Environmental Information Regulations 2004 (EIR)

Decision notice

Date: **4 October 2016**

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

Decision (including any steps ordered)

1. The complainant has requested various items of information in respect of planning and bin surrounds at Wyatt Park Road. The Council initially refused this complaint by virtue of section 30(1)(b) of the FOIA. Following the Commissioner's procedural investigation of this request, the Council issued a response stating that it did not hold relevant information. Following a further response to the complainant, the Council is now relying on regulation 12(4)(b) of the EIR.

2. The Commissioner's decision is that the London Borough of Lambeth has incorrectly relied on regulation 12(4)(b) in respect of this request.

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

    - Issue a fresh response that does not rely on regulations 12(4)(b)

4. 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.

Request and response

5. On 18 November 2014, the complainant wrote to the Council and requested the following information in respect of Wyatt Park Road:

   *"We'd be most grateful if you would let us know under the Freedom of Information Act exactly what [named Council official A] – the planning officer in charge of the bin surrounds that were supposed to be built by [**named individual]*** [complainant's emphasis] *which he signed off on*.

   *Could [**named Council official A**]* [complainant's emphasis] *list – point by point, action by action – exactly what he has done since this situation was brought to his attention on the 8th of July 2014 to rectify this situation.*

   *To be clear, despite [**named Council official A***] [complainant's emphasis] *signing a document claiming the bin surrounds had been built and were now in place, there weren't any and have never, ever been any bin surrounds as stated in the document he signed. As a result of these surrounds being 'missing' the entire bottom of Wyatt Park Road is strewn with large black wheelie bins which a health and safety hazard."*

6. The Council responded on 27 November 2014 refusing the request by virtue of section 30(1)(b) of the FOIA.

7. Following an internal review the Council wrote to the complainant on 24 December 2014 upholding its original response.

8. The complainant subsequently complained to the Commissioner that it had not received a response to its request. Complaint reference FS50570105 was set up to investigate the Council's procedural handling of the request, and following the intervention of the Commissioner, the Council sent a further response to the complainant dated 11 June 2015. The Commissioner was unaware of the Council's previous response and internal review of 2014 at this point.

9. The 11 June 2015 response informed the complainant that the Council does not hold relevant information, and provided an explanation to parts of the request including a letter from [named Council official A] dated 5 November 2014. It also asked WPRRG to provide further clarity regarding the request in the event that its explanation was not relevant to the request.

10. As this was a procedural complaint, no further action was required by the Commissioner and the complaint was subsequently closed. However, WPRRG were not satisfied with the response and contacted the Commissioner periodically to express its dissatisfaction. On each

occasion the complainant was informed that it would need to request an internal review from the Council. WPRRG informed the Commissioner that it had exhausted the Council's internal complaints procedure as it had expressed dissatisfaction on more than one occasion.

11. The Commissioner notes that the Council's letter to the complainant dated 12 February 2016 supported this view, and in this letter it confirmed that it was refusing the request by virtue of regulation 12(4)(b) on the basis that was considered manifestly unreasonable.

12. The Commissioner therefore accepted that a complaint against the substance of the Council's response was now valid and subsequently set up this case reference [FER0628308] to investigate the complainant's concerns.

Scope of the case

13. The complainant contacted the Commissioner on 28 April 2016 to complain about the way its request for information had been handled.

14. The Commissioner notes that the Council initially considered this request under the FOIA. However, following her intervention, it subsequently considered it under the EIR. The Commissioner has therefore included a discussion of the appropriate legislation under which the request should be considered.

15. The Commissioner would also wish to confirm that during the course of her investigation, she highlighted to the Council the inconsistency in its handling of this request for information. However, the Council has since confirmed that it intends to maintain its reliance on regulation 12(4)(b) of the EIR in respect of this request. The scope of the Commissioner's investigation is therefore to determine the appropriate legislation under which the request should be considered, and the Council's reliance on regulation 12(4)(b) in response to this request.

Reasons for decision

The appropriate legislation

16. Regulation 2 provides the definition of environmental information for the purposes of the Regulations as:

> "*any information in written, visual, aural, electronic or any other material form on-*

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

17. *(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 those elements;*

18. Whilst the Council initially considered the request under the FOIA, the Commissioner notes that it concerns information regarding a planning matter and bin surrounds.

19. The Commissioner therefore considers that the requested information if held, would be likely to fall within the definition of environmental information at regulation 2(1)(c) of the EIR. This is because the request relates to information on measures, and activities affecting or likely to affect the elements of the environment, in particular the state of the landscape and waste. Accordingly, the appropriate legislation for this information, if held, is likely to be the EIR rather than the FOIA.

Regulation 12(4)(b) – Manifestly unreasonable

20. Regulation 12(4)(b) is a qualified exception and therefore subject to the public interest test. It states that a public authority may refuse to disclose environmental information if the request is manifestly unreasonable. There is no definition of 'manifestly unreasonable' under the EIR, but the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable

21. A request can be manifestly unreasonable for two reasons: where the request is vexatious and where the public authority would incur unreasonable costs or an unreasonable diversion of resources.

22. In this case, the Council considers that the request has been repeatedly asked for and to provide the information again would be manifestly unreasonable. It informed the complainant that the purpose of the exception is to protect public authorities from a disproportionate burden

or an unjustified level of distress, disruption or irritation in handling information requests.

23. The Commissioner has already outlined the chronology of this request and the Council's various responses in paragraphs 5 to 12 of this notice. However, for ease of reading, the Council's original response to this request in November 2014 was to refuse it by virtue of section 30(1)(b) of the FOIA, further endorsed in December 2014 at its internal review.

24. The logical conclusion at this point therefore is that the Council held information it considered fell within the scope of the request.

25. However, in her consideration of the Council's second response to this request, (June 2015), the Commissioner notes that the Council subsequently concluded that it did not hold relevant information, although it did provide a brief explanation and a copy of a letter to the complainant.

26. In the Commissioner's view therefore, neither of the Council's first two responses provided the relevant information to the complainant. Further, the Council has failed to explain the inconsistency between response one and response two to the Commissioner.

27. The Council has therefore failed to demonstrate to the Commissioner that the request has previously been appropriately responded too, with the current situation regarding the information remaining unresolved. The Commissioner therefore has no hesitation in concluding that the request falls considerably short of being 'obviously or clearly unreasonable' and cannot justifiably be deemed manifestly unreasonable. The Commissioner's decision therefore is that the Council has incorrectly relied on regulation 12(4)(b) in respect of this request.

28. As the Commissioner has determined that the exception is not engaged, consideration of the public interest test is not required.

Other matters

29. The Commissioner is aware that the complainant has made a number of other requests to the Council, some of which are similar to the request considered above, whilst others have been for clearly distinct information. Case reference FER056924 considered one such request.

30. Whilst it is possible that the number of requests have added to the confusion of the Council, the Commissioner is disappointed that the Council failed to inform her during her procedural investigation of its handling of this request, that it had previously responded to it in

November and December of 2014. Issuing a fresh response in June 2015, different in content and with no reference to the previous response is not indicative of good records management in relation to the handling of FOIA and EIR requests and has served to unnecessarily prolong the Commissioner's investigation.

31. The Commissioner hopes that this is an exception and not indicative of the Council's general standard of handling information rights requests.

Right of appeal

32. 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

33. 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.

34. 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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