

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

Date: 18 March 2022

Public Authority: London Borough of Bromley
Address: Civic Centre
Stockwell Close
Bromley
BR1 3UH

Decision (including any steps ordered)

1. The complainant submitted a multi-part request to the London Borough of Bromley (the Council) seeking information about proposals to demolish Beckenham Library. The Council provided some information it considered to fall within the scope of the request but sought to withhold further information on the basis of regulation 12(4)(e) (internal communications) of the EIR.
2. The complainant challenged the Council's reliance on that exception and argued that it was likely to hold further information that would answer his request.
3. The Commissioner has concluded that on the balance of probabilities the Council does not hold any further information falling within the scope of the request other than that which it has disclosed or is seeking to withhold. In relation to the latter information, the Commissioner is satisfied that this is exempt from disclosure on the basis of regulation 12(4)(e) of the EIR and that in all of the circumstances of the case the public interest favours maintaining the exception. However, given its delays in handling the request the Commissioner has found that the Council breached regulations 5(2) (duty to make information available) and 14(2) (refusal notices) of the EIR.

4. No steps are required.

Request and response

5. The complainant submitted the following request to the Council on 24 November 2019:

'I would be grateful if you would provide full details of the following:

1. the restrictions on demolition and redevelopment within Conservation Areas (CA) within Bromley with particular reference to the Elm Road CA in Beckenham;
2. the manner in which the Elm Road CA status has been taken into account in the proposals for the relocation of Beckenham Library including the demolition of the existing purpose built facility submitted to the Renewal, Recreation and Housing Policy Development and Scrutiny Committee on 5 November 2019 (the minutes of the meeting indicate that an assurance that this had been done was given to Councillor Ian Dunn by the Assistant Director Culture and Regeneration (ADC&G));
3. the discussions that have taken place with the Planning Department regarding the proposals for the scheme (again the minutes contain an assurance from the ADC&G that these were held); and
4. how the land on which the current Beckenham Library sits came into the possession of the Council and any covenants or other restrictions which affect its use...

...The start date will be dependent on the specific point: i.e. from 2005 for matters relating to Elm Road CA, from the date on which the current proposals in respect of the Beckenham Library demolition/redevelopment were instigated and as required for historical bequests/covenants. In all cases the end date of the range should be regarded as 3 November 2019'.

6. The Council provided the complainant with a response on 11 March 2020. In response to question 1 the Council explained that the restriction on demolition in conservation areas is not a local matter and is governed by the Planning (Listed Buildings and Conservation Areas) Act 1990. In response to question 3, the Council explained that information which fell within the scope of this question was exempt from disclosure on the basis of regulation 12(4)(e) (internal communications) of the EIR. The Council explained that it was not able to respond to questions 2 and 4 as it was awaiting a reply from the Culture and Regeneration department.

7. The complainant contacted the Council on 21 March 2020 and asked it to conduct an internal review of this response. He explained that he was not satisfied with the Council's response to questions 1 and 3 and that he was unhappy with the Council's failure to provide him with any response to questions 2 and 4.
8. The Council informed him of the outcome of the internal review on 15 April 2020. In relation to question 1, the Council explained that this was not considered to be a matter that is covered under FOIA, but provided the complainant with an explanation as to how proposals for demolition or redevelopment within conservation areas are assessed through the planning process. The Council also provided him with a copy of the Supplementary Planning Guidance produced by the Council in relation to the Elm Road conservation area. In relation to question 2, the Council explained that this question could be answered by reviewing the minutes of the Renewal, Recreation and Housing Policy Development and Scrutiny Committee meeting of 20 December 2019 and a feasibility study.¹ In relation to question 3, the Council upheld the decision to withhold the information falling within the scope of this part of the request on the basis of regulation 12(4)(e) of the EIR. Finally, in relation to question 4 the Council directed the complainant to a document on its website concerning land ownership.²

Scope of the case

9. The complainant contacted the Commissioner on 3 August 2020 in order to complain about the Council's response to questions 1 to 3 of his request. In relation to questions 1 and 2 he argued that the Council had

¹ <https://cds.bromley.gov.uk/documents/g6825/Public%20minutes%20Friday%2020-Dec-2019%2009.00%20Renewal%20Recreation%20and%20Housing%20Policy%20Development%20and%20Scr.pdf?T=11> and <http://cdslbb/documents/s50074750/Appendix%20C%20-%20Feasibility%20study.pdf> (The latter link no longer works, but the Commissioner understands that the study is that contained at page 41 onwards <https://cds.bromley.gov.uk/documents/g6825/Public%20reports%20pack%20Friday%2020-Dec-2019%2009.00%20Renewal%20Recreation%20and%20Housing%20Policy%20Development%20an.pdf?T=10>)

² The Council directed the complainant to the answer to question 26 in this document <https://cds.bromley.gov.uk/documents/b50014014/3.%20Answers%20to%20questions%20for%20Written%20Reply%20Friday%2020-Dec-2019%2009.00%20Renewal%20Recreation%20and%20Housing.pdf?T=9>

not fully answered his questions and in relation to request 3 he disagreed with the Council's reliance on regulation 12(4)(e) of the EIR.

Reasons for decision

Question 1

10. In relation to question 1, the complainant explained that he considered the Council's response that 'this is not considered to be a matter that is covered under the FOIA' to be evasive as the opening words of the Supplementary Planning Guidance (SPG) which was provided to him are 'The Elm Road Conservation Area was designated by the Council ... on 01 December 1998. ... (with the SPG being) proposals for ... preservation and enhancement'. The complainant argued that it was illustrative to note that section 6.13 of the SPG states that 'All the principle (sic) buildings ... make a positive contribution ... and therefore the Council will resist demolition of any building.' Section 4.8 also says that '(the Library) is a good example of late Art Deco architecture'.
11. The complainant explained that in his view the Council should answer his questions in a fully open and transparent manner without caveats, references to other documents or attempts to utilise legislation in a manner which acts against the clear intent of freedom of information legislation. For example, with reference to question 1 he argued that the Council should provide evidence that the relevant provisions of the SPG, including the need for conservation area consent, were taken into account before they put forward their proposals for the demolition of the Library.
12. In the context of the complainant's concerns about question 1 (and indeed question 2) it is important to note that the right of access provided by the EIR is limited to recorded information. That is to say, in response to a request for environmental information a public authority should provide any recorded information they hold that falls within the scope of the request – subject to the application of any exceptions. If it does not hold any recorded information it should inform the requester of this. There is no requirement under the EIR for a public authority to create information or provide explanations of its position in order to answer a request.
13. It is also useful to note that when answering a request it is often the case that the recorded information that a public authority holds is contained in an existing document or on an existing website. It is therefore appropriate for a public authority, in some cases, to simply provide a copy of that document or a link to a document online.

14. The Commissioner notes that the internal review response stated that the Council did not consider question 1 to be a matter that is covered by FOIA. However, as explained above both FOIA and the EIR provide an applicant with a right of access to recorded information held by a public authority, subject to the application of any exemptions.
15. Therefore, in response to question 1, in the Commissioner's view the Council should have located any recorded information it held falling within the scope of this question – namely information about the restrictions on demolition and redevelopment within conservation areas within Bromley and in particular the Elm Road conservation area – and provided this to the complainant.
16. The Commissioner appreciates that the Council has provided him with a copy of the Supplementary Guidance for the Elm Road Conservation area (as well as providing a narrative description of the way in which proposals are considered within conservation areas).
17. However, as part of his investigation of this part of the complaint, the Commissioner focused on establishing whether the Council held any further recorded information that would fall within the scope of question 1 of the request.
18. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant 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 a public authority holds any information which falls within the scope of the request (or held at the time of the request).
19. In order to assist with this determination the Commissioner asked the Council to explain what searches had been carried to locate information falling within the scope of question 1 and whether there was any business purpose for it to hold recorded information falling within the scope of this request.
20. In response, the Council explained that it had liaised extensively with officers in its planning department and explained to the Commissioner that 'The Council initially explained that the restriction on demolition in Conservation Areas is not a local matter and is governed by the Planning (Listed Buildings and Conservation Areas) Act 1990. There was no need to carry out searches because this is policy and legislation which is applicable to all proposals for demolitions and redevelopment. During Internal Review stage, additional information was provided to [the complainant] to assist in understanding the way in which proposals for

