

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

Date: 26 October 2018

Public Authority: London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant has requested pre-planning application information relating to a specific planning application.
2. The Commissioner's decision is that the London Borough of Croydon ("the London Borough") has now disclosed all the information within the scope of the request. However she also finds that the London Borough failed to issue an adequate refusal notice and therefore breached Regulation 14 of the EIR.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 9 December 2017, the complainant wrote to the London Borough and requested information in the following terms:

"I note from the Application Form that pre-application advice [ref 17/03563/PRE] was provided in July 2017, which apparently included the following comments:

- 1. Rear balconies at the upper floors must be removed.*
- 2. Left double gable end is not encouraged-Recommendation for*

- balconies both sides at the front elevation.*
- 3. Front entrance should be increased in prominence.*
 - 4. Door for private garden at the front elevation must be removed.*
 - 5. Location of the refuse store and the cycle store must be swapped.*
 - 6. Unit 9 at the second floor has no main bathroom.*
 - 7. Request for larger windows to enable more natural light.*
 - 8. The building must be pushed forward to mitigate visual impact with 13 Briton Road.*
 - 9. Regarding the density the mix of units provided on site must be reduced.*
 - 10. The plans must provide a disable space and should be located close to the entrance.*

Please provide any information relating to [Officer]'s advice, including but not restricted to copies of what was submitted by the applicant, the minutes of any meeting[s] and the officer's advice letter[s] or email[s]."

5. The London Borough responded on 11 January 2018. It provided some redacted information. It relied on Regulation 12(3) and Regulation 13 (Third Party Personal Data) to withhold the redacted information.
6. On 14 January 2018, the complainant requested an internal review of the London Borough's response, challenging the use of Regulation 12(3) to withhold information. The London Borough provided the outcome of its review on 24 January 2018 in which it maintained its original position.
7. The complainant contacted the London Borough again on 8 February 2018. This time he challenged whether the London Borough had in fact disclosed all the information it held within the scope of the request.
8. The London Borough replied to this correspondence on 14 February 2018. It admitted that it did hold further information within the scope of the request but that it considered that an exception allowed it to withhold the information. The London Borough cited Regulation 12(5)(f) (voluntary supply) as its reason for withholding the information.

Scope of the case

9. The complainant contacted the Commissioner on 27 March 2018 to complain about the way his request for information had been handled.
10. During the course of the Commissioner's investigation, the London Borough decided to withdraw its reliance on Regulation 12(5)(f) and

provided the complainant with most of the information with some personal data redacted.

11. Shortly thereafter, the complainant brought to the Commissioner's attention that the personal data which the London Borough had attempted to redact was visible on the materials disclosed to him. The Commissioner has addressed this matter separately, however, as a result, the London Borough withdrew its reliance on Regulation 12(3).
12. Therefore the only remaining elements of this complaint for the Commissioner to consider are whether the London Borough holds further information within the scope of the request and whether it has complied with the procedural elements of the EIR.

Reasons for decision

Is the requested information environmental?

13. Regulation 2(1) of the EIR defines environmental information as being information 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);*
 - (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)...as well as measures or activities designed to protect those elements;*
14. In cases where it is the existence of information which is in dispute, the Commissioner has to consider whether the requested information, if it existed, would be environmental.
15. In this case the information thus far disclosed concerns planning. Therefore it is information on a measure affecting the elements of the environment. The Commissioner considers it likely that any further information within the scope of the request would also fall under this

description and therefore the Commissioner has assessed this case under the EIR.

Held/Not Held

16. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"

The Complainant's position

17. The complainant initially stated to the Commissioner that the information which had been disclosed to him contained redactions and discrepancies which, he believed, indicated that further correspondence existed and should have been disclosed. However, once the London Borough withdrew its reliance on Regulation 12(5)(f), he subsequently confirmed that all the redactions were covered by the personal data exception – which itself was eventually withdrawn.

The London Borough's position

18. The London Borough has stated that all correspondence relating to pre-planning applications is stored centrally and not on personal computers. Records relating to such applications are not (or should not be) deleted or destroyed until 15 years after they were created according to the London Borough's records retention policy.
19. The London Borough searched its manual files and carried out keyword searches of its electronic files using the application reference number and the name of the road. It states that all the information that those searches turned up has now been disclosed to the complainant.

The Commissioner's view

20. The Commissioner's view is that the London Borough does not hold further information within the scope of the request.
21. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
22. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a

judgement on whether the information is held on the civil standard of the balance of probabilities.

23. In this case, whilst the complainant has made suggestions that information was missing, all these suggestions predate the further tranche of information released when the London Borough withdrew its reliance on 12(5)(f).
24. The Commissioner is satisfied that the London Borough has carried out adequate searches and has identified all information within the scope of the request and has therefore complied with its Regulation 5(1) duty.

Refusal Notice

25. Regulation 14 of the EIR states that:

- (1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.*
- (2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.*
- (3) The refusal shall specify the reasons not to disclose the information requested, including—*
 - (a) any exception relied on under regulations 12(4), 12(5) or 13; and*
 - (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).*

26. It is not clear whether the London Borough did not initially identify the information it subsequently withheld under Regulation 12(5)(f) when it issued its refusal notice or whether it had identified the information but did not cite the appropriate exception. Either way, the effect is the same: the refusal notice which the London Borough issued did not cite Regulation 12(5)(f) and was therefore inadequate.

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

**Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
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SK9 5AF**