

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

**Decision notice**

**Date:** 13 March 2013

**Public Authority:** Enfield Council  
**Address:** Civic Centre  
Silver Street  
Enfield  
Middlesex  
EN1 3XF

**Decision (including any steps ordered)**

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1. The complainant made a number of requests for information relating to the councils introduction of wheeled bins into the area. The council responded, after 20 working days. Its response sought to answer the questions of the complainant in an informal way rather than a formal response under the Regulations. The council provided some information, said that it did not hold other information and asked the complainant for clarification of other parts of his request. After the Commissioner's intervention the council provided a formal response applying Regulation 12(4)(a) to some requests, and asking for clarification of other statements or requests made by the complainant. The Commissioner's decision is that the council has now complied with its obligations under the Regulations. He has decided however that it breached Regulation 5(2) in that it did not provide its initial response within 20 working days. It also did not initially state which exceptions which it was applying to the request when first responding to the complainant.
2. The Commissioner does not require the council to take any steps.

**Request and response**

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3. On 12 April 2011 the complainant wrote to Enfield Council and requested information relating to the councils introduction on wheeled

bins into his area. Specific details of the requests he made are detailed below.

4. The council did not respond to the initial requests. It stated that it did not receive them albeit that the complainant states that he hand delivered them to the correct department at the council. After subsequent correspondence chasing a response the council responded. It said that some parts of the correspondence were not requests and other requests were unclear. It responded to other requests as part of the normal course of business, answering the questions directly rather than responding under the Act.
5. Following an internal review the council wrote to the complainant on 15 March 2012. It stated upheld its initial assessment and response although it did apologise for the delays in responding to his requests.

### **Scope of the case**

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6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He argues that the council ignored his initial requests and did not provide him with the information he requested.
7. Having considered the complainant's requests, the Commissioner considers that some of the requests are in fact not requests for information. They are statements of opinion or fact which do not constitute requests for information. They sought to raise a debate over the council's policy or to elicit a response from the council explaining its actions.
8. The Regulations provide a right to requests information in recorded form from a public authority. There is no right under the Act or the Regulations to force a council to engage in a debate with a requestor. There is also no right to force an authority to explain its actions, other than where recorded information is held which does in fact provide an explanation of the authority's actions.
9. The complainant also asked direct questions rather than making requests for information in some parts of his request. Whilst direct questions may not strictly be requests for recorded information the first-tier tribunal has decided that where recorded information is held which can respond to the question then this should be provided to an applicant in response to the question.
10. The council also asked the complainant to clarify some parts of his request. The Commissioner has addressed this further below. Under

Regulation 12(4)(c) a public authority is not under a duty to respond to a request where they have asked for clarification of the information which the applicant is requesting and it has not received clarification from the applicant.

11. The Commissioner has not considered statements of opinion further as they fall outside the scope of the Regulations. The council was not under a duty to respond further.
12. Where requests have been unclear and the complainant has not provided (or provided inadequate) clarification to the council he has outlined this below.

## **Reasons for decision**

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### Background

13. The Commissioner recognises that the complainant's correspondence and requests have been part of his campaign to prevent, or reverse the introduction of wheeled bins into the area in which he lives. It appears from the correspondence that his purpose is to raise arguments and dispute the council's policy by making requests for information, issuing statements of opinion and asking questions of the council regarding its policy.
14. The Commissioner notes that the complainant's requests are long and numerous. Many of the requests are not in fact requests at all, but are statements of opinion or fact which the complainant expected the council to respond to. He has sought to engage the council in discussion or argument about its policy rather than to ask for specific recorded information. Whilst the Commissioner recognises the right of the complainant to seek to engage the council in debate about its policy it is not something which the complainant is able to seek to enforce via the Commissioner or the Regulations.
15. The Commissioner also recognises that some requests were unclear. The council had written to the complainant stating that some parts of his requests were unclear and asked him to clarify the information he was requesting. Although the complainant did write back to the council in response to this, some parts of the request remained unclear to the council.
16. Having considered these requests the Commissioner wrote to the complainant providing information to him on how to make a request. He also informed the complainant that the council was able to request clarification of a request where the information being requested is

unclear and informed him that it did not need to respond further where clarification was not provided. The Commissioner also notes that the council asked the complainant to attend a meeting to discuss his request in order to clarify what information he was seeking.

17. The Commissioner asked the complainant to consider withdrawing his current complaint and to remake his requests in a clearer fashion, bearing in mind that his rights under the Regulations were to ask for recorded information rather than to ask the council to answer questions, explain its policy, or engage in a discussion of the policy with him. The complainant however said that the complaint should be taken forward as it stood. He argued that he had already clarified the requests which the council had asked him to or that the information he was asking for was already obvious. He considered that the requests for clarification were simply the council's way of delaying or avoiding answering that part of the request.