demolition and redevelopment within Conservation Areas are assessed through the planning application process. However the overarching position is that the Council does not hold any documentation/policy relating to restrictions other than the information provided to [the complainant] in response to this question.'

21. On the balance of probabilities the Commissioner accepts that the Council does not hold any further recorded information falling within the scope of question 1. In reaching this conclusion he notes that the Council interpreted this request to be seeking information about restrictions in conservation areas in the context of national planning legislation. In the Commissioner's opinion the question could equally be seen to be seeking information about restrictions in place in the Elm Road conservation area. The Commissioner notes that the Council has provided the complainant with the recorded information it holds on this issue, namely the SPG for that conservation area. Having read this information, and taken into account the Council's comments above, the Commissioner accepts that the Council does not appear to have any business need to hold any further recorded information which would fall within the scope of this request, be it about conservation areas in the context of national planning or in the Elm Road area, other than that already provided to the complainant. In reaching conclusion, the Commissioner notes the complainant's comment that the 'Council should provide evidence that the relevant provisions of the SPG, including the need for conservation area consent, were taken into account before they put forward their proposals for the demolition of the Library.' In the Commissioner's view any such information would be out of scope of question 1.

Question 2

22. As with question 1, the scope of the Commissioner's role is to determine on the balance of the probabilities whether the Council holds any further information falling within the scope of the request. That is to say, information about the manner in which the Elm Road conservation area status has been taken into account in the proposals for the relocation of Beckenham Library.
23. As part of his initial letter to the Council in relation to this question, the Commissioner: asked it to detail the searches it had undertaken to locate information falling within the scope of this request (and why these searches would have located information); explained that if no searches had been undertaken then to rectify this; explained that if the Council's position was that no recorded information was held then to offer an explanation as to why this was considered to be case; and, to confirm whether the Council had held recorded information relevant to this request but had deleted it, and if so when this was deleted.

24. In its initial response to the Commissioner's enquiries, the Council noted that the complainant was provided with a link to the minutes of the Renewal, Recreation and Housing Policy Development and Scrutiny Committee papers of 20 December 2019.³ The Council highlighted that Cllr Dunn, on page 2 of the minutes, pointed out that suitable discussions and deliberations on the impact to the conservation area had not yet taken place and it was requested that the matter was referred back to committee. However, the Council explained that the proposals were not taken forward and as a result there was no need to undertake any further impact assessment.
25. Having considered the Council's initial response to him, the Commissioner contacted the Council again to seek clarification of its position in respect of question 2. He noted that question 2 had sought the following:
- 'full details of...the manner in which the Elm Road CA status has been taken into account in the proposals for the relocation of Beckenham Library including the demolition of the existing purpose built facility submitted to the Renewal, Recreation and Housing Policy Development and Scrutiny Committee on 5 November 2019 (the minutes of the meeting indicate that an assurance that this had been done was given to Councillor Ian Dunn by the Assistant Director Culture and Regeneration (ADC&G));'
26. The Commissioner noted that the relevant part of the minutes from 5 November 2019 stated that:
- 'The Assistant Director Culture and Regeneration assured Councillor Dunn that the proposals for the scheme did take the Conservation Area into account and discussions with the Planning Department had been undertaken.'
27. The Commissioner noted that the internal review concluded that question 2 could be answered by the information contained in the minutes of, and a paper for, the Renewal, Recreation and Housing Policy Development and Scrutiny Committee from 20 December 2019. However, the Commissioner explained that having reviewed these documents again he was unclear how they contained information which

