

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

Date: 3 January 2013

Public Authority: Haringey Council
Address: Civic Centre
High Road
Wood Green
London
N22 8LE

Decision (including any steps ordered)

1. The complainant has requested information relating to meetings between the Haringey Planning Department and the North London Waste Authority about the inclusion of Pinkham Way in an outline planning application. The Commissioner's decision is that Haringey Council did not meet the requirements of regulation 5 of the EIR in that it did not provide the requested information within 20 working days. However, as the information has now been provided, the Commissioner does not require the public authority to take any steps.

Request and response

2. On 24 July 2011, the complainant wrote to Haringey Council ('the council') and requested information in the following terms:

"[Named individual], senior planning officer at Haringey Council, stated at a recent meeting that there had been a number of meetings between the Haringey Planning Department and the NLWA about the inclusion of Pinkham Way in an outline planning application:

How many such meeting were held?

On which dates were they held?

Who attended such meetings?

Please provide copies of minutes of the meetings referred to above.

3. Following the Information Commissioner's intervention (see paragraph 5 below), the council responded on 22 December 2011 and provided information relating to the dates of three meetings but refused to provide the remainder. It cited the exceptions at Regulations 12(4)(d), 12(5)(e) and 12(5)(f) as its basis for doing so.
4. The complainant requested an internal review on 23 January 2012. The council responded on 20 February 2012 and maintained its original position.

Scope of the case

5. The complainant originally contacted the Commissioner on 8 November 2011 to complain that his request for information had not been responded to. The complaint was closed on 13 December 2011 following a letter from the Commissioner to the council requesting that it provide a response within 10 working days. The complainant then contacted the Commissioner by letter dated 15 April 2012 stating that the council had now responded to his request and provided an internal review but he was unhappy with the application of exceptions.
6. During the Commissioner's investigation, the council advised that it no longer wished to apply any exceptions to the requested information. On the advice of the Commissioner it disclosed the minutes of two meetings, which also provided the names of those who attended, to the complainant on 8 October 2012. However, it also stated that after a thorough search of records, it has been determined that it does not hold a copy of any minutes from the meeting of 18 January 2010.
7. The complainant wrote to the Commissioner on 15 October 2012 as he was suspicious that the minutes of the meeting of 18 January 2010 were not available. He stated that of the three meetings, this was potentially the most significant meeting and the minutes were the most likely to yield embarrassing for the council and the North London Waste Authority ('NLWA'). He also stated that it seemed particularly curious that the council did not declare the fact that these minutes could not be found at an earlier stage given that it should have reviewed the document before applying exceptions. He also stated that he did not believe it was in the public interest for the Commissioner not to issue a decision notice in this case as he alleged that the council and other participants in the North London Waste Plan had repeatedly ignored formal requests for information, had worked the system by prevaricating and delaying responses, and that this unreasonable behaviour should be on the public record.

8. The complainant wrote again to the Commissioner on the 15 October 2012 suggesting that one of the sets of minutes supplied might not be for a meeting between the council and the NLWA and that the disclosed minutes suggest that further meetings may have taken place and therefore further information within the scope of the request may be held.
9. On 18 October 2012, the Commissioner wrote to the council to enquire as to what information was in fact held, what searches had been carried out to retrieve the requested information and whether the minutes supplied were those actually requested.
10. On 14 November 2012, the complainant informed the Commissioner that Camden Council, on behalf of the NLWA, had conducted an internal review of the same request for information made to Camden Council in parallel to the request made to Haringey Council. Camden Council had confirmed that the minutes of the 18 January 2010 were held and agreed to release them within 7 days. Camden Council stated that in reversing its original decision to withhold these minutes, it had taken into account Haringey Council's decision to release the minutes of the other pre-application meetings and that had it been able to locate their copy of the 18 January 2010 minutes, they would have been released. However, despite this confirmation that the complainant was due to receive the requested information, albeit from a different public authority, he requested that Haringey Council should still be pressed to find their copies as there was some doubt as to whether the document to be released was a draft or final version and he believes that in the days of electronic mail, losing a document must be almost an impossibility.
11. The council wrote to the complainant on 15 November 2012 stating that the minutes of the meeting of 18 January 2010 had been found and disclosed a copy to him. It also disclosed minutes of a meeting on the 21 January 2010, which it stated was information similar to that requested, and confirmed why the minutes disclosed on the 8 October 2012 were considered to fulfil the terms of the original request. The council provided the following explanation:

"Haringey planning department operates a paper free system as far as possible and does not use manual files to store pre-application discussions. This is due to limited office space and even more limited storage space available. The only paper copies of such information would be printed by and used by the officers attending the pre-application meetings for the actual meetings. All papers regarding such discussion are disposed of when the process of pre-application discussion is complete and/or an application is submitted, only an

electronic record is kept. Any hand written notes would also be destroyed.

Each of these officers has carried out a full electronic search for the minutes. This search included information held on networked resources and emails. Officers did not use personal computers for saving electronic data. No records of these minutes were found this way. There were no known paper files in relation to the pre-application discussion.

We can now confirm that the minutes have now been retrieved and have only recently been found in the email archive of a member of planning staff who has left the employment of the Council since this time, [named individual]. Please find attached the full draft minutes of the meeting of the 18th January 2010.

This search also confirmed that to the best of our knowledge that these draft minutes were never forwarded on to any of the Haringey officers who were present at the meeting on the 18th.

These minutes are considered to be draft cannot be confirmed as a true and accurate record of the meeting on the 18th January.

This search was not carried out before as:
None of the other Haringey officers who attended the meeting had any record of being sent these draft minutes.
A search such as this involves the Haringey IT staff and so there are cost implications to the planning department."

12. In relation to the complainant's suggestion that there may be minutes of further meetings, the council explained that it had checked Haringey officer emails, including that of the ex-employee, for any details or reference to any further pre-application meetings but there no emails or meetings in officers electronic diaries referring to any other meetings and officers cannot recall any such meetings. The complainant has not disputed this.
13. The council also wrote to the Commissioner on the 22 November 2012, responding to his enquiries of 18 October 2012, in which it expanded on the details of the search carried out and provided further information in relation to how it handles certain records. It also stated that in its original response to the complainant it should have been clearer that the minutes of the meeting of 18 January 2010 were not available.
14. As the requested information has now been provided the scope of this case is therefore to consider whether the council has complied with the requirements of regulation 5 of the EIR.

15. The Commissioner acknowledges that the complainant has made other requests to the council as a result of the information it has disclosed in this case and that he is dissatisfied with the responses provided to date. For clarity, those requests are not considered in this decision notice but the complainant does have a right to complain, under section 50(2) of the FOIA, about those specific requests.

Reasons for decision

Regulation 5

16. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of request.
17. The complainant submitted his request for information on 24 July 2011. The council did not provide the complainant with the requested information until 8 October 2012 and 15 November 2012. Consequently the Commissioner finds that the council has breached regulation 5(2) of the EIR, in that this information was not provided to the complainant within 20 working days.

Other matters

18. The Commissioner is concerned about the severity of the delay in this case. That delay has been logged and will be used to monitor any persistent trends which might indicate that a public authority is routinely failing to respond within the statutory 20 working days permitted under regulation 5 of the EIR.

Right of appeal

19. 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

20. 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.
21. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF