

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

Date: 25 February 2022

Public Authority: London Borough of Enfield
Address: Civic Centre
Silver Street
London
EN1 3XA

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Enfield (the Council) seeking information about a public consultation regarding a Low Traffic Neighbourhood scheme. The Council provided some information in response to the request and explained that in relation to other parts of the request it did not hold any recorded information. The complainant disputed the Council's position that it did not hold any information in relation to questions 2 and 4 of his request.
2. The Commissioner's decision is that the Council does not hold any recorded information falling within the scope of question 2 of the request and that the information sought by question 4 is now in the public domain.
3. The Commissioner does not require any steps to be taken.

Background

4. In September 2020 the Council implemented a Low Traffic Neighbourhood (LTN) scheme for Fox Lane. It also began a six month consultation period in October 2020 (referred to in the request below as 'let's talk') to seek views on the scheme. In May 2021 the Council extended the consultation period until July 2021.¹

Request and response

5. The complainant submitted the following request to the Council on 6 January 2021:

'Attached is the guide from TfL on how to display feedback. As you are the project manager of the healthy streets, I would prefer if you refrain from continually guiding me back to the "healthy streets" team. It is you, the leader of this project that I solely wish to communicate with.

Ealing and Kentish Town both have clear heat maps.

- you have responded to a resident to say this hasn't been chosen by you at Enfield.

- why? And where is the transparency on what you are accumulating?

- are TfL aware that you are concealing a heat map in disregard to the format they have stipulated?

As the "lets talk" is ongoing and you are yet to share any update on this, please class this email as an FOI whereby you have 20 working days to fulfill this request:

- what are the total numbers received in lets talk of:

1. Negative feedback
2. Neutral feedback
3. Positive feedback

¹ Information taken from <https://letstalk.enfield.gov.uk/foxlaneQN>

You have received so far for Connaught, Fox Lane and Bowes?

How is the feedback being graded where free text is permitted for qualitative feedback?

How were those not digitally activated included in your "consultation"? How many of those have had their concerns recorded and heard by you?

Can you also advise why Edmonton is missing from the "let's talk" site.. do Edmonton residents not get to take the survey on the implementations already enforced in their neighbourhood?'

6. The Council responded on 4 February 2021 as follows:

'Thank you for your email. Please see our responses in blue [for the purposes of this notice the Commissioner has marked the responses in bold text rather than in blue text] to your FOI below. Please note that your request can be in the form of a question, rather than a request for specific documents, but the authority does not have to answer your question if this would mean creating new information or giving an opinion or judgment that is not already recorded.

1. Ealing and Kentish Town both have clear heat maps.
- you have responded to a resident to say this hasn't been chosen by you at Enfield.
- why?

Information not held. There is no record of decision as to why Enfield did not choose to use a heatmap. It is not a stated requirement by TfL to use a heatmap.

And where is the transparency on what you are accumulating?

This is a request for a subjective opinion, no record of which is held.

- are TfL aware that you are concealing a heat map in disregard to the format they have stipulated?

No. Furthermore, we do not hold information in the form of a 'heatmap'.

2. As the "lets talk" is ongoing and you are yet to share any update on this, please class this email as an FOI whereby you have 20 working days to fulfill this request:

- what are the total numbers received in lets talk of:

1. Negative feedback
2. Neutral feedback
3. Positive feedback

You have received so far for Connaught, Fox Lane and Bowes?

The survey did not ask a question regarding sentiment and at this time we do not hold this information. Analysis of the responses for the Bowes and Fox Lane projects is ongoing, and a summary of responses will be shared in the final reports.

4. How is the feedback being graded where free text is permitted for qualitative feedback?

Information not held.

5. How were those not digitally activated included in your "consultation"?

How many of those have had their concerns recorded and heard by you?

A flyer and letters were delivered to residents within the Bowes Primary, Fox Lane and Connaught Gardens areas with information and maps of the relevant scheme. We included information regarding how to request materials in languages other than English, and the postal address of the Council should residents prefer to post their response to the consultation. As of 31 December 2020, 12 paper copies have been requested for the Bowes Primary Quieter Neighbourhood consultation, and none have been received back. The consultation survey was translated into Gujarati for one person. 7 paper copies were requested for Fox Lane and 3 completed surveys received. There has been 1 request from for Greek translations of the consultation surveys for both Bowes and Fox Lane Quieter Neighbourhoods. No requests were made for paper surveys or translations for the Connaught Gardens Quieter Neighbourhood.