³ <https://cds.bromley.gov.uk/documents/g6825/Public%20minutes%20Friday%2020-Dec-2019%2009.00%20Renewal%20Recreation%20and%20Housing%20Policy%20Development%20and%20Scr.pdf?T=11>

fell within the scope of question 2. He asked the Council to clarify why it considered this to be the case.

28. Furthermore, the Commissioner acknowledged that the Council's response to him noted that in the minutes of 20 December 2019 Cllr Dunn pointed out that suitable discussions and deliberations on the impact to the conservation area had not yet taken place and it was requested that the matter was referred back to committee. The Commissioner also noted that the Council's response had also explained that the proposals were not taken forward and there was no need to undertake any further impact assessment.
29. However, the Commissioner noted that the Assistant Director Culture and Regeneration in the minutes of 5 November 2019 was clear that 'the proposals for the scheme did take the Conservation Area into account'. The Commissioner suggested that this appeared to be confirmed by two references to the conservation area in the public reports pack for this meeting (paragraph 3.11 on page 38 and the reference on the plan page 70).⁴
30. Therefore, the Commissioner suggested to the Council that prior to the meeting of 5 November 2019 some consideration appears to have been given by officers as to how the proposal would impact on the conservation area. Furthermore, the Commissioner suggested that it seemed plausible that such considerations could have resulted in recorded information being created prior to the meeting of 5 November.
31. As result the Commissioner sought further clarification from the Council as to whether it held any recorded information which fell within the scope of question 2, and in particular details of the steps it had taken to locate any such information.
32. In response, the Council explained that it had liaised with the relevant officers and it informed the Commissioner that no further information has been recorded or is available in the scope of this question. The Council acknowledged that in the minutes of the November 5 2019 meeting the Director of Culture and Regeneration assured Councillor Dunn that 'the proposals for the scheme did take the Conservation Area into account and discussions with the Planning Department had been undertaken'. In light of this the Council had sought clarification from the

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<https://cds.bromley.gov.uk/documents/g6619/Public%20reports%20pack%20Tuesday%2005-Nov-2019%2019.00%20Renewal%20Recreation%20and%20Housing%20Policy%20Development%20>

relevant officers who advised that aside from an acknowledgment from both departments that the conservation area would have to be properly and fully considered should the scheme progress past the initial proposal stage there was, at this time, no formal dialogue either written or staged.

33. With regard to the Commissioner's request for clarification as to why the documents to which the Council referred the complainant in response to question 2 were considered to fall within the scope of the request, the Council acknowledged that there was no absolute correlation. However, it explained that due to there being a lack of other formal documentation (as set out above), and because the project was in its relative infancy and at the stage where a formal assessment of the impact of the conservation area would be undertaken, the internal review panel deemed the content to give some insight into the mindset of the Council. The panel therefore concluded that it would provide the complainant with some helpful information rather than simply a response with no further details.
34. Having considered the Council's further submissions, the Commissioner has concluded that on the balance of probabilities it does not hold any recorded information falling within the scope of question 2, beyond the information cited by the Council at the internal review stage. (The Commissioner has commented below on the extent to which this information could be considered to fall within the scope of the request.) In reaching this conclusion the Commissioner acknowledges that the minutes of November 2019 clearly suggest that some consideration had been given to the Elm Road conservation area in relation to the proposals concerning the library. However, the meeting minutes of December 2019 do, as the Council argue, suggest the opposite. In the Commissioner's opinion this does cast some doubt as to whether the Council would hold information falling within the scope of question 2. Furthermore, the Commissioner recognises that the Council has now undertaken further consultations with the relevant officers who have confirmed that at the time of the request no formal dialogue either written or staged had taken place between relevant officials in the Council.
35. With regard to the Council's explanation as to why it provided the complainant with the information it did at the internal stage, in the Commissioner's view it is questionable as to whether this information actually falls within the scope of the request. The Commissioner acknowledges that the Council's intention in citing this information was in an attempt to be helpful to the complainant. However, in the Commissioner's view rather than the internal review simply informing the complainant that 'The panel concluded that this question can be answered by viewing published documents on the Bromley Council website. Please use the links below.', it would be helpful for the

Council to explain to the complainant why it considered such information to be relevant (ie the rationale provided to the Commissioner and set out above at paragraph 33).

Question 3

36. As noted above, when it responded to this request the Council confirmed that it held information falling within scope but considered this to be exempt from disclosure on the basis of regulation 12(4)(e) of the EIR.
37. During the course of the Commissioner's investigation, the Council provided him with the following two documents it explained that it was seeking to withhold:
 - A Word document entitled 'Beckenham Library.docx' which outlined proposals for the site. The document was undated but the metadata of the document suggested that it dated from 23 August 2019.
 - A letter from the Council's planning department providing pre-application advice on the proposals. The letter is dated 15 April 2020.
38. Having considered these documents, the Commissioner informed the Council that the second document was outside the scope of the complainant's request.
39. The Commissioner's rationale for this was as follows: The starting point for public authorities when determining whether they hold information falling within the scope of the EIR is whether information is held at the date of the request. However, the EIR require public authorities to respond to a request within 20 working days. Therefore, the Commissioner will accept an authority considering whether the requested information is held at any point between the date of the request and the date for statutory compliance. Where a public authority fails to comply with the request within the statutory timeframe, the public authority must still consider whether it holds the information within the period between the date of the request and the date for compliance.
40. In the circumstances of this case the complainant submitted his request on 24 November 2019 and therefore the letter of 15 April 2020 is outside the scope of his request. Consequently, the Commissioner has not considered whether this letter is exempt from disclosure under EIR on the basis regulation 12(4)(e) of the EIR. Rather, he has simply considered whether the Word document described above is exempt from disclosure.
41. However, before considering the application of this exception, the Commissioner wishes to note that as part of his investigation of this

particular question, he asked the Council to confirm whether it held any more information falling within the scope of the request, beyond the Word document in question. The Commissioner's basis for undertaking these enquires was that, as noted above, the minutes of 5 November 2019 are clear that 'The Assistant Director Culture and Regeneration assured Councillor Dunn that the proposals for the scheme did take the Conservation Area into account and discussions with the Planning Department had been undertaken.' (emphasis added). In light of this, the Commissioner explained to the Council that he assumed that it may hold more recorded information detailing the discussions with the planning department that took place prior to the request being submitted, than simply the Word document provided. For example, emails between various officers, notes of discussions, meeting minutes etc.

42. In response to the Commissioner's enquiries, the Council explained that the following searches had been undertaken to locate information: Searches of shared drives, SharePoint (and mailboxes and OneDrive of relevant officers who worked on the project have been undertaken. Keywords and phrases used "Beckenham Public Halls", "Public Halls", "Beckenham Library", "conservation area", "Elm Rd Conservation Area", "Elm Road", "Cllr Dunn", "Councillor Dunn", "impact assessment" A review of handwritten notebooks, where retained, has also been undertaken. No further relevant information had been located.
43. With regard to how the Council accounted for the creation of the 'Beckenham Library.docx' but no surrounding recorded information, the Council explained that officers will often have informal dialogues that are not routinely recorded. In this case as the project did not progress past the pre-application stage, a standard project filing system and governance approach was not as yet implemented; therefore no further information is available, other than the two withheld documents (one of which, for the reasons noted above, the Commissioner considers to be out of scope) and the information that is already in the public domain.
44. In light of the clarification provided by the Council the Commissioner is satisfied that it does not hold any further information falling within the scope of request 3.
45. Turning to whether the document 'Beckenham Library.docx' is exempt from disclosure on the basis of regulation 12(4)(e), this exception states that information is exempt from disclosure if it involves 'the disclosure of internal communications'. It is a class-based exception, meaning there is no need to consider the sensitivity of the information in order to engage the exception. Rather, as long as the requested information constitutes an internal communication then it will be exempt from disclosure.

