

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 March 2025

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

Decision (including any steps ordered)

1. The complainant submitted a number of requests about estate service charges for a housing estate and about the landscaping service provided by Lambeth Parks. The London Borough of Lambeth ("the Council") provided the complainant with some information within scope of the requests, however stated that further recorded information was not held. The Commissioner's decision is that on the balance of probabilities the Council holds information within scope of the request further than that which has already been provided.
2. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council is required to provide a fresh response to each request after carrying out further searches aimed at identifying all the information it holds within scope. The Commissioner stresses that the Council must consider the terms of each request and ensure that it responds to each part of the requests in turn. If the Council is maintaining that the email inbox of the former Director of Housing is the sole repository of information within scope of the request, the Commissioner requires it to conduct fresh searches of the inbox using an appropriate search strategy (such as that outlined at paragraph 30 below) aimed at identifying all relevant information. If, once the Council has identified all of the relevant information, it decides to apply a new exception or exemption, it must clearly communicate this to the complainant. If, following

searches, the Council wishes to maintain its position that no further information is held, it must be able to clearly demonstrate that it has performed adequate searches before arriving at this conclusion.

3. The public authority must take these steps within 30 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 the Act and may be dealt with as a contempt of court.

Background

4. The complainant contacted the Commissioner in respect of the Council's handling of their requests on 11 December 2023. The Commissioner issued his decision upholding the complaint on 2 July 2024 under reference IC-275864-S7G2¹.
5. In his decision the Commissioner found that the Council was not entitled to rely on regulation 12(4)(b) to refuse the complainant's requests for information about Lambeth Parks/Landscapes dated 17 July 2023, 15 August 2023, 17 September 2023 and 29 September 2023. The Commissioner ordered the Council to provide a fresh response to each of the requests that did not rely on regulation 12(4)(b).
6. The Council issued a fresh response on 9 July 2024. It provided the complainant with a copy of a cabinet member delegated decision document dated 8 July 2019.
7. Paragraph 2.9 of the delegated decision document reads:

"Resident Services is also looking to start developing proposals to directly deliver estate-based grounds maintenance by expanding Environment's existing parks and open spaces award-winning DLO – 'Lambeth Landscapes' to enable the delivery of their high-quality service and expertise on Lambeth housing estates. This is also seen as very low risk given there is an existing and experienced team in place and there will be limited additional infrastructure requirements. This will also help eliminate duplication across directorates."

¹ <https://ico.org.uk/media2/migrated/decision-notice/4030217/ic-275864-s7g2.pdf>

8. In an email to the Commissioner, the Council explained that it had located this document in May 2024 however due to an "administrative error" had failed to provide a copy to the complainant.
9. The Council also stated that it was unable to locate any further information within scope of the requests.

Request and response

10. A complete history of the complainant's requests and the Council's responses is contained in the previous decision notice and will not be repeated in its entirety here. For clarity, the four requests central to the present complaint are:

[1] Request submitted 17/7/23:

"Cllr Windle referred to 'When Lambeth Parks team took over' in his reply. Could you please tell me who or what 'Lambeth Parks' are? Is it a separate organisation to Lambeth Council? What is the relationship between Lambeth Council and Lambeth Parks? Who employs the people who work for Lambeth Parks? What did they take over and when please? How and why was it decided that they should 'take over'?"

[2] Request submitted 15/8/23:

"Could you also please tell me more about Lambeth Parks. Is it an entity of some sort such as a Division, Branch or some sort of Unit of the Council or a private entity or a name given to part of the Council workforce who look after Parks? Is it a separate organisation to Lambeth Council? What is the relationship between Lambeth Council and Lambeth Parks? Who employs the people who work for Lambeth Parks? What did they take over and when please? How and why was it decided that they should 'take over'"

[3] Request submitted 17/9/23:

"If Lambeth Parks is not a separate organisation then how did it bid for the contract to take over the contract? Who was it that 'agreed a recharge formula based on hedges, grass and shrub beds at each location', on what basis was this formula derived, who approved it (knowing that it was 4 times the cost of the previous contract), and on what basis are Council employees being used as a contracting body back to the Council? Please disclose also who set up the contract, what are the terms of the contract, who is it between (is it one part of the Council and another, for example), on what basis was the 'recharge formula'"

was calculated and why are leaseholders being charged a separate, much higher, contracted rate for the employment of staff who are already being paid for through Council Tax etc? Please unpack this as a matter of Freedom of Information and, indeed, transparent governance."

