

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 July 2022

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

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Wandsworth about changes to Battersea High Street. The Council provided him with some information and explanations but said that no further recorded information was held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further recorded information, and does not require the Council to take any steps.

Request and response

Request 1

3. On 5 December 2020, the complainant wrote to the Council and requested information in the following terms:

"You submitted a single consultation on change to Battersea High Street on 01/02/2018. The results were in favour of it, however the works done were radically different. Can you please confirm the cost of the project, that it was bid for competitively and the reasons for the scheme being so different to the one consultation exercise? First and foremost - what was the total cost?"

4. The Council responded on 11 December 2020 and provided information about how the scheme (known as the public realm improvement scheme) had been approved, and explained that the scheme included "flexibility for officers to incorporate changes at detailed design stage where these were considered desirable". It advised him who constructed it, and the total cost.
5. On 10 May 2021 the complainant asked for a review of this as follows:

"I asked why the scheme implemented was radically different to that which was consulted on. Wandsworth Council alleges that W/ECS/TMO/1744 was submitted to newspapers (not neighbours) on 23/04/2019 - construction began on 10/06/19. As by paper 18-312 of 8th October 2018 some minor changes could be implemented. However you have withheld the reasoning for the very major differences shown in drawing P00714-RN-001. I ask again for the consultation and justification for doing this."
6. On 9 June 2021 the Council responded again, referring to a meeting of the Council's Strategic Planning and Transportation Overview and Scrutiny Committee and subsequent report, which included an "Appendix B". It explained the plan in Appendix B was an outline plan only, and highlighted that the report stated that officers could make amendments at a future date "where desirable". It added: "The scheme then progressed from outline design stage to detailed design stage and the final layout plan was signed off by local Councillors and sent to properties in the street in advance of the work (see advance notification letter and plan attached) and to other stakeholders. The parking changes were also advertised in the local press in accordance with the statutory consultation process."
7. The complainant requested a further review on 11 June 2021:

"I am writing to request an internal review of Wandsworth Borough Council's handling of my FOI request... After 6 months you have failed to release Appendix B of the committee decision... It is not appropriate to withhold the information which allegedly justified [the re-design]... So again - please release any information you have about the economically disastrous, unconsulted plan that is causing so much hardship. That includes the plan which was released to the councillors and council officials and their approval of it. As is the law."
8. On 24 June 2021 the Council responded as follows:

"Thank you for your emails. Please note that Appendix B is already publicly available on the Council's website at [link provided]. Appendix B of the committee decision was mentioned in our original response to

you with a link to the committee report and the Appendix B. For completeness, Appendix B and the other documents referred to have all been attached again."

9. The Council also provided details of consultations which had been carried out in May and June 2019.

Request 2

10. On 23 January 2021, the complainant requested the following information from the Council:

"W/ECS/TMO/1744 was advertised in non-local newspapers 08/03/19 Notice ID: SUT1054254. However, neighbours did not receive notice - nor can the results be found in the summary of delegated decisions. So - where is the decision & record of consultation? Why... is there not 'at any time' waiting restrictions on the south west side?"

11. The Council responded on 6 April 2021, as follows:

"The TMO for 'At any time' waiting / loading restrictions in Battersea High Street was advertised in The London Gazette and The Wandsworth Times as detailed below:

- Notice of Proposals – 08/03/2019 - The Wandsworth Times and The London Gazette
- Notice of Making – 19/04/2019 - The Wandsworth Times and The London Gazette

Summary of the consultation results is attached in the committee report.

There are double yellow lines on the South West side; but no loading restrictions as loading / unloading for traders needs to be carried out."

12. On 10 May 2021 the complainant clarified that he wished to receive a copy of "W/ECS/TMO/1744".
13. On 12 May 2021 the Council provided him with some information.
14. On 24 May 2021 the complainant commented: "There is no information about why it was implemented when paper 18-312 (the committee and executive approval). The recommendations are held in Appendix B to that paper. That was not disclosed. However the recommendations are not what was implemented under TMO 1744. So we're missing the Appendix and any consultation or committee approval to legally justify TMO 1744."

15. The Commissioner notes that the location of Appendix B was addressed in the subsequent response to request 1 (paragraph 8, above).

Scope of the case

16. The complainant contacted the Commissioner on 11 June 2021 to complain about the way his requests for information had been handled.
17. The Commissioner has determined that information falling within the scope of the requests would be “environmental” within the definition at regulation 2(1)(c) of the EIR, since it would be information on measures and activities likely to affect the elements and factors of the environment.
18. In this notice, the Commissioner has considered whether the Council holds any more information falling within the scope of the requests, in addition to the information it has already disclosed.

Reasons for decision

Regulation 12(4)(a) – information not held

19. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information “to the extent that it does not hold that information when an applicant’s request is received”.
20. In cases where there is a dispute over whether further information is held, the Commissioner applies the civil test of the balance of probabilities in making his determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held, in cases which it has considered in the past.
21. The Commissioner will consider the complainant’s evidence and arguments. He will also consider the actions taken by the public authority to check whether further information is held, and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is held.

The complainant’s view

22. The complainant considers that the Council is withholding information and refusing to “reveal why/ how they changed a £1m consulted design”. He commented: “to say this occurred without information or

process is not realistic... it is absurd to say that secret meetings took place with no record which result[ed] in a different plan and that no notes were made".

23. Despite being provided with copies of various documents and signposted towards information on the Council website, he considers there must be further recorded information shedding light on the decision having been taken to "radically" alter the proposed scheme.
24. He stated that for no further information to be held "is wholly unrealistic to any common person."

The Council's position

25. The Commissioner asked the Council for details of the searches and enquiries it made in response to the requests.
26. The Council explained that all data and information relating to the project was held electronically within the relevant project folder, which, it explained, "is subdivided into sub-folders for ease of reference". It stated that:

"The project engineer populated these folders on daily basis with information/data generated, received internally or externally including emails. Any information/data received as a hard copy was scanned and uploaded into the project folder. The project engineer was aware which piece of information was kept in which sub- folder and was able to retrieve that information quickly... the project manager, who used the project folder on daily basis, was aware which piece of information was kept in which sub folder and was able to go directly into the sub folder and search out the relevant information."
27. The Commissioner asked the Council to address, specifically, whether further information, such as correspondence, meeting minutes or memos, falling within the scope of the complainant's requests seeking to understand the "approval" of the changes, might be held elsewhere.
28. The Council confirmed:

"Having consulted with the relevant officers in charge of and involved in the relevant discussions relating to changes to the scheme, I can confirm that there is no further information held... we do not hold records of telephone conversations, nor verbal discussions between officers and councillors. Not all decisions are formally recorded, especially as was the case here, where the scheme had been to committee already, endorsed and supported by the Administration of the time and the changes were accepted through discussions."

The Commissioner's decision

29. The Commissioner understands that the complainant considers that the Council has not acted properly, and is incredulous that there appears not to be an adequate record of why changes were made to the "consulted" scheme: changes which, he states, have "collapsed" local businesses and which continue to cause financial losses.
30. In view of the significant design changes, the complainant considers that the Council must hold further records.
31. The Commissioner notes that the Council provided detailed explanations of the process which it followed, to the complainant, as well as recorded information, as is set out in summary in this notice.
32. He also notes the explanations offered by the Council and the outcome of the searches it made for information, including renewed searches during the course of the investigation. He is satisfied that these searches were thorough and appropriately targeted, and would have been likely to retrieve further information if it were held.
33. The Commissioner is satisfied, on the balance of probabilities, that no further recorded information, falling within the scope of the requests, is held.

Right of appeal

34. 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

35. 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.
36. 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

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