

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

Date: 9 May 2013

Public Authority: London Borough of Lambeth
Address: Lambeth Town Hall
Brixton Hill
London
SW2 1RW

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Lambeth (the council) to inspect information from environmental records held on a specific property in London which would enable him to answer questions from the CON29R form. The council initially stated that the information was not available for inspection and that it would only be provided on receipt of a fee. During the course of the Commissioner's investigation, the council provided the information it held in respect of the specific property to the complainant.
2. The Commissioner's decision is that the council has breached regulation 5(2) of the EIR as it failed to make the requested information available on request within the time for compliance.
3. As the requested information has been provided, the Commissioner does not require the council to take any steps in this specific case.

Background

4. Section 3 of the Local Land Charges Act 1975 compels all local authorities to generate, maintain and update a Local Land Charges Register and to provide local searches. In order to obtain information from a local search, an application for an Official Search must be submitted to the relevant Local Authority on form LLC1. This is usually accompanied by form CON29R.

5. The CON29R form is comprised of two parts. Part 1 contains a list of standard enquiries about a property. Optional enquiries are contained in Part 2.
6. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority.
7. The complainant represents a company which provides information about property and land issues.

Request and response

8. On 18 July 2012, the complainant wrote to the council and requested information in the following terms:

*"ADDRESS (redacted), London,
Pursuant to Regulation 5 (1) of the EIR, please treat this as a formal request to inspect environmental information.*

Pursuant to Regulation 5 (1), the Council is obliged to make the information available on request.

Furthermore, we wish to examine the information requested at the place which the Council makes available for that examination.

The information which we wish to examine is that which will enable us to deduce the answers to 1.1 f, g and h and 3.8 of the con29r form in respect of the property mentioned above."

9. The council responded on 18 July 2012. It stated that the requested files were not available to the public online and it charged a fee of £50 for the search and issue of a completion certificate. It provided further details of the procedures followed by the Building Control Team for dealing with requests for property search information.
10. Following an internal review the council wrote to the complainant on 25 July 2012. It upheld its original response.

Scope of the case

11. The complainant contacted the Commissioner on 15 November 2012 to complain about the way his request for information had been handled. At the time of making his complaint, he was concerned about the charge the council had levied for the provision of the requested building control information.

12. During the course of the investigation, the council changed its position regarding the charges and provided the complainant with the requested information free of charge. The Commissioner therefore considers that the scope of the case is to formally record the council's delay in complying with the request.

Reasons for decision

Regulation 2

13. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
14. The Commissioner considers that the information requested falls within regulation 2(1)(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 these elements". Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore considers the information requested by the complainant to be environmental information.

Regulation 5

15. Regulation 5(1) provides that environmental information shall be made available upon request. Regulation 5(2) provides that this information should be made available within 20 working days following receipt of the request.
16. The complainant's original request was submitted on 18 July 2012. The council finally provided the information to the complainant on 22 April 2013. The complainant has stated that although he had requested to inspect the information, in the circumstances he is prepared to accept copies of the requested information. He has also stated that given the length of time it has taken the council to provide the requested information, it is of little value now.
17. The Commissioner therefore finds that the Council has breached regulation 5(2) by failing to make the requested information available within the statutory time for compliance.

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.
19. Although he is not making a finding with regard to regulation 8 and the council's initial decision to provide building control information for a fee, he notes that the First-Tier Tribunal Information Rights in Leeds City Council vs IC (EA/2012/0020 and 0021) upheld the Commissioner's decision notices which found that Leeds City Council was not entitled to charge a fee of £22.50 under regulation 8 for the provision of building control information. It is not clear in this case whether the council's decision to provide the complainant with the requested information free of charge represents a change in its policy regarding charges for building control information, but the Commissioner would like to take this opportunity to remind the council of the outcome of this Tribunal decision when responding to requests like this in the future.

Right of appeal

20. 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

21. 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.
22. 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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