**Reference:** IC-102504-B8Q9

ico. Information Commissioner's Office

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

**Date:** **18 January 2022**

**Public Authority:** **London Borough of Lambeth**
**Address:** **Lambeth Town Hall**
**Brixton Hill**
**London SW2 1RW**

## Decision (including any steps ordered)

1. The complainant has requested various reports including health and safety reports and asbestos survey reports for specific properties in Brixton. The London Borough of Lambeth ("LB Lambeth") denied holding the requested information but, after the complainant requested an internal review, it found some relevant information and disclosed it. It argued that it held no further information. However, it found and disclosed additional information within the scope of the requests during the course of the Commissioner's investigation.

2. The Commissioner's decision is that on the balance of probabilities, the LB Lambeth does not hold any further information within scope of the requests. However, the Commissioner has concluded that LB Lambeth breached the requirements of regulation 5(2) in failing to provide all the information it held within the scope of the requests within 20 working days.

3. No steps are required.

## Request and response

4. On 9 November 2020, after a previous exchange of correspondence with LB Lambeth, the complainant requested information of the following description:

   "In light of the above [email from LB Lambeth dated 5 November 2020], I now amend/modify the scope of my request accordingly (please see below) citing said London borough' obligation being, 'Duty to provide advice and assistance' pursuant to s.(16) of the Freedom of Information Act 2000 of which you have made me aware. Thank you.

   Amended Scope of Request

   This request relates to; *Number(s) 30 - 44 Pelican Walk, London, SW9 and Number(s) 45-49 Pelican Walk, London SW9, now known as Clifford Drive SW9, the Moorlands Estate, Brixton, London.

   1. The Architects Plans and Surveys. (Used prior to and during construction)

   2. The Health and Safety Reports, Asbestos Surveys reports and its findings. (01 January 1994 - 01 December 1998)

   3. The Building Plans and the list of materials used in the construction (to building completion date) of and in the Building and the Human Dwellings of the Buildings at the following addresses;

   (a) Number(s) 30 - 44 Pelican Walk, London, SW9

   (b) Number(s) 45-49 Pelican Walk, London SW9

   4. Contemporanous documentation that Asbestos was used in the construction at s.3(a)&(b) above. or;

   5. Contemporanous documentation that Asbestos was not used in the construction at s.3(a)& (b) above. The above addresses at s.(a)&(b) above *are now known as Clifford Drive SW9, the Moorlands Estate, Brixton, London. I trust the above is acceptable in its amended and limited form."

5. On 14 December 2020, LB Lambeth responded. It denied holding the requested information. Specifically, it said its housing department would not hold "information on the construction types of dwelling from that period".

6. The complainant wrote back on 18 December 2020 to ask which department would hold such information.

7. On 18 February 2021, LB Lambeth wrote to him to say that a named Data Protection Officer was not available and implied that if he had left any voicemail messages with them, these were not accessible. It also suggested that building control officers may be able to help him and gave him two links to online resources.

8. It wrote to him again on 1 March 2021 and said that it held some information which "you may find of use" and disclosed these to him. These were two planning documents. One of the documents was dated 1995; the other was dated 1996. The complainant had a further exchange of correspondence with LB Lambeth after this.

9. The Commissioner is satisfied that LB Lambeth's letter to the complainant of 1 March 2021 constitutes an internal review. The Commissioner wrote to LB Lambeth to advise this when advising it that it had received the complaint to which this Notice relates.

## Scope of the case

10. The complainant contacted the Commissioner on 24 April 2021 to complain about the way his request for information had been handled.

11. There was an exchange of correspondence between the Commissioner and the complainant and the Commissioner and LB Lambeth. LB Lambeth identified some further information for disclosure and provided the Commissioner with an explanation of its records relating to asbestos. This explanation will be addressed later in this Notice.

12. Although it is not the role of the Commissioner to act as conduit for communications, he asked LB Lambeth if it would agree to him sending on its letter with attachments in the interests of expediency. It agreed. The complainant remains of the view that LB Lambeth holds more information within the scope of his requests – the detail of his arguments will be set out and considered later in this notice.

13. The Commissioner has therefore considered whether LB Lambeth holds further information within the scope of the complainant's requests.

## Reasons for decision

### Is the requested information environmental information?

14. Regulation 2(1) of the EIR defines environmental information 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, 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. The Commissioner considers that the phrase 'any information…on' should be interpreted broadly. In this case the requested information concerns various survey reports at specific properties in Brixton.

16. Any information held within the scope of the requests would fall within regulation 2(1)(c) "activities affecting or likely to affect the elements and factors referred to in (a) and (b)".

17. The Commissioner is satisfied that the requested information would, if held, be environmental information and that the EIR apply.

18. All the exceptions under the EIR are subject to the public interest test, including regulation 12(4)(a). However, the Commissioner can see no practical value in applying the test where information is not held and he does not expect public authorities to do so.

**Regulation 5(1): duty to make information available**
**Regulation 12(4)(a) – information not held at the time of the request**

19. Regulation 5(1) of the EIR states that, subject to other provisions, a public authority holding environmental information shall make it available on request.