#### Statements of opinion or fact rather than requests for information

18. Having considered the requests outlined in Annex 2 below the Commissioner considers that they are statements of opinion rather than requests for information. He has not therefore considered these parts of the complainant's complaint further.

#### Unclear requests

19. The council stated that the following were unclear and asked the complainant to clarify his request:

*"FOOD WASTE*

*Any differences between being added in the existing securable green bins as against free—to—come—open/blow over new bins"*

20. The Commissioner wrote the council after the complainant had explained that a previous letter to the council had clarified that this request was seeking to establish how the council could make statements that the introduction of wheeled bins would allow food waste to be recycled. He wanted to know how this was not possible with the old bins. In response to the Commissioner's clarification the council explained its position to the complainant but stated that no documents exist which can answer the request. It therefore applied Regulation 12(4)(a) to the request.

*"NAGS HEAD ROAD Especially important as the key direct access to central Enfield from the east. Part of the pilot to trial the effects of the plans. Since, a dire street scene of parking and wheeled bin - and*

*reported low recycling: all amply absorbed during the typical 10 min it takes to negotiate much of the time. What improvements are happening here? How has this pilot affected subsequent stages elsewhere?"*

21. The council initially stated that it did not understand this part of the request and asked the complainant to clarify it. The Commissioner however believed that the request was relatively clear and asked the council to provide details of any improvements recognised as a result of the pilot and details of any recommendations made as a result of those findings.
22. The council therefore wrote back to the complainant providing him with details of the improvements and the changes which it had made in response to the pilot. It stated however that although the changes it had made happened as a direct result of the feedback from the pilot no reports/evidence is held to prove this. Therefore it applied Regulation 12(4)(a).

*"I have further heard that alternative methods are in use e.g. bags. Would the council elucidate now ALL methods for especially terraced properties including the operation and relevant criteria for adoption proposed."*

*"Press comment is around 90% against. And can the council remind us of any other single project which had such a widespread impact?"*

23. The council did not respond to this part of the request after it had asked the complainant to clarify the information he was asking for. The Commissioner has decided that the council is not under a duty to respond to the complainant further without him clarifying the information he is seeking.
24. Although the council did not specify that it was relying upon Regulation 12(4)(c) (request not properly formulated) it is clear from its arguments that in fact this is what it was seeking to do. It also complied with the requirements of Regulation 9 by requesting further information from the complainant and seeking to assist him regarding the information he was attempting to request. The council has also on several occasions invited the complainant to meetings to discuss what information he was seeking however the complainant refused to attend any meetings.
25. The Commissioner is therefore satisfied that the council was correct to apply the exception in this instance.

Valid requests

*"HEIGHT The new bins are very conspicuous over walls, fences and hedges and equally from inside where they have to be kept in front of low windows. The slimline variety are further prone to being blown over. To mitigate any such problems, in the five years or so the Council has been considering changes, what investigation has been undertaken into, simply, less obtrusive lower—height ones ?"*

26. The council responded to directly to this question by clarifying the reasons why it had opted for the bin height it had. Essentially the bin height is a standard height across Europe and the equipment and refuse vehicles it uses do not therefore need to be altered in order to handle the bin size chosen. It therefore considered that it made financial sense to choose the sizes it had. After the Commissioner's intervention it further clarified that although it did consider other options of bin height this was not recorded and therefore information is not held. It therefore applied Regulation 12(4)(a).

*"PRODUCTIVITY Staff  
To maintain momentum, are additional staff to accompany vehicles?"*

27. The council responded to this question.

*"PRODUCTIVITY Vehicles  
What rate of progress by each vehicle is being experienced and planned for 7  
(e.g. — 60%)"*

28. The council responded to this question.

*"NEW BINS  
Source of manufacture, transport means, and transits to reach doorsteps"*

29. The council responded to this question however it did not initially name the manufacturer concerned. After the Commissioner's intervention the council provided details of the manufacturer of the bins and the means of transit to households.

*"OLD BINS  
Disposal means and costs"*

30. The council responded saying that the bins are recycled and provide a positive income to the council. It said however that any further details could not be provided because the information is commercially sensitive.

31. After the Commissioner intervention however the council explained that this response was wrong. It said that after further checks, the information on costs was not held. It explained that the old bins were recycled along with other plastics. Figures specifically regarding the old bins were not however able to be separated from the overall figures for plastic recycling. It therefore applied Regulation 12(4)(a) to this part of the request as it did not hold this information. It did however explain that the revenue extracted from the recycled plastic meant that it considered that the disposal did not represent any overall cost to the council.

