

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

Date: 26 October 2017

Public Authority: Royal Borough of Greenwich
Address: The Town Hall
Wellington Street
London
SE18 6PW

Decision (including any steps ordered)

1. The complainant has requested information on air quality blackspots.
2. The Commissioner's decision is that the Royal Borough of Greenwich ('the Council') has appropriately relied on regulation 12(4)(a) and regulation 6(1)(b) as it does not hold some the requested information and the remaining information is already in the public domain on the Council's website.
3. The Commissioner does not require the Council to take any steps to ensure compliance with the legislation.

Request and response

4. On 23 January 2017 the complainant wrote to the Council and requested information in the following terms:
5. "As an Air Quality Management Area, Greenwich has many policies in place to try to mitigate the effects of bad air quality.

One involves planning issues. If planning permission is given to build residential accommodation in air quality black spots then the department should be using a range of measures to ensure that occupants are protected from toxic air.

My questions are:

in 2016 how many permissions were sought to build residential accommodation in these black spots?

of these how many were granted?

a breakdown of which mitigation measures were used in which schemes."

6. The Council responded on 10 February 2017. It stated that it did not hold information in respect of questions 1 and 2 and referred the complainant to the Greater London Authority with an associated link. In respect of her third question the Council provided a link to the planning section of its website.
7. Following an internal review the Council wrote to the complainant on 17 February 2017. It stated that it upheld its initial response.

Scope of the case

8. The complainant contacted the Commissioner on 20 February 2017 to complain about the way her request for information had been handled. She advised the Commissioner that the Council's initial response :

"essentially referred me to various links and told me to do the job myself."

She went on to explain:

"My main point is that if the information exists enough for the public to be able to do the work, then presumably it exists and is "held" enough for the council to do the work, hopefully with more expertise than a simple parent trying to find out more about the quality of air being breathed by the kids."

9. The Commissioner considers that the scope of her investigation is to determine whether the Council responded appropriately in its response to the complainant.

Reasons for decision

10. The Commissioner notes that the Council cited the FOIA in its initial response to the complainant's request. The Commissioner considers that the request was for environmental information as defined by regulation 2 of the EIR and should therefore be considered under the provisions of

the EIR. In this case there is no material difference between considering whether relevant information is held under either the FOIA or the EIR.

Regulation 12(4)(a) – Information not held

11. Regulation 12(4)(a) of the EIR states:

“(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –
(a) it does not hold that information when an applicant’s request is received;”

Regulation 6(1)(b)- Information available by other means:

12. Regulation 6(1)(b) states that a public authority does not need to make information available in response to a request, if that information is already publicly available and easily accessible to the requestor in another form or format.
13. In responding to the request for information the Council explained that it did not hold the information requested in the complainant’s first two questions and referred her to the Greater London Authority’s (‘GLA’) datastore. It explained its assumption that the complainant was relating her request to areas of the borough where pollution levels are above those set in the National Air Quality Objectives. In this regard it explained that within the Royal Borough of Greenwich only nitrogen dioxide is exceeded as an annual average.
14. In response to the third question the Council referred the complainant to its planning search information on its website, explaining that details of mitigation measures could be found by:

“ looking at the relevant planning conditions on the decision notice or Section 106 legal agreement for each planning approval, which can be found by following the link provided.”
15. In the first instance the Commissioner attempted to access the URLs provided by the Council. She was unable to access any information within the scope of the request. She received a message stating that the GLA datastore page did not exist and the Council’s URL to planning applications also appeared to be inaccessible.
16. The Commissioner contacted the Council on 29 June 2017 and asked it to provide a fresh response to the complainant. The Council responded on 11 July 2017 and provided a more detailed response with a step by step explanation for accessing the GLA datastore and the Council’s online planning system.

17. The Commissioner accessed the URLs successfully. She notes that the Council attempted to assist the complainant by providing the GLA URL and advising her to request the information from GLA directly. The Commissioner advised the complainant to contact the GLA as the maps resulting from the GLA website may not assist her specific requirements.
18. In respect of the Council's online planning system the Commissioner undertook a 'simple search' as described by the Council for details of "air quality mitigation" and located relevant submissions. The Commissioner examined the first submission and within the submission's 'documents' an Air Quality Assessment is located which contains a detailed report covering many aspects of air quality relevant to the complainant's request.
19. The complainant was not satisfied by the Council's further response and asserts that she is unable to access the information from the links provided and was dissatisfied by the suggestion to contact the GLA. She considers that the Council should not expect her to access the information herself.
20. For the sake of completeness, notwithstanding its previous explanations, the Commissioner questioned the Council on the searches undertaken for information within the scope of the request. It explained that the information was held electronically, not manually, at the database applications referenced earlier. The Commissioner asked the Council whether any information within the scope of the request may have been deleted or destroyed. In response the Council advised her that planning applications and permissions are a matter for the public record and therefore cannot be deleted or destroyed.
21. The complainant accepts that her request could be more specific in order to address her concerns. The Commissioner recommends that the complainant makes a request to the GLA, as she suggested previously.

Other matters

22. The Commissioner is disappointed that the Council did not thoroughly check the operation of the URLs provided to the complainant in its first responses. She accepts that had the complainant attempted to access the information at that time she would have been frustrated in her attempts. However, the Commissioner is also surprised that the complainant refused to attempt to access the information following the Council's final response and the Commissioner's confirmation that relevant information was available on the Council's planning site.

Right of appeal

23. 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

24. 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.
25. 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

Gerrard Tracey
Principal Advisor
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