

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 7 November 2019

**Public Authority:** London Borough of Southwark

**Address:** PO Box 64529

London

SE1P 5LX

### **Decision (including any steps ordered)**

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1. The complainant has requested information from the London Borough of Southwark ("the Council") about cost-benefit analyses of the municipal waste management strategy in the Borough.
2. The Commissioner's decision is that the Council has failed to carry out a reconsideration (internal review) of a response it provided within 40 working days and has therefore breached Regulation 11 of the EIR.
3. The Commissioner also decides that the Council breached Regulation 14 of the EIR in that it: failed to specify precisely the reasons for not providing the requested information, including citing an exception; failed to consider the public interest test in its refusal to disclose the requested information; failed to inform the complainant of their right to make representations to the public authority under Regulation 11 of the EIR; and failed to inform the complainant of the enforcement and appeal provisions of the Act applied by Regulation 18.
4. The Commissioner does not require the Council to take any steps in response to this decision.

## Request and response

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5. On 6 February 2019, the complainant wrote to the Council and requested information in the following terms:

*"I'm [...] looking for information on the cost and benefits of the current municipal waste management strategy in Southwark [...]"*

*Could you please provide the following information? If you don't have all of this information, please provide what you can.*

- *Cost benefit analysis of the current way the municipal waste is managed or the most current cost benefit analysis*
  - *Information on the costs associated with waste management in Southwark, such as collecting, sorting and storing the waste*
  - *The benefits generated from managing waste the way Southwark manages it, such as savings on landfill costs, market price of saleable materials and customer benefits*
  - *Tender analysis/cost comparison explaining why the contract was awarded to Veolia in 2008*
  - *The costs and benefits of the way the municipal waste was managed before the contract was awarded to Veolia*
  - *The costs and benefits of building and managing the Integrated Waste Management Facility*
  - *Information on income made from waste management in Southwark, such as other councils using the Integrated Waste Management Facility, income from selling recyclable materials and how the revenue is split between Southwark and Veolia*
  - *Any information used to determine the waste streams collected in Southwark, for example, mixed recycling instead of separate recycling of glass and general waste (with food mixed in) instead of separate food waste collections*
  - *The cost of running the bulky waste collection service prior to the collection fee being introduced in 2016, the amount of money collected from residents for bulky waste collections since the collection fee was introduced and the amount of money spent collecting fly tipped waste since the fee was introduced*
  - *Information on how the interests of residents help shape Southwark's waste strategy"*
6. The Council responded to the request on 19 February 2019 in the following terms:
- "Thank you for your below enquiry; most of the information you require we wouldn't have ourselves and would not have access to as it is commercially confidential."*

*We have an integrated waste management contract where we pay a contract price for waste collected, based on a number of service standards that must be achieved. The delivery of the service is undertaken by the contractor at their own cost and risk, to achieve those service standards. We do not have details of what those costs would be at a detailed level, as they are determined and funded by the contractor, and we cannot provide costing data for individual services as a result.*

- The contract for collection and treatment of household waste gives a high priority to maximising recycling of waste and minimising disposals to landfill. This provides economic incentives for our contractor to achieve those outcomes, and the result has been a high recovery rate (less than 3% is sent to landfill), and a fairly high recycling rate (34.7% of household waste is recycled annually – the highest level in Inner London).*
- Collections of household waste are publicly funded through taxation, and most services are provided free at the point of use. Because household waste collections are a statutory service, there is no lawful option to provide it commercially, so the question as to whether it might be viable does not arise.*
- In the case of non household collections, businesses buy the services they need from commercial providers on terms they have agreed - we would not have information about those privately contracted arrangements, but in general terms, environmental taxes such as landfill tax make disposals quite expensive, giving an economic incentive for waste producers to recycle more.*
- The service is mainly shaped by statutory requirements which includes specific requirements to recycle and recover wastes, and to manage wastes to specified legal standards – such as the requirement to provide services to separately collect recyclable materials. Political decisions made by councillors can also create new targets and requirements that can then be implemented as contact changes – so services are also shaped by the democratic process.*

*I hope the above is somewhat useful to you and I wish you all the best [...]"*

7. The complainant wrote to the Council on 19 February 2019, challenging this response to their request in the following terms:

*"I'd say that the final bullet point on my list has been answered (services shaped through democratic process), but none of the other items, as no costs have been provided at all, no cost-benefit analyses, no tender analysis report, no details on what happens with the waste income, how the waste streams are determined, the cost of running the bulky waste collection v fly tipping, etc."*

8. The Council issued no substantive response to this appeal.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 7 September 2019 to complain about the way their request for information had been handled.
10. In line with her usual practice, the Commissioner contacted the Council on 2 October 2019 to highlight the outstanding response to the complainant's appeal. She requested that the Council complete its reconsiderations within 10 working days. Her correspondence was neither acknowledged nor responded to.
11. The Complainant contacted the Commissioner on 30 October 2019 stating that they were still not in receipt of a response to their appeal. The Commissioner therefore considers that a decision notice is appropriate in this instance.
12. The scope of the Commissioner's investigation is to determine whether the Council has complied with Regulation 11 and 14 of the EIR.
13. For the avoidance of doubt, the Commissioner has not yet considered and therefore takes no position on whether the Council is entitled to withhold the requested information.

### **Reasons for decision**

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14. 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);*
15. The Commissioner has not seen the requested information but, as it is information relating to waste management and associated cost-benefit analyses, she believes that it is likely to be information about measures (and associated cost-benefit analyses) affecting or likely to affect factors which themselves affect or are likely to affect the elements of the environment. She has therefore assessed this case under the EIR.
16. The Commissioner considers that the request in question constituted a valid request for information under the EIR.

#### *Reconsideration/Internal Review*

17. Regulation 11 of the EIR states that:
- (1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*
  - (2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*

- (3) The public authority shall on receipt of the representations and free of charge—
    - (a) consider them and any supporting evidence produced by the applicant; and*
    - (b) decide if it has complied with the requirement.**
  - (4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
  - (5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—
    - (a) the failure to comply;*
    - (b) the action the authority has decided to take to comply with the requirement; and*
    - (c) the period within which that action is to be taken.**
18. From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days, the Council has breached Regulation 11 of the EIR.

*Refusal notice*

19. Regulation 14 of the EIR states that:

- (1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.*
- (2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.*
- (3) The refusal shall specify the reasons not to disclose the information requested, including—
  - (a) any exception relied on under regulations 12(4), 12(5) or 13; and*
  - (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).**

- (4) *If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.*
- (5) *The refusal shall inform the applicant—*
- (a) *that he may make representations to the public authority under regulation 11; and*
  - (b) *of the enforcement and appeal provisions of the Act applied by regulation 18.*
20. From the evidence provided to the Commissioner it is clear that, in failing to specify precisely what information within the scope of the complainant's request was or was not held by the Council, the Council breached Regulation 14(3) as above.
21. Second, in responding to the request by stating that "*most of the information you require we wouldn't have ourselves and would not have access to as it is commercially confidential*" the Council failed to cite an appropriate exception in refusing to provide the requested information and has therefore breach Regulation 14(3)(a) as above.
22. Further, in failing to inform the complainant of the public interest matters it considered in reaching its decision to not disclose the requested information, the Council has breached Regulation 14(3)(b) as above.
23. Lastly, in failing to inform the complainant of their right to make representations to the public authority under Regulation 11 of the EIR, and in failing to inform the complainant of the enforcement and appeal provisions of the Act applied by Regulation 18, it is clear that the Council has also breached Regulation 14(5) of the EIR as above.

## **Other Matters**

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24. In their complaint to the Commissioner, the complainant wrote that they were no longer in need of the requested information. However, on a point of principle, they did not believe that the Council "*should be able to ignore [...] requests*". In the interests of proportionality, the Commissioner has therefore elected to issue the foregoing decision notice outlining the Council's non-compliance, but not require any steps to be taken in response.



25. The Commissioner encourages the Council to engage with her office in respect of future complaints, as such engagement may have avoided the need for a decision notice in this case.



## Right of appeal

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26. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.
28. 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 .....**

**Phillip Angell  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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Cheshire  
SK9 5AF**