*RECYCLING RATES "The claimed jump from 28% to 47% appears astonishing which the spontaneous response did not meet. Please give the full range of factors accounting for this in respect of 'dry' and 'green'."*

32. The council responded to this part of the request by explaining the effects which resulted in the difference between the first and second figure. It explained further however that it did not hold any documents which could evidence this and therefore applied Regulation 12(4)(a). It explained that it had looked at other authorities and noted that they consistently increased recycling rates with the introduction of wheeled bins. It said that it was therefore reasonable to expect that the same could be achieved at Enfield, and that this has been born out in the resulting recycling increase.

*"FEEDBACK AND STATISTICS Please clarify the terms and basis of the process(es) the scope in terms of residents involved coverage and involvement - including off-line. Please provide a specimen of questionnaires involved"*

33. The council responded to the question and provided a copy of the questionnaires.

*INFORMATION AND CONSULTATION "A formal presentation on recycling was given on 16 Oct 2008, this further one on 5 Apr 2011. Please provide copy minutes of any intervening meeting presentation to the Town Forum."*

34. The council disclosed information in response to this part of the request. The complainant however stated that he wanted information on any intervening meeting presentation to the town forum rather than the information which had been disclosed to him.
35. After the Commissioner's intervention the council wrote to the complainant saying that it is aware that he is on a permanent mailing list for all of the Town Forum meetings agendas and minutes. It

therefore said that he would have received each set of minutes, including those requested, previously from the council. It added that if he wished to reacquire the minutes then they are available on the internet at

<http://governance.enfield.gov.uk/ieListMeetings.aspx?CommitteeId=211>

36. The complainant has informed the council previously that he does not have access to the internet. The council stated that as he had received paper copies previously it felt that it was reasonable for him to re-obtain the information using free internet access provided by Enfield libraries. It said that library staff would be happy to help him to use the site if he was not able to do so himself. It therefore applied Regulation 12(4)(b) to the information falling within this part of the request.
37. The Commissioner has considered the application of this exception further. It is clear that the information he has requested is obtainable by other means, namely by the use of the internet, or by reference to the minutes he has received previously should he still hold it. The Commissioner considers that it is possible that the council could apply Regulation 12(4)(b) to this part of the request alone, although it has stronger arguments when taking into account the context of the issues surrounding the requests as a whole.
38. However the council's arguments for the application of Regulation 12(4)(b) are that the information is publicly available by other means, and that it has already provided the complainant with it in paper form in the past. In effect the council's arguments relate more to the application of Regulation 6(1)(b) than Regulation 12(4)(b). It is arguing that it is reasonable in all of the circumstances to refuse to provide the information to the complainant in paper form again as it is publicly available and it is reasonably accessible to him by other means.
39. The Commissioner has not therefore made a decision on the application of Regulation 12(4)(b) by the council. He has used his discretion and taken into account the actual arguments of the council rather than the specific exception stipulated. His decision is that the council was able to apply Regulation 6(1)(b) to this part of the request.

*"EXISTING SYSTEM Both quick and efficient, as recorded this achieved a 75% resident satisfaction level.*

*What attempts were made to identify and resolve the remaining 25% element ?*

*Considerations would include*

*— avoiding the most problematic items in black bags (see 'Food Waste' above)*



*- publicising/reminders, for example squashing plastic containers availability of additional or larger containers leaving out refuse 'On the day of collection by 7 am' NOT by 7 am on the day of collection - not collecting earlier (e.g. 0635) which naturally encourages/impels overnight exposure – alternatively adopting a later start, say 10 am, to obviate any excuses.*

*As the Council appears to have already moved on beyond such aspects I trust that clear and identifiable responses can be provided promptly, the more so since further moves are being pursued. In all respects please be explicit as regards the significant proportion of the population who are not "on line".*

40. The council responded to this by providing reasons why it considered the new methods were better than the previous system and how it had noted that other areas using wheeled bins had higher rates of satisfaction. After the intervention of the Commissioner the council wrote to the complainant and provided him with examples of the type of advertising it had used and explained the types of advertising and public talks and demonstrations it had undertaken.

#### Information not held

##### Regulation 12(4)(a)

41. Section of EIR states that a public authority may refuse to disclose information to the extent that) it does not hold that information when an applicant's request is received.
42. The Commissioner has already outlined above areas where the council has sought to respond to the complainant's request or questions by direct response rather than an examination of the information it actually holds. Where, after the Commissioner's intervention it has subsequently considered this, it has written to the complainant stating that no information is held, and specified that the exception in Regulation 12(4)(a) is applicable.
43. In addition to those outlined above, the council stated that the following information was not held.