20. Regulation 12(4)(a) provides an exception from the duty to make information available if the authority does not hold the requested information at the time of the request.

21. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, ie the balance of probabilities. Accordingly his investigation will consider the public authority's reasons for stating that it does not hold the information in question, as well as the extent and reasonableness of any search conducted. The Commissioner will also consider any arguments put forward by the complainant as to why the information is held (as opposed to why it ought to be held). Finally, the Commissioner will consider whether there are any further steps he could require the public authority to take if the complaint were upheld.

22. LB Lambeth explained the difference between planning and building control records and how information about each was recorded. In respect of planning records, it explained that pre-1986 records (applicable here) would be kept in hard copy as well as in PDF format. It added that access to hard copy files for "some older historic files" was restricted during the Covid-19 pandemic. It explained that some further information within the scope of the requests from 1996 was found. This was provided to the complainant.

23. It added:

    "It is also important to note that health and safety reports and asbestos reports are not a Planning matter and such information would not be held by the Planning Service (see parts 2, 4 and 5 of the EIR request). Planning would only hold details for external construction materials unless the subject site is a listed building. The properties detailed in the subject request are not listed buildings."

24. It then went on to explain its Building Control records. It said:

    "Building Control records are only likely to exist for the original building construction, and any subsequent extensions/ alterations or improvements, and dangerous structures or demolitions. Therefore, the part of this request most likely to have Building Control relevance would be if we had records of the original construction plans and specifications submitted.

We have looked at street view images and the style of build would suggest that the properties on this site (Clifford Drive) appear to have been built in the 1970s, or possibly 1980's. As we understand, it remains a distinct possibility that the building works was carried out by the GLC [Greater London Council] or similar authority, and that the Council's own [that is, LB Lambeth's] building control may not have been the appointed authority for the Building Control function.

Furthermore, subsequent refurbishment or other works carried out on these properties since the original build may or may not have obtained (or even required) Building Control involvement, but even so, Building Control would not typically ask for, or expect to be provided with information in relation to the use of, or presence of Asbestos, nor Health and Safety records.

We would clarify that Building Control does not monitor or supervise the day-to-day management of residential properties, even those owned or managed by the Council, so again would not have normal cause to request information related to Asbestos, nor any routine surveys, assessments, or health and safety records from the 1990's (or any other time).

Whilst we would (in current times) request evidence of asbestos surveys and method statements as part of a demolition notice to show that sufficient consideration and procedures have been put in place to enable the safe removal and disposal of identified asbestos, as this query is not in relation to a demolished building, we would not expect to find any demolition application (which we have not)."

25. It also explained which records it had checked, including its email systems and that it had asked surveyors who had worked at LB Lambeth for a long time and who may have had recollections of the properties. It went on to provide further background detail of its records.

26. It then provided detailed answers to specific questions the Commissioner had put to it regarding its searches and its records as well as its record retention and destruction policies.

27. The Commissioner asked LB Lambeth if he could forward this response and any attachments directly to the complainant for his input. It agreed to this and the Commissioner forwarded the correspondence on to the complainant. He asked the complainant to consider the detail and provide a response himself. Due to its detail and the complainant's thorough knowledge of issues surrounding the request, the Commissioner decided that this would be more practical than any precis he might produce of LB Lambeth's response. In the Commissioner's

view, LB Lambeth's response appeared to indicate that, on the balance of probabilities, no further information within the scope of the requests was held but he felt that the complainant's further comments would be helpful in reaching a more definitive view.

28. In his response to the Commissioner, the complainant sought the identity of officials at LB Lambeth who had written particular documents unless there was a legal reason not to disclose them. The Commissioner advised him to contact LB Lambeth directly about this.

29. He also raised concerns about the actions of an elected representative and an official at LB Lambeth. He also reiterated concerns about how he felt particular communities had been treated based on what he had learned from the disclosures and other information. The Commissioner notes the complainant's strongly held views which he has expressed calmy and politely at all times. However, the Commissioner has no remit to address these concerns.

**The Commissioner's conclusions**

30. Having considered the details of LB Lambeth's explanation and the thoroughness of its searches as well as the complainant's further comments having seen this explanation, the Commissioner has concluded that, on the balance of probabilities, LB Lambeth holds no further information within the scope of the requests. The Commissioner notes the complainant's heartfelt concerns and recognises that the delay he experienced in receiving this information inevitably added to those concerns.

**Regulation 5(2): time for compliance**

31. Regulation 5(2) of the EIR states that information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.

32. In this case, LB Lambeth failed to provide the complainant with all the information it held within the scope of his request within 20 working days. LB Lambeth was therefore in breach of regulation 5(2). Because it has now provided that information, the Commissioner does not require LB Lambeth to take any further steps in respect of this delay.

## Right of appeal

33. 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: 0203 936 8963
    Fax: 0870 739 5836
    Email: grc@justice.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.

35. 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 ……**

**Gerrard Tracey**
**Principal Adviser**
**Information Commissioner's Office**
**Wycliffe House**
**Water Lane**
**Wilmslow**
**Cheshire**
**SK9 5AF**