

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

Decision notice

Date: 7 March 2022

Public Authority: London Borough of Wandsworth
Address: The Town Hall
Wandsworth High Street
Wandsworth
SW18 2PU

Decision (including any steps ordered)

1. The complainant requested information held by the London Borough of Wandsworth (the council) relating to major works carried out on a particular property in 2020.
2. By the date of this notice, the council had not issued a substantive response to the complainant's request.
3. The Commissioner considers both the FOIA and EIR to be relevant to the request. It is his decision that the council has breached regulation 5(2) of the EIR, and section 10(1) of the FOIA, by failing to provide a valid response to the complainant within the statutory time frame of 20 working days.
4. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Provide a substantive request to the complainant's request in accordance with its obligations under the EIR, and the FOIA.
5. The council 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 FOIA and may be dealt with as a contempt of court.

Background

6. On 27 June 2020, the complainant wrote to the council and requested information in the following terms:

'I am writing to you under the Freedom of Information Act 2000 to request all information recorded by the Council on the Major Works at Bisley House (Wimbledon Park Side, SW19 5NW).

If it was not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in Section 12, please provide advice and assistance, under the Section 16 obligations of the Act, as to how I can refine my request.'

7. On 30 July 2020, the council issued a refusal notice, citing section 12 (cost limits) of the Freedom of Information Act 2000 (FOIA). It went on to explain its reasons for applying this exemption, and advised the complainant that he might wish to narrow the scope of his request in order to try and bring it within the cost limit.
8. The complainant responded to advise that he had not received any advice and assistance on how he might narrow the scope of his request. He also stated that it should have been clear that he required information about the ongoing works only, and that if it was not, that the council should have clarified this with him. He also raised concerns about the time taken by the council to make its decision.
9. On 4 August 2020, the council confirmed to the complainant that it would conduct an internal review. On 5 August 2020, the complainant then contacted the council again, asking whether all recorded information held (including emails, texts etc) 'inherent to the 2020 major works would fall within the cost limits', and that if this was not the case, that the council provide appropriate advice and assistance as to how he could refine his request.
10. On 17 August 2020, the complainant contacted the council again, raising concerns about its failure to respond to his correspondence of 30 July 2020, and 5 August 2020. He stated that he was, once again, formally requesting that information, or advice be provided to him.
11. On 22 October 2020, the council sent further correspondence to the complainant. It provided some brief details about the external and communal decoration and works/repairs carried out in respect of Bisley House in 2020. It also confirmed that it had attached the requested information relating to the works, but had redacted some information under section 43 (commercial interests) of the FOIA, and section 40 (personal data) of the FOIA.

12. On 4 January 2021, the complainant contacted the council to advise that he was already in possession of the documents that it had now provided. He stated that his request had been for all information which was held, including emails, chats and texts.
13. On 7 January 2021, the council confirmed that it would consider the matter further and respond.
14. As the complainant did not receive any further correspondence from the council, on 7 March 2021, he submitted a complaint to the Commissioner.
15. On 22 March 2021, the Commissioner wrote to both parties to confirm that the case had been accepted for further investigation.
16. On 21 April 2021, the council then wrote to both the complainant and the Commissioner to confirm that it had now reviewed its handling of the complainant's request.
17. The council advised the complainant that it should have considered his request under the EIR, and that 'significant information' had now been located; the council apologised for not having identified this in its initial response to his request, and at the internal review stage.
18. The council confirmed to the complainant that it hoped to be able to provide him 'with information following any subsequent, re-scoped request as quickly as feasibly possible', before going on to say that it now viewed his request to fall under regulation 12(4)(b) (manifestly unreasonable) of the EIR.
19. The council also confirmed that it should have previously offered advice and assistance in accordance with regulation 9 of the EIR, and provided details of the information it believed could be disclosed 'within the constraints of the exception set out at Reg 12(4)(b)'.
20. On 25 May 2021, the complainant then submitted a further 'refined' request for information; it is this request which is the subject of this decision notice.

