

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 September 2016

Public Authority: The London Borough of Camden
Address: Old Town Hall
Judd Street
London
WC1H 9JE

Decision (including any steps ordered)

1. The complainant has asked the London Borough of Camden (the "Council") for correspondence between specific dates and individuals regarding the site allocations development plan for a given address. The Council provided a response to this request under the EIR however the complainant was not satisfied with this response and requested an internal review. This has not been provided.
2. The Commissioner's decision is that the Council has failed to comply with the requirements of regulation 11(3) and 11(4) of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - conduct an internal review in respect of the request made on 13 June 2016 that complies with the requirements of regulation 11(3).
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 13 June 2016, the complainant wrote to the Council and requested information in the following terms:

'5.1 Request 1 -Any electronic or hard copy correspondence between the persons specified below over the period 23 January 2013 - 30 June 2013 inclusive concerning the Site Allocations Development Plan for [address redacted]. We request any such correspondence sent or received by officers in the Council's Planning and Estates Departments. This is to include in particular correspondence between officers, and correspondence between officers and members.

5.2 Compliance with this part of our request is unlikely to be unduly burdensome: we ask that you contact the relevant officers and members and ask them to search all of their filing systems, email folders and computers for information using the above search parameters, namely the date range specified, the sender/recipients and/or search terms such as '[address redacted]'.

5.3 We anticipate, for example, that the Planning and/or Estates Departments may hold hard-copy files or electronic files for [address redacted] containing such documents.

5.4 Request 2 -Any electronic correspondence between the persons specified below over the periods 19 November 2014 to 3 December 2014 inclusive and 15 September 2015 to 15 March 2016 inclusive which refer to or relates to [company name redacted] and/or [address redacted]. We request any such correspondence sent or received by officers in the Council's Planning, Estates, Legal and Finance Departments. This is to include in particular correspondence between officers, and correspondence between officers and members.

5.5 Again, compliance with this part of our request is unlikely to be unduly burdensome: we ask that you contact the relevant officers and ask them to search all of their email folders and computers for information using the above search parameters, namely the date range specified, the sender/recipients and/or search terms such as '[company name redacted]'. If it assists you in conducting your search, we are particularly interested in correspondence concerning (i) an exchange of emails between [name 1 redacted] and [name 2 redacted] between 19 November 2014 and 3 December 2014 and (ii) an exchange of emails between [name 3 redacted] and [name 4 redacted] and others (including [name 5 redacted]) between 15 September 2015 and 15 March 2016. The aforementioned individuals' names may assist as additional search terms.

5.6 Request 3 -Any memoranda, meeting minutes, records of phone conversations or other documentation (whether electronic or hard copy) held by the Council covering the period 23 January 2013 to 30 June 2013 inclusive) concerning the Site Allocations Development Plan for

[address redacted] *and which make reference to* [company name redacted] *and/or* [address redacted].

5.7 As indicated above, we anticipate, for example, that the Planning, Estates, Finance and/or Legal Departments may hold hard-copy files or electronic files for [address redacted] containing such documents.

6. As we have emphasised, we ask that all, or as much as possible of the information outlined above be disclosed without delay. We do not anticipate that the information above would be commercially sensitive or would fall within any other exceptions or exemptions. If you do intend to rely on any such exceptions or exemptions, please contact us without delay so that we can discuss how we may obtain as much information as possible without engaging any such provisions. We will also ask that you explain why you consider any such provisions to be applicable to the above information.

6. The request made it clear that the complainant's client (the complainant is a firm of solicitors) would be prepared to pay for all reasonable expenses incurred in providing the requested information. The complainant requested that the Council should discuss any charges it wished to make with respect to its response.
7. The complainant asked that this request should be responded to as quickly as possible and in any event within 20 working days. It reminded the Council that it had requested this information on 21 December 2015 and on 8 March 2016 but was not satisfied with the responses received. It asked the Council to consider its obligation to offer advice and assistance to a requester.
8. On 7 July 2016 the Council responded to this request. The Council explained it had aggregated these requests and that it had applied regulation 12(4)b of the EIR to the request as a whole. It explained that it considered the cost or burden of dealing with the requests to be excessive.
9. The Council broke down the time involved to respond to the request. It estimated the total time would be a minimum of 37 hours at a cost of £925.
10. The Council explained it has also considered the balance of the public interest in line with the EIR and it provided its public interest arguments.
11. On 21 July 2016 the complainant asked the Council to conduct an internal review. The complainant argued the Council had failed to fulfil its duty to offer advice and assistance. The complainant also suggested search terms which could be used to locate the relevant information.

12. The complainant wrote again to the Council on 19 August 2016 to complain it had not yet received an internal review.

Scope of the case

13. The complainant contacted the Commissioner on 21 July 2016 to complain about the way this request for information had been handled and the Council's failure to conduct an internal review.
14. The Commissioner considers the scope of this case is concerned with the failure of the Council to conduct an internal review.

Reasons for decision

Is the information environmental?

15. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR and as such must be considered under the terms of the EIR. Under regulation 2(1)(c), any measures that will affect, or be likely to affect, the elements referred to in 2(1)(a), will be environmental information. The requested information relates to the development of land. The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

Regulation 11 – Internal review

16. Regulation 11(1) provides that an applicant may make representations to a public authority, if he considers that the authority has failed to comply with the requirements of the EIR in relation to his request.

Regulation 11(3) requires that the public authority consider the complainant's representations, along with any supporting evidence provided by the complainant, and to decide whether it has complied with the requirements of the EIR.

17. Finally, regulation 11(4) requires that the authority notify the applicant of its decision in relation to the applicant's representations no later than forty working days after receipt of those representations.
18. In this case, the Council received the request for an internal review on 21 July 2016 and repeated the request on 19 August 2016.
19. The Commissioner considers that regulation 11 provides a clear statutory right for an applicant to have his or her request reconsidered

by the public authority in question. This in turn provides the authority with an opportunity to rectify any procedural or handling issues, as well as an opportunity to explain to the complainant how their request was handled.

20. As an internal review has not been provided within the appropriate time period, the Commissioner finds the Council to be in breach of regulation 11(3) and 11(4) of the EIR.

Other matters

21. The Commissioner notes that in its response of 7 July 2016 the Council applied exception 12(4)(b) of the EIR to this request. The Council explained that due to the cost burden of compliance, it considered the request to be "manifestly unreasonable".
22. The Council provided an estimate of the time it would take to comply with the request. However, in accordance with its obligation under regulation 9(1) of the EIR, the Council did not offer the complainant advice and assistance to help bring the request within the cost limits.
23. The EIR regulation 16 Code of Practice¹ covers the provision of advice and assistance to a requester. As under the FOIA, the Commissioner recommends that an authority should consider providing an indication of what, if any, information could be provided within the cost ceiling and advising the applicant that a re-focussed request may enable the information to be supplied.
24. The Commissioner has written to the Council and suggested that in the internal review, the Council reviews its application of exception 12(4)(b) and considers what advice and assistance it could provide to the complainant. In particular the Commissioner has asked the Council to review the search terms suggested by the complainant in its internal review request.

¹ Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 No. 3391) – issued under Regulation 16 of the regulations February 2015
https://ico.org.uk/media/1644/environmental_information_regulations_code_of_practice.pdf

25. The complainant has explained that its client would like a response to this request as a matter of urgency. The Commissioner notes that the internal review was requested on 21 July 2016. She therefore considers that, although the Council has 35 days to respond, in the circumstances an internal review should be provided as soon as possible.
26. The Council has confirmed that it is now reviewing this request as a matter of priority.

Right of appeal

27. 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

28. 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.
29. 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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