46. The Commissioner is satisfied that document in question falls within the scope of the exception as it is a document created by, and only shared within, the Council.

The public interest test

47. Regulation 12(1)(b) requires that, where the exception under regulation 12(4)(e) is engaged, a public interest test should be carried out to ascertain whether the public interest in maintaining the exception outweighs the public interest in disclosing the information.
48. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019), 'If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure...' and 'the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations' (paragraph 19).

Public interest in disclosing the information

49. The Council acknowledged that there was a public interest in openness and transparency and more specifically that public authorities engaging in plans that would have an impact on the environment and community must expect some information about those activities to be scrutinised.
50. The complainant argued that the public interest favoured disclosure of the information as there was wide and significant concern about these proposals, the manner in which they have been put forward and their continuation (at the time of the request) at further public expense despite vocal objections.

Public interest in maintaining the exception

51. The Council argued that reasons for disclosing the information must be balanced against the following considerations:
52. The Council suggested that there was a risk of prejudice to the ability of officers and councillors to deliberate and form ideas in a free and frank way. It argued that if such a right were to be taken away these discussions are likely to be carried out in a less effective manner to the detriment of the Council not being able to fully analyse the use and application of resources.
53. The effect that disclosure of such deliberations might have on the tendering process, allowing potential bidders to have sight of strategic and potentially commercially sensitive information, is likely to affect the Council's ability to achieve a competitive and fair price.

54. The Council argued that there is an inherent public interest in ensuring that redevelopment occurs in an effective way, taking into consideration the views of all interest groups by allowing the public and other groups time and space to scrutinise, comment and object to plans that are deemed appropriate as a natural part of the process. The Council argued that should the public and interest groups be allowed to inspect plans that have not been fully formulated, not only would it add time to the process but such proposals may not be approved by the Council, therefore wasting Council resources.
55. In summary, the Council acknowledged the need for openness, but, at this early stage there may be some controversial options that need to be fully investigated before releasing into the public domain. In the Council's opinion there is greater harm to all interest groups by this, and there is a real risk that those who would be negatively affected by such proposals would come under undue stress and worry should the proposals not come to fruition. The Council argued that this practice would be irresponsible and that only plans that have traction within senior decision makers should be released for necessary and correct public scrutiny.

Balance of the public interest test

56. With regard to attributing weight to the public interest arguments in favour of maintaining the exception, the Commissioner accepts that a public authority needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction. The safe space arguments may carry significant weight in some cases. In particular, the Commissioner considers that the need for a safe space will be strongest when the issue is still live.
57. In the circumstances of this case, the Commissioner understands that the Council's considerations in relation to the site in question were live and ongoing at the point that the complainant submitted his request. Indeed, it is the Commissioner's understanding that it was not until September 2020 that the decision not to demolish Beckham library was taken as part of a broader decision relating to the future of Beckham Public Hall. Therefore, the Commissioner accepts that the Council needed a safe space at the time of the request to consider issues concerning the proposed project. Furthermore, the Commissioner recognises that the plans contained in the withheld document represent initial early considerations of the feasibility of the project. Moreover, the Commissioner also recognises that the proposals had raised strong concerns locally. In the Commissioner's view both of these factors add considerable weight to the Council needing a safe space in which to consider ideas and options for the proposal. He is satisfied that disclosure of the withheld information at the time of the request and at the time of internal review would have interfered directly with this. The

Commissioner therefore accepts that there is a considerable public interest in maintaining this exception.

