

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

**Date:** 9 November 2015

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

**Decision (including any steps ordered)**

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1. The complainant has requested building control information for a specific property and paid a £25 fee for an expedited search. The Commissioner's decision is that the charge of £25 in this case is a reasonable amount and that there has been no breach of regulation 8.

**Request and response**

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2. On 29 June 2015, the complainant made the following request for information within an email entitled 'LILLIAN BAYLIS SCHOOL, LOLLARD STREET, LONDON, SE11 6PY':  
  
"Please can you email us the building control information for the above property by 23<sup>rd</sup> July 2015."
3. The complainant then paid £25 for an expedited search as the information was needed urgently.

**Scope of the case**

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4. The complainant contacted the Commissioner on 28 July 2015 to complain about the way his request for information had been handled. He was concerned that the council is not following the guidelines of the EIR in relation to charging and timescales as he said it will expedite the

information to a period of three to five working days in return for a £25 fee but otherwise will take the full 20 working days to provide information.

5. The Commissioner has considered whether the council has breached regulation 8 by charging a fee for an expedited search.
6. The Commissioner informed the complainant that he could only consider the issue of the council taking the full 20 working days to respond to the EIR request once the complainant provided evidence of a particular instance when this has occurred. Once the complainant sent the required evidence, the complainant set up a separate case to deal with that issue (case reference FER0596001).

## Reasons for decision

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### Regulation 8 Charging

7. Regulation 8(1) permits a public authority to charge for making environmental information available. However, Regulation 8(3) states any charge cannot "exceed an amount which the public authority is satisfied is a reasonable amount". Regulation 8(3) does not provide any definition of the word "reasonable".
8. The EIR implements the provisions of the Directive 2003/4/EC on public access to environmental information ('the Directive') into UK law. Article 5(2) of the Directive provides that:

"Public authorities may make a charge for supplying any environmental information but such charge shall not exceed a reasonable amount."
9. As stated in the Commissioner's guidance 'Charging for environmental information'<sup>1</sup>, the intention behind the EIR is to increase public access to environmental information. This can be seen in recitals 1 and 9 of Directive 2003/4/EC of the European Parliament of the Council ('the Directive') from which the EIR are derived. The Commissioner therefore considers that any charge should be compatible with encouraging transparency and should not be an obstacle to such access. Recital 18 of the Directive states "as a general rule, charges may not exceed the actual costs of producing the material in question".

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1627/charging-for-environmental-information-reg8.pdf>

10. The Commissioner considers that the drafters of the Directive made a clear decision not to exclude the cost of staff time in searching for the environmental information when considering a reasonable amount for a charge. Therefore the Commissioner takes the view that the EIR do allow public authorities to charge a reasonable amount to recover the cost of staff time taken to locate environmental information. However, any charges for staff time must still be reasonable and applicants should not be unfairly penalised for a public authority's poor records management. Therefore the reasonableness of any charge for staff time will often depend on how wide ranging the request is and how well the authority maintains its records.

11. The aforementioned guidance states the following:

"There are two broad types of costs for which a public authority can charge:

- The cost of staff time spent locating, retrieving and extracting the information.
- The costs incurred when printing or copying the requested information and sending it to the applicant.

It is unreasonable for a public authority to include any further costs associated with a request, for example:

- The costs associated with maintaining a register of environmental information.
- The cost of maintaining a database used by the public authority to answer requests for environmental information.
- Overhead costs attributed to staff time properly taken into account in fixing the charge.
- Staff time spent redacting excepted information after it has been retrieved."

12. A public authority should be able to demonstrate why it believes a charge in each particular case is reasonable. This may mean providing a breakdown of the charges so the requester can understand the basis for the fees. In line with the Directive and Article 5(2) the Commissioner will carry out an objective assessment of whether the PA's charge was reasonable (as opposed to a public law test, that public authority's assessment must be so unreasonable as to be perverse).

