicated that the complainant, via his solicitor, sought to obtain the photographs in relation to his ongoing dispute.
12. The scope of the Commissioner's investigation in this case was to determine whether the Council had in fact provided the complainant with the information he requested, and if it held any further information relevant to the request that ought to have been disclosed.

Reasons for decision

Access regime

13. The Commissioner notes that the requested information in this case comprises photographic images of repair works undertaken to the internal floor of a property. The Council dealt with the request under the EIR, but the Commissioner is of the opinion that the requested information is not in fact environmental information within the meaning of regulation 2 of the EIR. Therefore the Commissioner considers that the request ought to have been dealt with under the FOIA. The Council has not disputed this, and since the information has now been provided to the complainant the Commissioner has not considered the issue further.

Section 1: general right of access **Section 10(1): time for compliance**

14. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
15. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request.
16. The Commissioner wrote to the Council on 11 November 2018 to request copies of the disputed information. The Council responded to the Commissioner on 12 December 2018, advising that it had provided her with the photographs disclosed to the complainant as well as the photographs withheld from him.

17. The Commissioner observed that the withheld photographs did contain personal data, ie information that could identify the tenants' personal possessions and individual workers. However the photographs were all date-stamped 2017, which meant they did not meet the description specified in the request, ie photographs dated from 2014.
18. The Commissioner asked the Council to check that it had provided her with the information it held which was relevant to the complainant's request. The Commissioner reminded the Council that the complainant had clearly stated that he wanted to receive photographs from 2014. The Commissioner also referred the Council to its correspondence with the complainant's solicitor in 2016. This correspondence set out that the Council had employed a contractor to undertake the repair works, and that the contractor had provided the Council with the photographs it had taken.
19. The Commissioner reminded the Council that photographs held by the contractor relating to the repair works were held on behalf of the Council. The Commissioner therefore requested that the Council check with the contractor to ascertain whether it held any additional photographs. The Commissioner pointed out that if the contractor held any information on behalf of the Council, this information would be held by the Council for the purposes of the FOIA.
20. The Council duly contacted the contractor, and subsequently provided the Commissioner with a large number of photographs supplied by the contractor. On inspection of the photographs the Commissioner noted that they were all date-stamped 2014, and none contained personal information. Accordingly the Commissioner asked the Council to disclose the photographs to the complainant.
21. The Council disclosed the photographs to the complainant on 19 March 2019. Since this was well outside the statutory time for compliance, the Commissioner finds that the Council failed to comply with section 1(1)(a) and section 10(1) of the FOIA.

Right of appeal

22. 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

23. 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.
24. 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

Sarah O'Cathain
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF