

## **Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004**

### **Decision Notice**

**Date: 2 August 2011**

**Public Authority:** London Borough of Tower Hamlets  
**Address:** Town Hall  
Mulberry Place  
5 Clove Crescent  
E14 2BG

### **Summary**

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The complainant requested minutes of the meetings of a group set up by the public authority in relation to the regeneration of Roman Road East District Centre. The public authority withheld the information on the basis of the exemptions at sections 36(2)(b) (i) & (ii) and 36(2)(c) of the Act. The Commissioner found that the request should have been addressed under the Environmental Information Regulations 2004 (the EIR). He therefore ordered the public authority to either disclose the information or respond to the request in accordance with its responsibilities under the EIR.

### **The Commissioner's Role**

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. 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

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3. On 20 September 2010 the complainant requested:
  - i. Copies of the minutes of the meetings of the Roman Regeneration Group or whatever the group (not LAP5) is called that is forming the strategy for the regeneration of Roman Road East District Centre under the Chairmanship of Cllr Joshua Peck, for all meetings from 2008 to the present, and*
  - ii. Copies of the clerk's notes from which the minutes were drawn up.*
4. On 20 October 2010 the public authority responded. The request was denied on the basis that the minutes of the meetings requested were exempt on the basis of sections 36(2)(b) (i), (ii), and 36(2)(c). However, item ii of the request for the clerk's notes was not specifically addressed.
5. The public authority went on to explain that there was no further right to request an internal review because the decision had been taken by its monitoring officer and within its structure, there was no one else, other than the monitoring officer who could conduct an internal review.
6. The complainant nonetheless requested an internal review on 12 November 2010.
7. The public authority wrote back on 16 November 2010 and reiterated that the decision was taken by the qualified person under the Act (i.e. the monitoring officer) and any internal review would be at a similar level and therefore result in the same outcome.

## The Investigation

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### Scope of the case

8. On 12 January 2011 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to review the public authority's decision to withhold the information requested.

### Chronology

9. On 16 February 2011 the complaint was allocated to one of the case resolution teams.

10. On 18 April 2011 the Commissioner wrote to the complainant. He outlined the scope of his investigation and invited the complainant to comment if necessary. The complainant did not respond.
11. On 18 April 2011 the Commissioner also wrote to the public authority. In addition to requesting its submissions on the application of exemptions and copies of the withheld information, he specifically asked the public authority to consider whether the correct information access regime for the withheld information should have been the Environmental Information Regulations 2004 (the EIR).
12. The public authority initially wrote to the Commissioner on 18 April 2011 in response to his recommendation that the public authority consider whether the EIR was in fact the correct access regime. It explained that it did not consider the EIR was the applicable access regime.
13. On 31 May 2011 the public authority wrote to the Commissioner in response to his request for submissions on the application of exemptions and made further representations to support its view that the request should not have been addressed under the EIR. It also provided the Commissioner with copies of the withheld information.
14. On 2 June 2011 the Commissioner and public authority exchanged emails in relation to the withheld information.

## Analysis

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### Substantive Procedural Matters

15. A full text of the statutory provisions referred to below can be found in the legal annex.

### Applicable Access Regime

16. The Commissioner first considered whether the withheld information is 'environmental' within the definition in the EIR.
17. The public authority submitted that the meetings were '*multi-disciplinary discussions about a series of issues as part of an overall approach to the area...*' and did not therefore constitute environmental information. According to the public authority the minutes relate to variety of matters of business on Roman Road such as shop front improvements, development of a farmers' market and a local shop scheme. It argued that regulation 2 of the EIR is '*very much concerned with the specified natural elements of the environment and the*

*specified factors affecting those elements of the environment.....this was not the focus of the meetings.'*

18. The public authority however also stated that it would be willing to disclose parts of the minutes on 'waste enforcement' reported in the meetings of 3 December 2008, 21 January 2009, and 2 September 2009 because it considered this was the only part of the withheld information caught by the EIR.

#### Commissioner's Assessment

19. In response to his request for copies of the withheld information, the public authority provided the Commissioner with copies of the minutes described below.
- Meeting Minutes – 20 July 2007
  - Meeting Minutes - 23 November 2007
  - Meeting Minutes – 16 September 2008
  - Meeting Minutes – 7 May 2008
  - Meeting Minutes: Roman Road Executive Board – 3 December 2008
  - Meeting Minutes: Roman Road Executive Board – 21 January 2009
  - Meeting Minutes: Roman Road Implementation Group – 4 March 2009
  - Meeting Minutes: Roman Road Implementation Group – 8 April 2009
  - Meeting Minutes: Roman Road Implementation Group – 20 May 2009
  - Meeting Minutes: Roman Road Implementation Group – 20 May 2009 [This appeared to be slightly different from the copy above.]
  - Roman Road Town Centre Implementation Group Meeting Minutes – 15 July 2009
  - Roman Road Town Centre Implementation Group Meeting Minutes – 29 July 2009
  - Meeting Minutes: 2<sup>nd</sup> September 2009
  - Roman Road Implementation Group Meeting Minutes – 4 November 2009