13. In this case the Commissioner asked the council to confirm under which charging provision the amount of £25 been calculated, how the charge of £25 has been arrived at in this case, and on what basis the council believes the charge is reasonable. He also enquired as to how the council's building control records are maintained and how many files would need to be searched in order to locate the information requested in this case.
14. The council confirmed that the request is for environmental information and that under the EIR it commonly provides this information free of charge and within 20 working days but where an expedited search is required a fee of £25 is chargeable under Regulation 8 of the EIR. It explained that expedited requests are prioritised in order to meet the shorter timescale for response of 1-5 days.
15. In relation to how the charge of £25 has been arrived at and on what basis the council believes the charge is reasonable, the council said that, in its view, it is reasonable to use the FOI flat rate charge of £25 which represents one hours work. It said that the simplest requests will take at least an hour to meet and more complex ones will take significantly longer. It explained that the way its systems are currently configured means it is not possible for the general public to view the information and that the £25 was a figure provided to cover what was considered to reflect the costs of staff time spent viewing the systems, including the on-costs and re-charges to the department. It said that the fee covers the cost of staff time spent locating, retrieving and extracting the information and confirmed that no overhead costs related to providing information are included in the figure.
16. The council also informed the Commissioner that in 2013/2014, Building Control carried out 289 expedited requests and in 2014/2015 it made 271 searches, all charged at £25 and that the vast majority of customers are satisfied with the service offered. It said that it does not have the ability to charge on the basis of costing each expedited request individually as this would be impractical but if a search turned out to be considerably more than the £25 there would be the potential for cancelling the works undertaken up to that point in time. It said that the £25 figure was a realistic assessment of the time taken with on-costs and re-charges from the department allowed for under the CIPFA (The Chartered Institute of Public Finance & Accountancy) regulations.
17. With regards to how its building control records are maintained and how many files would need to be searched in order to locate the information requested in this case, the council said that when responding to a request, staff search four systems where information is potentially held on Building Control records. It said that all four systems are electronic

but two older systems do not have an access allowing you to type in a specific address. It provided the following information:

“• **Uniform database** is an electronic database which holds records back to 1998. The files are structured on property address.

• **Anite new document management systems** is an electronic database.

• **Anite old document management system** The old Anite is a card system means that when you find an address you have to open up various elements of the system to establish firstly which card it is on and then searching through the screen to the number you want. This is very time consuming.

Anite records are held electronically and are not in date order. The records can go back as far as the 1960's and can take up a lot of the officer's time. The files are structured on property address. These files as previously stated are electronic for access but not logically stored in a number order relating to a street.

• **The BCM spreadsheet** is searched back to 1992. This is an electronic database. The files are structured on property address. Paper records were sent to be scanned where the jobs were still “live”. At about the same time Housing submitted a large amount of details to be scanned as well. We then have no knowledge of who stated that the Housing documentation could be destroyed, but inadvertently this also included all of the Building Control paperwork. We do therefore have works that were completed before the incident but nothing after that, that was still active and using this system.”

18. The Commissioner considers that a charge of £25 for an hours work is reasonable. As stated in the aforementioned guidance, although the FOI Fees Regulations do not apply to the EIR, it is the Commissioner's view that it is reasonable for public authorities to use the FOI rate of £25 per hour as a starting point.
19. Taking into account the council's explanation as to how its building control records are structured, the Commissioner considers that an hour, as the minimum amount of time, to provide building control records on a specific property is reasonable. He notes that the council's new systems allow efficient searching and does not consider that the council's old systems are so unstructured as to constitute poor records management which an applicant would be unfairly penalised for. The Commissioner also considers that a charge of £25 is not an obstacle to access, particularly given the overall value of property transactions.

20. Regulation 8(8) requires all public authorities to publish and make available to applicants a schedule of charges in order to be able to charge applicants for environmental information. The Commissioner notes that a published schedule of charges can be found on the council's website<sup>2</sup> which includes the £25 fee for an expedited personal search.
21. Taking all the above into consideration, the Commissioner has decided that the charge of £25 in this case is a reasonable amount and that there has been no breach of regulation 8.

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<sup>2</sup> <http://www.lambeth.gov.uk/planning-and-building-control/building-control/make-an-environmental-information-regulations-eir>

<http://www.lambeth.gov.uk/sites/default/files/pl-agreed-CON29R-charges-for-building-control.pdf>

## Right of appeal

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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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**