*"LOGISTICS Rubbish is typically generated at the rear - kitchen, main garden etc. The clumsy bins being imposed are quite impractical to transfer through, as worked so well with the longstanding, fast, efficient and flexible arrangements. Far from encouraging people to take pride in their area, the effect is to impose individual recycling*

*areas at the front. Has the council other expectations on such everyday, practical issues"*

44. The council initially stated that information on this was not held but did not specify to the complainant the exception upon which it was relying. After the Commissioner's intervention it therefore wrote to the complainant and applied Regulation 12(4)(a).

Conclusions to information not held responses

45. The Commissioner has considered the above requests where the council has ultimately applied Regulation 12(4)(a). His view is that the council has now complied with the requirements of the Regulations, in that it has now provided the complainant with a response indicating the exceptions which it has applied.
46. As to the application of Regulation 12(4)(a) the council has in each case explained what it has done, or how it made its decision but stated that it does not hold any recorded information to justify its actions.
47. The Commissioner is satisfied with the responses of the council in this respect, in that it has explained the actions it took. He does not therefore find it necessary to order the council to carry out searches to ascertain whether any recorded information is held because it appears clear from the councils responses that that it not how its decisions were in fact reached.
48. The Commissioner therefore considers that on a balance of probabilities no information is held by the council that can assist in responding further to the requests.

## Right of appeal

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49. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

50. 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.
51. 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**

## **Annex 1**

### The complainant's requests

#### **"RECYCLING**

*At the Town Forum meeting on 5 April the number of contentious issues brought an over-capacity audience. The time to put points was very controlled and limited the opportunity to raise questions and respond to the answers given. In the event the meeting raised more questions than it answered, particularly so in the long- overdue subject of recycling. It is necessary thus to make an opportunity such as this to raise such matters, in as straightforward a way as possible."*

#### **"FLEXIBILITY - Green waste**

*With the established system bins can be kept one inside the other and tucked in a corner. Additional needs are accommodated in sacks which are simply emptied at the same time and returned i.e. self-evidently highly flexible, indeed ideal. The proposal imposes a tall, bulky container, inevitably very visible year— round, and which cannot cope with the simple natural needs of the seasons. Both inflexible and inadequate."*

#### **"FLEXIBILITY Property types:**

*Detached properties are clearly of no concern where bins continue to be kept out of sight. The bulk of individual dwellings however are terraced and whereas present bins are carried through, wheeled bins are far far clumsier hence scuffing wallpaper, knocking paint, hauling up and down steps, muck of wheels are obvious problems, even if there is a navigable route. Hence many bins will appear, and in a highly conspicuous form, where there were none previously".*

#### **"HEIGHT**

*The new bins are very conspicuous over walls, fences and hedges and equally from inside where they have to be kept in front of low windows. The slimline variety are further prone to being blown over. To mitigate any such problems, in the five years or so the Council has been considering changes, what investigation has been undertaken into, simply, less obtrusive lower—height ones ?"*

#### **"PRODUCTIVITY Staff**

*To maintain momentum, are additional staff to accompany vehicles?"*

#### **"PRODUCTIVITY Vehicles**

*What rate of progress by each vehicle is being experienced and planned for 7 (e.g. — 60%)”*

*TEXTILES e.g. old towels, sheets, curtains  
Previously recycled, apparently now not so”*

**“NEW BINS**

*Source of manufacture, transport means, and transits to reach doorsteps”*

**“OLD BINS**

*Disposal means and costs”*

**“FOOD WASTE**

*Any differences between being added in the existing securable green bins as against free—to—come—open/blow over new bins”*

**RECYCLING RATES**

*“The claimed jump from 28% to 47% appears astonishing which the spontaneous response did not meet. Please give the full range of factors accounting for this in respect of ‘dry’ and ‘green’.”*

**“STREET LITTER**

*Inadequate/unemptied council bins - overflow<sup>1</sup> blown around (six overflowing bins visible in one glance 9 4 11)*

*No bin in area - random discarding especially takeaways*

*Street cleaning done prior to collection of waste*

*Street cleaning not done at all*

*Slimline bins liable to blow Over”*

**“FEEDBACK AND STATISTICS**

*Please clarify the terms and basis of the process(es) the scope in terms of residents involved coverage and involvement - including off-line.*

*Please provide a specimen of questionnaires involved”*

**INFORMATION AND CONSULTATION**

*“A formal presentation on recycling was given on 16 Oct 2008, this further one on 5 Apr 2011. Please provide copy minutes of any intervening meeting presentation to the Town Forum.”*

