

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 September 2014

Public Authority: Lewisham Council
Address: Second Floor
Lewisham Town Hall
Catford Road
London
SE6 4RU

Decision (including any steps ordered)

1. The complainant has requested information in connection with Lewisham Council's decision to dispose of its freehold interest in the land adjoining 'The Den' and leased to Millwall Football Club.
2. Lewisham Council has not responded to the complainant's request.
3. The Commissioner's decision is that Lewisham Council has breached Regulation 5(2) of the EIR by failing to fully respond to paragraphs 4 and 6 of the complainant's request dated 19 May 2014 within 20 working days or at all.
4. The Commissioner requires Lewisham Council to take the following steps to ensure compliance with the legislation.
 - Respond to the new questions in paragraphs 4 and 6 of the complainant's email dated 19 May 2014 in so far as they are not covered by the scope of her original request dated 6 March 2014 which is dealt with in the Decision Notice bearing the reference: FS50551446.
5. 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

6. This Decision Notice should be read in conjunction with the linked Decision Notice under reference FS50551446.
7. Decision Notice FS50551446 relates to the complainant's initial request dated 6 March 2014 which was responded to by Lewisham Council (the council) on or about the 14 April. An internal review was requested on 19 May 2014 and the outcome is still outstanding.
8. Decision Notice FER0554957 relates to the new information requested by the complainant as part of internal review on 19 May which was not covered by the scope of the initial request dated 6 March 2014. The council's response to this new request is also outstanding.

Request and response

9. On 14 May 2014 the complainant emailed the council and stated the following in response to her initial request dated 6 March 2014 (which is dealt with in the Commissioner's Decision Notice FS50551446);
 1. *'While the Council may contend that some of this information is commercially confidential, it cannot be the case that ALL of the terms and conditions of the contract for the disposal of the land to Renewal are confidential. Please provide as much information as possible and indicate the nature of the information that you are choosing not to provide and explain why it is in the public interest to withhold such information. In particular, please explain why you consider that the public interest justifies the continued withholding of information on the consideration to be paid for the disposal of public assets, namely, the Council's freehold interests?'*
 2. *Please explain why disclosure would undermine the Council's commercial relationship with Renewal. Contracts have already been exchanged, so how would disclosure affect the relationship?*
 3. *Please state precisely how the contract protects the Club's interests and explain specifically how the use of a Compulsory Purchase Order is in the best interests of Millwall Football Club and the Millwall Community Scheme.*
 4. *You have disclosed none of the information that was discussed. I do not believe that ALL of it was "exempt information" and not in the public interest. Please disclose as much of the information as*

possible and state the nature of the information that has not been disclosed, explaining why disclosure is not in the public interest.

5. *The minutes of the meeting of Mayor & Cabinet of 2 October 2013 provide no information about the content of the verbal presentation that was made by Cllr Curran and Cllr Hall. Please provide the notes that were taken of the presentation.*
6. *What were the terms of the brief to Bond Dickinson for the provision of the legal advice that you say is legally privileged? What was the nature of the legal advice provided by the Council's Head of Law? Please explain why disclosure would have an adverse effect on the course of justice.*
7. *In your answer to question 5 you provide no information about the due diligence carried out on Renewal. It is surely in the public interest to disclose some of that information? Please disclose as much as possible and explain the nature of the information that has been withheld. You refer four times in your answer to the economic interests of the Council. Please explain why the economic interests of the Council are not in the public interest.'*
10. The council has not responded to this email apart from a couple of brief acknowledgements stating that it would do so within 20 working days or as soon as possible.

Scope of the case

11. The complainant contacted the Commissioner on 13 August 2014 to complain about the way her request for information had been handled. In particular, the council's failure to respond to questions 4 and 6 in her email request dated 19 May 2014 which were not fully covered by the scope of her initial request dated 6 March 2014.
12. The scope of this Decision Notice is limited to the new information requested in questions 4 and 6 of her email dated 19 May 2014.
13. In so far as the email dated 19 May 2014 constitutes an internal review of the complainant's initial request dated 6 March 2014, this is dealt with by the linked Decision Notice under reference FS50551446.

Chronology

14. The Commissioner contacted the council by telephone on 15 September 2014 to enquire as to when it would respond to the complainant's email dated 19 May 2014.
15. The council stated that its Legal Department was drafting a response for consideration and approval but was unable to provide the Commissioner with a definite date as to when this would be issued to the complainant.

Reasons for decision

The Environmental Information Regulations 2004 (the EIR)

16. The council has dealt with the complainant's initial request dated 6 March 2014 under the EIR on the basis that the information requested is 'environmental'.
17. The complainant has not disputed the application of the EIR to her initial request and to questions 4 and 6 of her email dated 19 May 2014.
18. The Commissioner is satisfied that the information requested in paragraphs 4 and 6 of the complainant's email dated 19 May 2014 is environmental as it is information on a measure affecting or likely to affect the elements of the environment, namely land under Regulations 2(1)(a) and 2(1)(c) of the EIR.

Regulation 5(2) of the EIR

19. Under Regulation 5(2) of the EIR a public authority has to respond to a request within 20 working days.
20. In this case the council has not responded to questions 4 and 6 of the complainant's email dated 19 May 2014 within 20 working days or at all and therefore has breached Regulation 5(2) of the EIR.
21. The Commissioner therefore requires the council to respond to these outstanding questions under the EIR.

Right of appeal

22. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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

Rachael Cragg
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