58. In reaching this conclusion, the Commissioner wishes to make it clear however that he does not consider that any weight should be placed on the Council's arguments outlined at paragraph 53, as the purpose of the exception contained at regulation 12(4)(e) is not to protect such interests.
59. With regard the public interest in disclosure of the information, the Commissioner agrees that there is clear interest in the Council being open about proposals it may have for its buildings which are likely to affect the environment, particularly proposals such as the demolition of a public building within a conservation area. Furthermore, the Commissioner acknowledges the complainant's point that there had been, as the complainant described, vocal concerns about the nature of these proposals. Disclosure of the information at the time of the request would have provided the public with an insight into the issues and options being considered by the Council in relation to the proposals, an insight which then could have been used by interested parties to inform any future contributions to the future debate and discussions regarding the proposals. In light of this in the Commissioner's view the public interest in disclosure should not be underestimated.
60. However, taking into account the weight that he considers should be attributed to the space safe arguments in the particular circumstances of this case, the Commissioner has concluded, albeit by a relatively margin given the reaction the proposals attracted, that the public interest in maintaining the exception outweighs the public interest in disclosure of the information.

Regulation 5 – Duty to make environmental information available on request

Regulation 14 – Refusal notice

61. Regulation 5(1) of the EIR states that, subject to any exceptions, environmental information must be made available on request. Regulation 5(2) requires that the information be made available promptly, and in any event no later than 20 working days after the date of receipt of the request.
62. Regulation 14(2) of the EIR requires that where a public authority refuses to disclose information under an exception, this is stated in writing within 20 working days.
63. In this case the complainant submitted his request on 24 November 2019. The Council did not respond to questions 1 and 3 until 11 March 2020, and in respect of the latter question issued a refusal notice citing

regulation 12(4)(e). However, the Council did not provide a response to questions 2 and 4 of the request until 15 April 2020.

64. These delayed responses by the Council represent breaches of regulations 5(2) and 14(2) of the EIR.

Other matters

65. The Commissioner wishes to note that the Council's delays in responding to his enquiries in relation to this complaint significantly impacted on his ability to investigate it in a timely and efficient manner.
66. The Commissioner initially wrote to the Council on 11 May 2021 and asked it to respond to the queries set out in that letter within 20 working days. Having failed to receive a substantive reply, the Commissioner informed the Council on 26 July 2021 that if a response was not issued within the next week, he would serve it with an Information Notice under section 51 of FOIA formally requiring it to respond to his letter of 11 May 2021. The Council provided the Commissioner with a response on 2 August 2021.
67. The Commissioner wrote to the Council again on 5 August 2021 with a number of follow up queries. The Commissioner asked for a response within 10 working days. Having failed to receive a response to this letter, nor any response to his chasing correspondence, the Commissioner served the Council with an Information Notice on 4 October 2021 which required it to respond to the Commissioner's letter of 5 August within 30 calendar days. The Council responded on 4 November 2021.
68. The Commissioner wrote to the Council again on 12 November 2021 seeking further clarification of a number of points. The Commissioner again asked for a response within 10 working days. Again, having received no response, and no response to his chasing correspondence, the Commissioner served the Council with a further Information Notice on 21 December 2021. The Council responded on 2 February 2022.
69. It is regretful that in investigating any section 50 complaint the Commissioner has to resort to issuing an Information Notice in order to get a public authority to provide him with a timely response to his enquiries. However, it is particularly disappointing in the circumstances of this complaint that the Commissioner had to serve not one, but two such notices. The pattern of delays in the Council's engagement with the Commissioner about this complaint followed, as clear from the above notice, notable delays in its handling of the request itself.

70. The Commissioner expects the Council to ensure that such delays are isolated ones and not repeated in either its handling of future requests or indeed its engagement with him in relation to future section 50 complaints.

Right of appeal

71. 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

72. 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.
73. 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

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