**“EXPLICIT ASSURANCES**

*At the 16 Oct 2008 meeting the Director gave a very explicit basis for Council action - a flexible method to suit the property type, e.g. wheeled bins only where there was adequate storage AND WITHOUT IMPACTING ON THE STREET SCENE. This clear, categoric, unambiguous statement, direct and unqualified, officially recorded in black and white, has not been followed with highly conspicuous consequences reflecting on the conduct of the Council in the most fundamental manner."*

**"EXISTING SYSTEM**

*Both quick and efficient, as recorded this achieved a 75% resident satisfaction level.*

*What attempts were made to identify and resolve the remaining 25% element ?*

*Considerations would include*

- avoiding the most problematic items in black bags (see 'Food Waste' above)*
- publicising/reminders, for example squashing plastic containers*
- availability of additional or larger containers leaving out refuse 'On the day of collection by 7 am' NOT by 7 am on the day of collection*
- not collecting earlier (e.g. 0635) which naturally encourages/impels overnight exposure*
- alternatively adopting a later start, say 10 am, to obviate any excuses.*

*As the Council appears to have already moved on beyond such aspects I trust that clear and identifiable responses can be provided promptly, the more so since further moves are being pursued. In all respects please be explicit as regards the significant proportion of the population who are not "on line".*

*Letter of 6th May 2011*

*"I have further heard that alternative methods are in use e.g. bags. Would the council elucidate now ALL methods for especially terraced properties including the operation and relevant criteria for adoption proposed."*

*"Press comment is around 90% against. And can the council remind us of any other single project which had such a widespread impact?"*

**NAGS HEAD ROAD**

*Especially important as the key direct access to central Enfield from the east. Part of the pilot to trial the effects of the plans. Since, a dire street scene of parking and wheeled bin - and reported low recycling:*

*all amply absorbed during the typical 10 min it takes to negotiate much of the time. What improvements are happening here? How has this pilot affected subsequent stages elsewhere?"*

## **LOGISTICS**

*"Rubbish is typically generated at the rear - kitchen, main garden etc. The clumsy bins being imposed are quite impractical to transfer through, as worked so well with the longstanding, fast, efficient and flexible arrangements. Far from encouraging people to take pride in their area, the effect is to impose individual recycling areas at the front. Has the council other expectations on such everyday, practical issues"*

## **Annex 2**

### Complainant's requests which the Commissioner considers are actually statements of opinion

*"RECYCLING At the Town Forum meeting on 5 April the number of contentious issues brought an over-capacity audience. The time to put points was very controlled and limited the opportunity to raise questions and respond to the answers given. In the event the meeting raised more questions than it answered, particularly so in the long-overdue subject of recycling. It is necessary thus to make an opportunity such as this to raise such matters, in as straightforward a way as possible."*

#### **"FLEXIBILITY - Green waste**

*With the established system bins can be kept one inside the other and tucked in a corner. Additional needs are accommodated in sacks which are simply emptied at the same time and returned i.e. self-evidently highly flexible, indeed ideal. The proposal imposes a tall, bulky container, inevitably very visible year— round, and which cannot cope with the simple natural needs of the seasons. Both inflexible and inadequate."*

#### **"FLEXIBILITY Property types:**

*Detached properties are clearly of no concern where bins continue to be kept out of sight. The bulk of individual dwellings however are terraced and whereas present bins are carried through, wheeled bins are far far clumsier hence scuffing wallpaper, knocking paint, hauling up and down steps, muck of wheels are obvious problems, even if there is a navigable route. Hence many bins will appear, and in a highly conspicuous form, where there were none previously".*

*"TEXTILES e.g. old towels, sheets, curtains  
Previously recycled, apparently now not so"*

*"STREET LITTER Inadequate/unemptied council bins - overflow1 blown  
around (six overflowing bins visible in one glance 9 4 11)  
No bin in area - random discarding especially takeaways  
Street cleaning done prior to collection of waste  
Street cleaning not done at all  
Slimline bins liable to blow over"*

*"EXPLICIT ASSURANCES At the 16 Oct 2008 meeting the Director gave  
a very explicit basis for Council action - a flexible method to suit the  
property type, e.g. wheeled bins only where there was adequate  
storage AND WITHOUT IMPACTING ON THE STREET SCENE. This clear,  
categoric, unambiguous statement, direct and unqualified, officially  
recorded in black and white, has not been followed with highly  
conspicuous consequences reflecting on the conduct of the Council in  
the most fundamental manner."*