

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

Date: 1 April 2025

Public Authority: London Borough of Richmond Upon Thames
Address: Civic Centre
44 York Street
Twickenham
TW1 3BZ

Decision (including any steps ordered)

1. A public authority will breach regulation 5(2) of the EIR if it fails to respond to a request within 20 working days. Based on the evidence available to the Commissioner the Council did not provide a response within the statutory timeframe. Therefore the Commissioner finds a breach of regulation 5(2).
2. A public authority will breach regulation 11 of the EIR if it fails to respond to a request for a reconsideration (internal review) within 40 working days. Based on evidence available to the Commissioner, the public authority did not provide an internal review response within the statutory time frame. Therefore the Commissioner finds a breach of regulation 11.
3. The Commissioner does not require further steps.

Request and response

4. The complainant requested the following information from the Council on 16 March 2024:

"Please provide the energy audit(s) for Pools on the Park that were completed since January 2019"
5. The Council acknowledged the request on 18 March 2024.

6. On 17 April 2024, the Council wrote to the complainant to advise that it required further time to carry out a public interest test in relation to the request, but did not cite an exception. The Council provided the complainant with a reference number for their request.
7. On 17 May 2024 the complainant wrote to the Council to query the delay in providing a response.
8. The Council responded the same day, advising that it was waiting to receive the requested information from its Environment and Community Services department.
9. On 22 May 2024 the Council responded to the complainant. It stated that it had aggregated the requests for the purpose of calculating the cost of compliance. The Council explained:

"As you will see, requests on the same or similar subject can be aggregated for the purpose of calculating costs under section 12 of the FOI Act. Similar mechanisms for aggregating requests exist where the burden multiple requests place on an authority result in those requests being deemed vexatious (under section 14 of the FOI Act).

For reference, I set out the information requests you have submitted regarding Pools on the Park from 19/01/2024 to 02/04/2024:

[REFERENCE REDACTED] 19/01/2024 Pools on the Park
[REFERENCE REDACTED] 07/02/2024 Pools on the Park
[REFERENCE REDACTED] 07/02/2024 Pools on the Park
[REFERENCE REDACTED] 22/02/2024 Emails
[REFERENCE REDACTED] 26/02/2024 Pools on the Park
Pools on the Park residents consultation on group
[REFERENCE REDACTED] 28/02/2024 exercise studio
[REFERENCE REDACTED] 18/03/2024 Pools on the Park Energy Audit
[REFERENCE REDACTED] 02/04/2024 Emails

In addition to the hours of officer time that has already been spent on responding to your information requests, the Council estimates it would take a further 25 hours to respond to the following two requests:

[REFERENCE REDACTED]
[REFERENCE REDACTED]

Please accept my apologies that I have been unable to obtain an estimate for [REFERENCE REDACTED]. This is being calculated and I will follow up with the same, however – not least because of the delay already experienced – I wanted to get this response to you sooner, rather than later. The hours already spent over the 60-day period and the further hours that would be required to answer outstanding requests [REFERENCE REDACTED] [REFERENCE REDACTED] and [REFERENCE

REDACTED] means that your requests relating to Pools on the Park have exceed the 18-hour (£450) cost limit under section 12(2) of the Freedom of Information Act 2000.

In accordance with the Freedom of Information Act, this email acts as a refusal notice."

10. On 28 May 2024 the complainant submitted a request for clarification in the following terms:

"PLEASE NOTE: This message IS NOT a request for internal review. It is being sent in order to clarify the council's response to my request.

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Thanks for your delayed response on this request - Energy Audit for Pools on the Park (LBR-FOI-04684)

I have some further questions for clarification:

1. Can you confirm that LBRUT holds the information I requested?
 2. What exemption(s) were you relying on when carrying out a public interest test?
 3. Can you confirm that the public interest test on the requested information has now been carried out since you requested an extension of 20 more working days?
 4. What was the outcome of the public interest test?
 5. The information requested on LBR-FOI-04684 is the supply of one or two existing documents and should therefore not incur a large burden of officer time. It is rather surprising that no estimate of time is not yet available. When can I expect your estimate?
 6. According to The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, a Section 12 exemption by aggregating requests requires the information requested to relate to the "same or similar information". Please tell me why LBRUT thinks that this request for one or more Energy Audit documents is the same or similar to requests for emails between council officers that have no connection with Energy Audit documents?"
11. On 7 June 2024 the complainant chased the Council for a response to their questions.
 12. On 21 June 2024 the complainant requested an internal review. The complainant argued that the Council was incorrect to aggregate the requests and had misread the wording of the legislation. The complainant stated that aggregation is permitted where the requests are for the same or similar information, and not "the same or similar subject", as asserted by the Council. The complainant also stated that the Council had misapplied the extension of time to consider the public interest test.

13. On 2 July 2024 the Council acknowledged the complainant's request for internal review.
14. On 31 July 2024, the Council wrote to the complainant to advise that it required a further 20 working days to provide an internal review outcome.
15. On 29 August 2024 the Council wrote to the complainant to extend the time for providing an internal review outcome by a further 20 working days.
16. On 8 September 2024 the complainant contacted the Commissioner to complain about the Council's handling of their aggregated requests. On 20 September 2024 the Commissioner accepted the case for investigation without requiring an internal review.
17. The complainant wrote to the Council a further three times in respect of the outstanding internal review.
18. On 24 October 2024, the Council wrote to the complainant to acknowledge their correspondence and advise that its solicitor was in the process of responding to the complaint he had raised with the Commissioner.
19. On 9 December 2024 the Commissioner wrote to the Council to request that it provide an internal review outcome in respect of the complainant's outstanding requests that had been refused under section 12(2).
20. On 23 December 2024 the Council provided its internal review response. The Council disclosed the information it held within scope of the complainant's request.

Scope of the case

21. On 31 January 2025 the complainant provided their grounds of complaint in the following terms:

"As you know, the requested information has finally been provided, so I do not disagree with the internal review response.

However, I am requesting that the ICO investigate this complaint on the grounds that LBRUT failed to properly handle my FOI request in accordance with the FOI Act and ICO guidance.
22. As the Council has disclosed the requested information and is no longer relying on section 12(2) to refuse the request, the Commissioner will not be considering as part of this decision whether the Council was entitled

to refuse the request under this exemption. The Commissioner considers that the scope of his investigation is to determine whether the Council complied with the procedural requirements set out in the regulations when responding to the request.

Reasons for decision

Is the requested information environmental?

23. 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);

24. The request concerns information relating to energy and emissions affecting or likely to affect the elements of the environment in 2(1)(a). The Commissioner also finds that the requested information meets the description of environmental information given at 2(1)(e). For procedural reasons, he has therefore assessed this case under the EIR.

Procedural matters

25. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."

26. Regulation 5(2) of the EIR states that:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

27. The Commissioner finds that the Council breached regulation 5(2) of the EIR by failing to provide the complainant with the requested information within 20 working days.

28. Regulation 11 of the EIR states that:

"(3) The public authority shall on receipt of the representations and free of charge—

(a) consider them and any supporting evidence produced by the applicant; and

(b) decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations."

29. From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days, the Council has breached regulation 11 of the EIR. The Commissioner considers the delay in this case to be extremely unsatisfactory and reminds the Council that it should provide prompt responses in future.

Right of appeal

30. 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

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jonathan Slee
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Information Commissioner's Office
Wycliffe House
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