

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

Decision notice

Date: 13 March 2012

Public Authority: London Borough of Barnet
Address: North London Business Park (NLBP),
Oakleigh Road South,
London.
N11 1NP

Decision (including any steps ordered)

1. The complainant requested copies of all written correspondence and/or related information between the London Borough of Barnet and the North London Waste Authority relating to the existing Hendon Waste Transfer Station and its future land use, or any proposed or potential land sale, and any cross reference to any correspondence between the BXC [Brent Cross Cricklewood] Partners or LB Barnet.
2. The Commissioner's decision is that the London Borough of Barnet (the council) has breached regulation 11(3) of the EIR as it failed to respond to the complainant's request for an internal review within 40 working days.
3. The Commissioner is satisfied that the council has complied with regulation 12(4)(a) as it has provided the complainant with all of the information it holds that is relevant to the request.
4. In addition to this, the complainant submitted a further expanded request to the council which it has not yet responded to, which is in breach of regulation 5(2).
5. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Respond to the request submitted on 6 April 2011
6. 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.

Background

7. The North London Waste Authority (NLWA) is made up of seven north London boroughs (Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest). A major procurement programme is underway for investment in new facilities and for new services after 2014. The future contract is likely to run for 25 to 35 years from 2014. Alongside this, there are growing demands for new waste facilities to support increases in recycling and composting and reduce the amount of waste that goes to landfill.
8. The complainant in this case may be subject to a compulsory purchase order as one of his business sites has been identified as a potential site for a new waste facility.

Request and response

9. On 10 March 2011 the complainant wrote to the council and requested information in the following terms:

Please can you provide to me Under the Freedom of Information Act 2000 and within the required 20-day statutory period, copies of all written correspondence and/or related information between LB Barnet and the NLWA relating to the existing Hendon Waste Transfer Station and it's future land use or any proposed or potential land-sale and any cross-reference to any correspondences between the BXC Partners or LB Barnet. All such information to be backdated to November 2009 to today

10. The complainant wrote to the council again on 6 April 2011, before the statutory deadline for his response, in which he said:

My outstanding FOIA with LB Barnet is restated -

Please can you provide to me Under the Freedom of Information Act 2000 and within the required 20-day statutory period, copies of all written correspondence and/or related information between LB Barnet and the NLWA relating to the existing Hendon Waste Transfer Station and it's future land use or any proposed or potential land-sale and any cross-referenced to any correspondences between the BXC Partners or

LB Barnet. All such information to be backdated to November 2009 to today (10th March 2011)

For the avoidance of any doubt whatsoever, they [sic] ONLY main subject here is the existing Hendon Waste Transfer Station and the related topics are (1) its future land use and/or (2) any proposed or potential land-sale - what is so complicated about this and (3) the NLWA's actual PFI (private finance initiative) scheme again concerning the existing Hendon Waste Transfer Station....

That is - the existing Hendon Waste Transfer Station - I want to know about this site and its future..... AND it's related topics are (1) it's future land use and/or (2) any proposed or potential land-sale and lastly, (3) the NLWA's actual PFI

So, please do not waste my time with 65% of the attached docs are totally unrelated to my FOIA request and maybe 25% are only loosely related, with maybe 10% or so slightly less tenuously related - again, NOT answering my question.

I want to know about the NLWA's existing the existing Hendon Waste Transfer Station and how this is dealt with in terms of its replacement by way of a PFI scheme.

I therefore want copies of all written correspondence and/or related information between LB Barnet and the NLWA and the BXC Development Partners, between November 2009 to today - and you can pick any date in November 2009 as I didn't actually state one...

11. The council wrote to the complainant on 14 April 2011, two days before the initial response was due, to inform him that it was extending the time for compliance under regulation 7 of the EIR from 20 working days to 40 working days.
12. The council responded on 10 May 2011, 39 working days after the request was made, in which it refused to disclose the information requested on 10 March 2011 on the basis that the information it held did not fall within the scope of the request. The council did not refer to the complainant's correspondence of 6 April.
13. Following an internal review, of the request submitted on 10 March, the council wrote to the complainant on 18 July 2011, the council took 47 working days to provide the outcome of the review. It stated that it did indeed hold some information which was caught by the scope of the request and provided what it did hold, applying regulation 13 to withhold 3rd party personal data. Again, the council made no reference to the complainant's correspondence of 6 April.

Scope of the case

14. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He argued that the council must hold more information than that provided to him as a result of his request. The complainant did not ask the Commissioner to consider the council's application of regulation 13.
15. The complainant's request of 10 March 2011 was for copies of all written correspondence and/or related information between LB Barnet and the NLWA relating to the existing Hendon Waste Transfer Station.
16. The complainant's follow up correspondence of 6 April 2011 contained a request for copies of all written correspondence and/or related information between LB Barnet and the NLWA and the BXC Development Partners.
17. The council has informed the Commissioner that in its opinion, the request of 6 April 2011 was an expanded and therefore new request. The complainant disagrees with the council and states that the correspondence of 6 April was merely clarification of the information he was seeking.
18. The Commissioner considers that by expanding the scope of his request and by changing the date for the time period he was requesting information for, the complainant has inadvertently submitted a new request for information. The Commissioner has therefore only considered whether or not the council has provided the complainant with the information he requested on 10 March 2011. The council has acknowledged that it overlooked the request contained within the 6 April correspondence.

Reasons for decision

19. Regulation 12(4)(a) of the EIR states that a public authority can refuse to disclose information on the basis that it does not hold the information at the time the request is received.
20. In cases such as this, where there is a dispute about the amount of information provided as a result of a request, the Commissioner will apply the civil standard of the balance of probabilities, i.e. whether on the balance of probabilities the Commissioner is satisfied that no further information is held.

21. The complainant has argued that the council has interpreted his request too narrowly and that the information provided to him was way short of the amount of information he would expect the council to hold.
22. The council explained to the Commissioner that the request of 10 March 2011 was interpreted to mean;
 - Correspondence between the Council and NLWA
 - Associated information exchanged between the Council and the NLWA
 - And of that correspondence/information, to provide only that which related to the existing Hendon Waste Transfer Station.
23. Searches were carried out during the initial response provided by the council and during the internal review in terms of the information bullet pointed above. The council has stated that in the request for a review, the complainant did not provide any further detail as to why he believed the initial response provided to him was inadequate. Therefore the council focussed only on the above points.
24. Both the person who compiled the initial response, and the person who conducted the internal review, sent the exact wording of the request of 10 March to the various managers involved in the project. None of those managers questioned the council's interpretation of the request.
25. During the course of the Commissioner's investigation, the council acknowledged that it had overlooked the expanded request of 6 April 2011. The council confirmed that this request had not yet been responded to.
26. Based on the submissions received from the council, the Commissioner is satisfied that on the balance of probabilities no further recorded information exists relevant to the complainant's request of 10 March and regulation 12(4)(a) of the EIR applies in this case.
27. The Commissioner is satisfied that the council has responded appropriately to the complainant's request and that all of the information caught by the scope of that request has been provided to the complainant. The Commissioner is also in agreement with the council that the request of 6 April is both larger in scope and a different request.

Public Interest Test

28. Regulation 12(4)(a) is subject to the public interest test. However it will not usually be possible for the Commissioner to consider the public interest test in respect of information which has already been provided,

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as in this case, and therefore he has not commented on it further in this Notice

Right of appeal

29. 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

30. 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.
31. 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

Andrew White
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Wycliffe House
Water Lane
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