

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 October 2011

Public Authority: North London Waste Authority
Address: Lee Valley Technopark, Unit 169
Ashley Road
Tottenham
London
N17 9LN

Decision (including any steps ordered)

1. The complainant has requested copies of all written correspondence and related information between the London Borough of Barnet and North London Waste Authority (NLWA) in connection with various aspects of the Hendon Waste Transfer Station.
2. The Information Commissioner's decision is that the public authority did not deal with the request for information in accordance with the EIR in that it did not apply the correct legislation when handling the request.
3. He therefore requires NLWA either to provide the information requested in compliance with regulation 5(1) or issue a valid refusal notice that complies with regulation 14 of the EIR.
4. The public authority must take these steps within 35 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 (or the court of session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 6 January 2011, the complainant wrote to North London Waste Authority (NLWA) making a multi-part request. In that part of the request that is the subject of this decision notice he requested:

"FOIA1 - Under the Freedom of Information Act 2000 that you provide me with copies of all written correspondence and/or related information between LB Barnet and the NLWA relating to the NLWA PFI scheme concerning the existing Hendon Waste Transfer Station and its future land use or any proposed or potential land-sale and any cross-referenced to any correspondences between the BXC [Brent Cross Cricklewood] Partners or LB Barnet. All such information to be backdated to November 2009 to today (6th Jan 2011) and to be provided to me within the required 20-day statutory period".

6. The NLWA responded on 4 April 2011 and 12 April 2011. It provided some information relevant to the request but withheld other relevant information citing the exemptions in sections 42 (legal professional privilege) and 43 (commercial interests) of the FOIA.
7. Following an internal review conducted, in accordance with NLWA's review process, by London Borough of Camden, the public authority wrote to the complainant on 28 April 2011. It stated that it considered *"that all information held that is releasable has been released"*.

Scope of the case

8. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He raised the following issues with the Information Commissioner:
 - the NLWA wrongly treated all the information as falling within FOIA when some, most or all of the information is governed by the Environmental Regulations 2004 (EIR);
 - the NLWA did not respond within the time prescribed by FOIA and the EIR; and
 - at no time did the NLWA comply with its duty to assist an applicant.
9. With the agreement of the applicant, the Information Commissioner considers the scope of this case to be with respect to that part of the multi-part request referred to as FOIA1.

Reasons for decision

10. NLWA originally processed the complainant's request for information under FOIA and considered the information to be exempt under sections 42 and 43. However, the Commissioner has first considered whether the

requested information in this case constitutes environmental information and that the correct access regime is, therefore, the EIR.

11. Environmental information is defined in regulation 2 of the EIR as :

*"any information in written, visual, aural, electronic or any other material form **on** ..."*:

- the state of the elements of the environment, such as air, water, soil, land;
 - emissions and discharges, noise, energy, radiation, waste and other such substances; and
 - measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment.
12. The Information Commissioner's approach is to interpret "*any information... on*" fairly widely. He does not consider it necessary for the requested information itself to have a direct effect on the environment in order for it to be environmental information. It will usually include information concerning, about, or relating to measures, activities and factors likely to affect the state of the elements of the environment.
13. The NLWA's primary function is to arrange for the transport and disposal of waste collected by seven London boroughs and to promote waste minimisation and recycling.
14. Having considered the nature and context of the request, and viewed the withheld information, the Information Commissioner has concluded that it constitutes environmental information as defined by regulation 2(1)(c) of the EIR. This is because the information in this case relates to information on a measure or activity and the measure or activity in question affects, or is likely to affect, the environment or is designed to protect it.

Other matters

15. The provision of advice and assistance is a wide-ranging duty, and has the potential to be relevant to most, if not all, stages of the request process. Advice and assistance can simply be seen as the means by which a public authority engages with an applicant in order to establish what it is that the applicant wants and, where possible, assists them in obtaining this. In effect, it provides for good customer service.

16. The Commissioner is therefore disappointed to note that a lack of understanding on the part of NLWA about what information the complainant was seeking may have contributed to the delays he encountered in receiving its response. The Information Commissioner would remind public authorities of their duties under section 16 of FOIA and regulation 9(1) of the EIR to provide advice and assistance to applicants.

Right of appeal

17. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

18. 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.
19. 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

Jon Manners
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