- Roman Road Centre Implementation Group Meeting Minutes – 20 January 2010
  - Roman Road Implementation Group Meeting Minutes – 21 July 2010
  - Roman Road Implementation Group Meeting Minutes – 1 September 2010
  - Meeting Minutes – 20 December 2010
20. In view of the fact that item i of the request was restricted to minutes of meetings from 2008 to 20 September 2010, the Commissioner asked the public authority to clarify why the minutes of 2007 and December 2010 were considered within the scope of item i of the request.
21. In response the public authority stated that it had forwarded the *'minutes held on the subject....[and] if they are for meetings outside of the scope of the request then they should be disregarded..'*
22. The Commissioner also queried why the withheld information did not appear to include information within the scope of item ii of the request (i.e. clerk notes from which the minutes were drawn).
23. In response the public authority explained that the clerk's notes would have been destroyed after the minutes were approved.
24. The Commissioner finds that the minutes of 20 July 2007, 23 November 2007, and 20 December 2010 are outside the scope of item i of the request and these minutes did not therefore form part of his investigation.
25. In terms of item ii, the Commissioner finds that the public authority should have notified the complainant of the position at the time of the request. This would have provided the complainant an opportunity to either challenge or accept the public authority's response to this part of her request.
26. 'Environmental Information' is defined at regulation 2(1) of the EIR as any information in written, visual, aural, electronic or any other material form 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) and (b) 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 elements of the environment referred to in (b) and (c);
27. In the Commissioner's view, the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. The Commissioner considers a broad interpretation of this phrase will usually include information concerning, about, or relating to the measure, activity, factor etc in question. In other words, information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.
28. The Commissioner has carefully considered the withheld information within the scope of the request. In broad terms, the minutes are predominantly discussions about the various options being considered and under implementation in relation to the development of Roman Road in order to make it an attractive option for businesses. Whilst a number of social initiatives were also discussed, the dominant purpose of the discussions was to improve the infrastructures, or simply put, to physically regenerate the area to attract small business.
29. The Commissioner considers that these initiatives or measures are on the environment because they are likely to affect the elements in regulation 2(1)(a). He therefore finds that the withheld information is environmental information within the meaning of regulation 2(1) (c).

## Procedural requirements

30. A public authority's duty to respond to a request is enshrined in regulation 5 of the EIR.
31. The Commissioner finds the public authority in breach of regulation 5 for failing to respond to item ii of the request.
32. By virtue of regulation 11 a public authority is required to conduct an internal review within 40 working days in light of any representations made by an applicant against the public authority's response to a request.
33. The Commissioner finds the public authority in breach of regulation 11 for not conducting an internal review as requested by the complainant.
34. By virtue of regulations 14(1) and 14(2) a public authority is required to issue a refusal notice under the EIR within 20 working days.
35. The Commissioner finds the public authority in breach of regulations 14(1) and 14(2) for issuing its refusal notice outside of the statutory 20 working days.
36. By virtue of regulation 14(3) (a) and (b) the refusal notice must specify the exceptions relied on to refuse the request and the matters the public authority considered in reaching its decision with respect to the public interest.
37. The Commissioner finds the public authority in breach of regulations 14(3) (a) and (b) for failing to rely on exceptions under the EIR to withhold the requested information.
38. By virtue of regulation 14(5) a public authority is required to inform an applicant of their right to request an internal review under regulation 11.
39. The Commissioner finds the public authority in breach of regulations 14(5) for failing to notify the complainant of her right to request an internal review.

## The Decision

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

## **Steps Required**

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41. The Commissioner requires the public authority to take the following steps to ensure compliance with the EIR:
  - Disclose the withheld information listed in paragraph 19 above (other the minutes referred to in paragraph 24) or issue a refusal notice relying on an exception(s) under the Environmental Information Regulations 2004.
  - In compliance with its duty under regulation 5, the public authority should inform the complainant directly whether or not it holds information within the scope of item ii of her request.
42. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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43. Failure to comply with the steps described above 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.



## Right of Appeal

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44. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 2<sup>nd</sup> day of August 2011**

**Signed .....**

**Alexander Ganotis  
Group Manager – Complaints Resolution  
Information Commissioner’s Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Regulation 2 - Interpretation

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#### Regulation 2(1)

In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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) and (b) 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 elements of the environment referred to in (b) and (c);

## **Regulation 5 - Duty to make available environmental information on request**

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### **Regulation 5(1)**

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

## **Regulation 14 - Refusal to disclose information**

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### **Regulation 14(1)**

If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

### **Regulation 14(2)**

The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

### **Regulation 14(3)**

The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

**Regulation 14(4)**

If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

**Regulation 14(5)**

The refusal shall inform the applicant –

- (c) that he may make representations to the public authority under regulation 11; and
- (d) of the enforcement and appeal provisions of the Act applied by regulation 18.