And;

[4] Request submitted 29/9/23:

"Clearly, if Lambeth Parks is just a name given to a certain group of Council employees who are paid to do grounds maintenance, how can the Council be incurring a cost over and above their salaries and other employment costs if they also now maintain the grounds in Estates etc? My questions above arise because the costs recharged to us by the Council have increased from £19K a year (maximum) to £89K a year for Lambeth Parks. I think some refund may have been given, but not significant and the principle of charging leaseholders for costs that the Council is not actually incurring needs an explanation. If you feel that this is something that Cllr Kay should answer, that is fine, as long as she does. But I remind that this question is lodged within the provisions of the Freedom of Information Act and in accordance with the provisions of the Landlord and Tenant Act 1985. I should, therefore, like a response from one of you please"

Scope of the case

11. The complainant contacted the Commissioner on 29 July 2024 to complain about the Council's fresh response to their information requests.
12. The Commissioner considers the scope of the complaint to be whether, on the civil standard of the balance of probabilities, the Council holds information within scope of the requests further than that which has already been provided.

Reasons for decision

Is the requested information environmental?

13. Regulation 2(1) of the EIR defines environmental information as being 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 affect the elements and factors referred to in (a)...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);
14. Although he has not seen the requested information but, as it is information relating to changes to landscaping contracts, the Commissioner believes that the requested information is likely to be information on measures likely to affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

The Council's position

15. The Commissioner asked the Council to detail the searches it had undertaken, following service of his decision, to locate information within scope of the requests.
16. The Council searched its internal SharePoint site using the terms "[address redacted]", "Pinnacle" and "Landscapes" but these searches produced a nil return.

17. The Council explained that it had liaised with senior leaders in Housing and Highways, Environment and "FM divisions"² who had confirmed that no existing staff were involved or hold any records relating to the decision to transition from Pinnacle to Lambeth Landscapes for grounds and estate maintenance services. The Council searched the email inbox of the previous Director of Housing on the basis that they were the person most likely to have made key decisions in relation to the matter.

18. In terms of searches of the inbox, the Council stated that:

"Keywords "[address redacted]" and "Contract" were used as the search terms, for dates between 01/01/2018 and 31/12/2019, as we expected these terms would be likely to return any specific emails in scope of the request. However, this search returned over 7000 emails. We therefore considered that s12 FOIA would be engaged as we estimated that a review all of the emails in this search to establish which may be in scope at 5 minutes per email would take over 615 hours."

19. With regards to its formal records management policy, the Council stated that its retention schedule did not refer directly to information of the type sought by the requests, however it would "expect to find similar records on its internal intranet site (sharepoint) which has been searched as noted above". In response to the Commissioner's questions about whether there were business or statutory requirements to retain the requested information, the Council stated these requirements were not applicable to information of this type.

20. Finally, the Council stated that it had provided the complainant with the delegated decision document detailed in paragraph seven above.

21. The Commissioner wrote to the Council to query its submissions as the details of searches undertaken appeared to be materially the same as those provided in respect of the previous complaint. Accordingly, it was not clear what steps the Council had taken to comply with the decision.

22. The Council explained that:

"In terms of IC-275864-S7G2, despite our original searches we were unable to locate additional information aside from the delegated decision report which was provided to the complainant.

² It is not immediately clear what business functions "FM divisions" serve, however a search of the Council's website suggests that the initialism may stand for Facilities Management: <https://www.lambeth.gov.uk/sites/default/files/2023-03/FM%20Building%20Surveyor.pdf>

We have noted that the ICO considers the time scale of our digital/email searches was too long. Since receiving the DN and in consideration of your observations, I have reviewed the search results and using the "find" tool within the Excel spreadsheet, filtered "[address redacted]" and "Pinnacle" emails to a reduced number (695). However to review each of these emails would still be considered to be *manifestly unreasonable* due to the time it would take to review to confirm if in scope of [name redacted]'s complaint.

I have further filtered emails that contain keywords [address redacted] and "delegated decision" - this returned fewer emails which I asked our Digital Team to extrapolate from the archived emails. I have now reviewed those emails which were all internal communications between officers and councillors, and whilst they discuss an Officer Delegated Decision Report (ODDR) regarding [address redacted], they relate to a different issue/ODDR than that pertaining to the original request from [name redacted].

Having carried out this further narrowed search of historical/archived emails, I'm afraid we are still unable to locate any other relevant information than that already shared with your Office and [name redacted]."