Request and response

21. The complainant's request to the council of 25 May 2021, was set out in the following terms:

'At this point, I would like to request all the information recorded by the Council on the tendering process of the Major Works carried out in

- 2020 at Bisley House, including internal and external correspondence with the surveyors and contractors to define an estimate of the cost of the Major Works, drawings and details of quantities used in the process and any other document that supported the final estimate of the cost.'
22. On 15 June 2021, 30 June 2021, and 21 September 2021, the council confirmed that it was still considering the request, and on 4 October 2021, it advised that a response would be issued shortly.
23. The complainant has recently confirmed to the Commissioner that he has not received any further contact from the council since 4 October 2021.

Scope of the case

24. The complainant first contacted the Commissioner on 7 March 2021, to complain about the way his initial request for information had been handled.
25. The complaint has recently confirmed that he is still concerned about the council's failure to provide him with the information that he requires. He is particularly concerned that he has still not received a proper response to his new 'refined' request of 26 May 2021.
26. The Commissioner is to investigate the following:
- Whether the council has dealt with the complainant's request of 26 May 2021, in accordance with its statutory obligations.

Reasons for decision

Correct Access Regime

27. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR, rather than the FOIA, if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.
28. Regulation 2(1)(c) of the EIR says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information.
29. The Commissioner notes that the council's response to the complainant of 22 October 2020, confirmed that the information originally requested

by the complainant related to both 'major' external works and internal works/ decoration at Bisley House. He is satisfied that the information requested by the complainant in his request of 26 May 2021, would also relate to the internal and external works previously referred to by the council.

30. The Commissioner considers that the information held relating to major external works to Bisley House are 'measures and activities affecting, or likely to affect, the elements and factors of the environment', and would fall within the definition of environmental information at regulation 2(1)(c) of the EIR.
31. However, having considered the Tribunal decision in the case of *Black v ICO* (EA/2011/0064, 8 September 2011),¹ the Commissioner is satisfied that any information held relevant to the request that relates to the internal works on Bisley House would fall within the scope of the FOIA, rather than the EIR.
32. The Commissioner therefore considers that both the EIR and the FOIA are relevant to the complainant's request in this instance.
33. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to them.
34. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and 'not later than the twentieth working day following the date of receipt.'
35. Regulation 5(1) states that 'a public authority that holds environmental information shall make it available on request.'
36. 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.'
37. From the evidence provided to the Commissioner in this case, it is clear that the council has not dealt with the complainant's request of 26 May 2021, in accordance with its obligations under the EIR and the FOIA.

¹ [Black v ICO EA/2011/0064 \(tribunals.gov.uk\)](https://www.tribunals.gov.uk/cases-and-guidance/first-tier-tribunal/cases/2011/0064)

38. The Commissioner finds that the council has breached regulation 5(2) of the EIR, and section 10(1) of the FOIA, as it failed to respond to the complainant's request within 20 working days,
39. The council is now required to provide a response to the complainant's request which complies with the EIR and the FOIA.

Other matters

40. The Commissioner appreciates that the resources of some public authorities have been severely affected by the Covid-19 pandemic, and that this is likely to have had a detrimental impact on their ability to respond to some information requests in a timely manner.
41. However, despite the Commissioner's intervention at an earlier stage of the process, the council has still failed to provide an adequate response to the complainant in this instance.
42. The council previously acknowledged that its handling of the complainant's original request had been poor; it had failed to identify all the information held relevant to the request, it did not consider the appropriate access regime, its response times were delayed, and it did not provide appropriate advice and assistance to the complainant, despite his repeated requests that it do so.
43. Furthermore, it appears that the council's correspondence of 22 October 2020, was intended to be its internal review response (as it references an internal review response in later correspondence). However, there is no confirmation of this within this response.
44. Given that the council was given the opportunity to review its position, and correct some of the errors previously made, it is of some concern to the Commissioner that, some 20 months after the initial request was received, it has still failed to provide an adequate response to the complainant.
45. The council must now ensure that it takes this opportunity to go some way towards remedying its poor handling of the complainant's information requests by providing a good quality response to the complainant's request of 26 May 2021 when complying with the step required by this notice. He also expects the council to ensure that it improves its request handling in future.

Right of appeal

46. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

47. 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.
48. 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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF