

## Environmental Information Regulations 2004

### Decision Notice

Date 13 September 2006

**Public Authority:** Westminster City Council  
**Address:** Westminster City Hall  
64 Victoria Street  
London  
SW1E 6QP

#### Summary

---

On 6 September 2005 the Complainant requested, under the Freedom of Information Act, information related to a possible change in planning use in Westminster's Dolphin Square and the Dolphin Square Hotel. The public authority did not respond to the request until 9 January 2006. Whilst the public authority dealt with the request under the Freedom of Information Act, the Commissioner is of the opinion that the information was of a predominantly environmental nature and that the request should have been dealt with under the Environmental Information Regulations. Consequently the Commissioner finds that, in responding outside the statutory time, the public authority breached regulation 5.(2) of the Environmental Information Regulations.

#### The Commissioner's Role

---

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

#### The Request

---

2. On 6 September 2005 the complainant contacted the public authority to request under the Act:

“Any internal or external memo, letters or emails within the past two months on the subject of possible change of planning use in Dolphin Square and Dolphin Square Hotel”.

3. The public authority wrote to the complainant on 5 October 2005 stating that the request was “still being considered”.
4. On 9 November 2005 the public authority wrote to the complainant explaining that the provisions of section 43 of the Act were being considered in relation to the request. The public authority said that the vendors and purchasers of Dolphin square would have to be consulted in order to see if their commercial interests would be prejudiced by disclosure.
5. On 9 January 2006 the public authority responded to the request by disclosing much of the information that had been requested. Some of the information was covered by the section 41 exemption for legal professional privilege but was still disclosed as the public authority felt that the public interest in disclosure outweighed the public interest in maintaining the exemption. Some documents were withheld in their entirety under section 43 of the Act and some information was redacted from documents under section 43 of the Act.

## The Investigation

---

### Scope of the case

6. On 21 January 2006 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the delay in responding to the request for information.
7. The complainant did not challenge the public authority’s decision to withhold some information under section 43 of the Act and therefore this was not considered as part of the Commissioner’s investigation.
8. The complainant also alleged that the public authority had deliberately delayed responding to the request in order to prevent the attempts by the complainant to oppose the public authority’s decision to sell Dolphin Square.
9. The Commissioner cannot speculate on a public authority’s motives for the manner in which it deals with a request and therefore has not considered this allegation as part of his decision.

### Chronology

10. The Commissioner exercised his discretion to consider the complaint even though the complainant had not exhausted the public authority’s internal review procedure.

11. On 15 May 2006 the Commissioner contacted the public authority to confirm the dates of correspondence between itself and the complainant. The Commissioner also asked the public authority for a further explanation as to why it took so long for it to respond to the complainant's request.
12. The public authority responded to the Commissioner on 4 July 2006, confirming the dates of correspondence. The public authority explained that the delay in responding to the request was due to the fact that it had to invite the views of the other interested parties involved in the sale of Dolphin Square in order to confirm whether or not the information it proposed to disclose would prejudice their commercial interests. The public authority further explained that "extensive consultation was undertaken with the relevant parties" and that, in its opinion, "given the number of officers and third parties involved it was inevitable that there would be some delay in responding to [the complainant's] request".

### **Findings of fact**

13. It was confirmed that although the public authority acknowledged the request on 6 September 2005 it did not respond to the request until 9 November 2005, stating that it was considering the section 43 exemption in relation to the request. The public authority did not respond substantively until 9 January 2006 at which time it disclosed much, though not all, of the information that was requested.
14. On reviewing the information, supplied to the Commissioner by the complainant, it was apparent that the request should have been dealt with under the EIR. The information was overwhelmingly of an environmental nature and concerned issues of planning and the change in use of buildings within Dolphin Square. The Commissioner accepts that the information falls within the definition of environmental information as set out in regulation 2(1) of the EIR.

### **Analysis**

---

#### **Procedural matters**

15. Regulation 5, paragraph 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 receipt of the request.
16. By disclosing the information on 9 January the public authority considerably exceeding the 20 working days provided for in the EIR. The Commissioner recognises that regulation 7 of the EIR provides for an extension of time for responding to a request if the public authority reasonably believes that the complexity and volume of the information requested means that it is impracticable to deal with the request within 20 working days. In such an instance regulation 7

provides an extension of time to 40 working days. The Commissioner realises that the public authority dealt with the request under the Act and therefore did not seek to rely on regulation 7 of the EIR. However, the Commissioner notes that even if the public authority had dealt with the request under the EIR the fact that it did not respond to the request until 9 January 2006 means that it would still have exceeded the extended time period of 40 working days.

## **The Decision**

---

17. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the EIR.

## **Steps Required**

---

18. The Commissioner requires no steps to be taken.

## **Other matters**

---

19. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
20. The public authority only responded to the request on 9 January 2006 and the extra information was therefore not received by the complainant until around 11 January 2006. The Commissioner recognises that, even if it was not the deliberate intention of the public authority, this had the effect of preventing the complainant from using the information in an attempt to oppose the public authority's decision to sell Dolphin Square.

## Right of Appeal

---

21. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 13<sup>th</sup> day of September 2006**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**