23. The Commissioner wrote to the Council a third time to query its position in respect of whether it is claiming that it doesn't hold information captured by the requests, and asked it to provide him with a representative sample of emails that it had identified as potentially falling within scope. As of the date of this decision the Council has not provided the Commissioner with this information, however he no longer considers that having sight of emails would influence his decision in any respect.

The Commissioner's position

24. Firstly, the Commissioner would like to stress that in cases such as this it would not be unusual to expect that recorded information relating to a large scale, cross-borough programme of work would be retained in a secure location for business, and perhaps statutory, purposes and would therefore be easily available to hand. Secure storage of this type of information is surely fundamental to preserving organisational memory, so that incumbent staff are aware of key decisions taken by their predecessors. The fact that information appears to be stored exclusively in the email inbox of an ex-employee raises concerns around the records management practices of the Council.
25. Nevertheless, the Council appears to maintain that this is the likely sole location of information within scope, therefore it remains to be decided

whether inbox searches undertaken have been adequate for the purposes of complying with the request.

26. At paragraph 35 of the previous decision the Commissioner explains:

"The Commissioner asked the Council why it hadn't included the terms "Lambeth Parks" or "Lambeth Landscapes" in its searches. The Council explained that it had limited the search terms to "[building name redacted]" and "contract" as the words "Lambeth Parks/Lambeth Landscapes" are commonly used in staff email signatures, and it wanted to be "more specific in the search terms used".

27. At paragraph 43 the Commissioner further states:

"If the Commissioner were to take the position that the Council does hold information within scope of the request, he considers that the search parameters applied to inspect the Director of Housing's inbox, as described at paragraph 33 above, were broad and unfocused. The reason provided by the Council for searching over a two year period is that information relating to the decision to bring services in house or not renew the contract it already had with Pinnacle would have been made "well before the Pinnacle contract ended", but the Commissioner notes that the Council has not at any point sought to explain to the complainant when that contract for grounds maintenance was terminated. Indeed, the Commissioner has seen an email from a Councillor to the complainant stating that "Records suggest that Mears were the provider for both grounds maintenance and estate cleaning in 2020/21 before Pinnacle took over." Therefore, the date range used to search the Director of Housing's inbox (January 2018 – December 2019) appears arbitrary. Furthermore, the Commissioner would expect that searches would be focused on emails between the Director of Housing and Pinnacle, or between them and Lambeth Parks/Landscapes as per the scope of the request, however this has not been the case. As a result, searches have returned over 7382 emails that feature either the term "[building name redacted]" or "contract", or a combination of the two."

28. The Commissioner understands that following service of his previous decision, the Council refined its searches on the basis that "the ICO considers the time scale of our digital/email searches was too long", but this is not what the decision notice says. The decision records that the date parameters applied appeared arbitrary and without a contextual basis. Indeed, the delegated decision report disclosed to the complainant which states that "Residents Services is looking to start developing proposals to directly deliver estate-based grounds maintenance by... Lambeth Landscapes", is dated 8 July 2019, the inference being that information held within scope of the requests is

likely to post-date this document. The Commissioner remains unclear as to when Lambeth Landscapes actually began delivering estate-maintenance services as the Council has repeatedly declined to respond to this part of the request.

29. As the Council hasn't given any details of the date parameters used to narrow the scope of its searches the Commissioner can only assume it has searched the same date range again.
30. Based on the submissions that the Council has provided, the Commissioner assumes that it is applying manual searches to raw, unstructured data using the "Find and Replace" tool, rather than utilising any of the functions within Excel that allow users to refine data quickly. For example, the Council could briefly cleanse the data by applying date and sender/recipient filters before conducting a keyword search of the body text of the emails, which would not be a difficult or time consuming process and likely to provide more focused results. It is not appropriate to claim that information is not held because the data hasn't been approached in a strategic manner.
31. Ultimately, the Commissioner considers the searches undertaken by the Council to be unsuitable for the purposes of identifying information within scope of the requests. By the Council's own admission it holds 695 emails relating to [address redacted] and Pinnacle, the previous estate grounds maintenance provider, therefore the Commissioner concludes that - on the civil standard of the balance of probabilities - it is likely that the Council holds information within scope of the complainant's four requests. However, the Commissioner cannot state categorically whether this is the case.
32. The Commissioner requires the Council to provide a fresh response to each of the requests detailed at paragraph 10 above, following the directions given at paragraph 2 above.

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.

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