6. Can you also advise why Edmonton is missing from the "let's talk" site.. do Edmonton residents not get to take the survey on the implementations already enforced in their neighbourhood?

The neighbouring residents of Park Road in Edmonton have been informed of the scheme and the ETO consultation which will soon follow.'

7. The complainant contacted the Council on 4 February 2021 and asked it to conduct an internal review because in his view its responses to the questions which explained that 'no information was held' were inaccurate.
8. The Council informed him of the outcome of the internal review on 3 March 2021. The review considered how the Council had responded to each of the questions and concluded that no further recorded information was held falling within the scope of the request.

Scope of the case

9. The complainant contacted the Commissioner on 4 May 2021 in order to complain about the Council's handling of his request. He raised the following concerns about how the Council had handled his request:
 - '1) [Name redacted] of Healthy streets at LBE states in reply to Question1: "It is not a stated requirement of TfL to use a Heatmap" – within the file is the proof of the clear guidance from TfL shown in pdf on figure 2 with LBE details about concealing responses from the public. The example of TFL has been ignored by LBE.
 - 2) In Question 5 [which in fact refers to question 4 of the original request] she further states "information not held" – Refuse to share what they are doing with the free text responses of information given to the council and how it is to being handled.
 - 3) Internal Review - The information is stated as being handled by an external company but that same information is not shared with residents at all. No external company stated to be able to contact for the data and that LBE would certainly have an agreement to decide how to handle this data and what is required of the external company before consenting for them to proceed with any such work.
 - 4) The privacy policy clearly states "The data will be used only internally within Enfield Council to inform decision making"
10. In his initial letter to the complainant about this matter the Commissioner explained to him that the right of access under FOIA is simply to recorded information. The Commissioner noted that as a result a public authority does not have to create information in order to answer a request nor does it have to offer an opinion, view or comment in response to a FOI request. Rather, the obligation on a public authority is simply to provide existing recorded information if it falls within the scope of a request. Therefore, the Commissioner explained to the complainant that his remit when investigating complaints is limited to determining whether any recorded information is held at the time of the request and

whether this should be disclosed under FOIA or whether it is subject to any exemptions within the legislation. (Although for the reasons explained below the Commissioner subsequently determined that this request should be considered under the EIR, these principles apply equally to that legislation.)

11. The Commissioner explained to the complainant that in light of his remit the only point he had raised in his May 2021 complaint that he could consider was in relation to question 4 of his request, ie *'How is the feedback being graded where free text is permitted for qualitative feedback?'*. In its internal review response in relation to this question the Council had stated that *'The Council's original response to this request stated the information is not held. My review can confirm that this information is not held by the Council, as the feedback is being graded by an external company.'* The Commissioner explained to the complainant that he would investigate whether the external company holds any recorded information about how the feedback is being graded, and whether this could be said to be held on behalf of the Council for the purposes of FOIA/EIR.
12. The Commissioner noted that the complainant had also raised concerns about the Council's position that the use of a heatmap is not a stated requirement of TfL. However, the Commissioner explained that it was not his role to comment on whether the Council had correctly followed guidance by TfL and his investigation would not consider that point. Furthermore, concerns about the Council's privacy policy are not issues which the Commissioner can consider as part of a section 50 complaint such as this.
13. During the course of the Commissioner's investigation, and subsequent to him informing the complainant of his provisional view in respect of question 4, the complainant explained that he was also unhappy with the Council's response to question 2. The complainant's concern in respect of question 2 was the Council's failure to provide any information sought by this request in relation to the Fox Lane LTN.
14. This decision notice therefore also considers whether the Council holds any information falling within the scope of question 2 in relation to that particular LTN.

Reasons for decision

The applicable access regime

15. Regulation 2(1) of the EIR provides a definition of 'environmental information' including 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 affecting the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements'
16. The information sought by the complainant's request focuses on the LTNs introduced by the Council. In the Commissioner's view LTNs are measures which are likely to affect the state of the environment. For example, by changing the layout and use of roads in the areas in question. Consequently, the information sought by this request falls within the definition of 'environmental information' contained at regulation 2(1)(c) of the EIR.

Regulation 5(1): duty to make information available

Regulation 12(4)(a) – information not held at the time of the request

17. Regulation 5(1) of the EIR states that, subject to other provisions, a public authority holding environmental information shall make it available on request. 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.
18. In scenarios such as this where there is some dispute between the amount of information located by a public authority and the amount of information a requester believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities the public authority holds any information falling within the scope of the request.

Complaint concerning question 2

19. As noted above question 2 stated that:

'2. As the "lets talk" is ongoing and you are yet to share any update on this, please class this email as an FOI whereby you have 20 working days to fulfill this request:

- what are the total numbers received in lets talk of:

1. Negative feedback
2. Neutral feedback
3. Positive feedback

You have received so far for Connaught, Fox Lane and Bowes?'

20. The complainant's concerns in relation to this request are focused simply on the Fox Lane LTN. As noted above, the 'let's talk' referred to in the question for Fox Lane is the consultation described in the Background section above which was launched in October 2020 and finished in July 2021.
21. As is clear from the quoted response above at paragraph 6, in its initial response to the request the Council stated that as the survey did not ask a question regarding sentiment, ie whether an individual felt negative, neutral or positive about the scheme, the requested information was not held at this time. The response also indicated that the analysis of the responses was ongoing and that a summary would be shared in the final reports which analysed the response to the consultation.
22. The Council's internal response clarified its position with regard to this question as follows:

'...the original response correctly stated that the survey did not ask a question regarding perception/sentiment of the above schemes. However, the assertion that this information is not held is misleading as the Council does indeed hold the survey responses and so the information is available to the Authority, to determine whether it constitutes negative, neutral or positive feedback. However, as the initial response advised, the analysis work is ongoing and as part of this analysis, the category of the different types of feedback i.e. negative/neutral or positive will be determined. However, at the time of your request, this work has not been carried out, as the consultations are still live and the Council is not obliged to create this new information, by categorising the responses it has already received, to fulfil your request.'
23. The Commissioner is satisfied that the Council did not hold, at the time of the request, any recorded information which would answer question 2. The survey did not ask a question or questions seeking views on sentiment and therefore the survey responses were not submitted in a way which easily or clearly identified them as positive, negative or

neutral. Therefore, in the circumstances of this request the Commissioner is satisfied that at the point that the complainant submitted his request the Council did not hold recorded information, ie responses to the survey to date, which stated whether a responder's position was negative, neutral or positive in relation to the LTN. The Commissioner appreciates that whilst the Council intended to undertake an analysis of the responses once the survey had closed which would categorise them in line with the question 2, this work had not been done at the point the complainant submitted his request. Furthermore, the Commissioner agrees with the Council that analysing the responses to the survey it had received at the point that the request was received in order to answer the question 2, would equate to the creation of new information, something which the Council is not required to do under the EIR. This because each of the individual responses would need to be reviewed, analysed and categorised in order to determine whether it fell into the three groups specified in the complainant's request.

Complaint concerning question 4

24. In its response to the Commissioner the Council explained that since the request was submitted in February 2021 it had published the consultation report for Bowes Primary and Surrounding Streets Quieter Neighbourhood.² The Council explained that this report sets out the coding framework used by the consultants who analysed and reported on the consultation responses in respect of that scheme. The Council also has explained that the consultants intend to take the same approach for the Fox Lane project.
25. The Council confirmed to the Commissioner that it did not hold any further information on the grading of the consultation responses for this project, and nor was any further information held by the contracted agency conducting this work on behalf of the Council.
26. The Commissioner has considered the information available in the report in question. Paragraphs 2.8 to 2.11 clearly set out the methodology as to how the qualitative feedback is graded.
27. In light of this the Commissioner is satisfied that the information sought by question 4 is now in the public domain and this resolves this aspect of the complaint.

² <https://governance.enfield.gov.uk/documents/s87885/Appendix%203.%20Bowe>

Right of appeal

28. 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

29. 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.
30. 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

Jonathan Slee
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