

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

Date: 5 October 2018

Public Authority: London Borough of Havering
Address: Town Hall
Main Road
Romford
RM1 3BB

Decision (including any steps ordered)

1. The complainant requested information about the maintenance schedule for a particular road.
2. The Commissioner's decision is that the London Borough of Havering ("the London Borough") has failed to carry out a reconsideration (internal review) of its initial response within 40 working days and has thus breached Regulation 11 of the Environmental Information Regulations ("the EIR"). It also failed to respond to the request within 20 working days and has therefore breached Regulation 5(2) of the EIR.
3. The Commissioner requires the London Borough to take the following steps to ensure compliance with the legislation.
 - Complete its reconsideration of the initial response and inform the complainant of the outcome of that reconsideration in accordance with Regulation 11 of EIR.
4. The London Borough 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 Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. On 22 May 2018, the complainant wrote to the London Borough and requested information in the following terms:

"My query relates to Cromer Road, (Just off Billet Lane) Hornchurch.

Please can you send me:

- 1. A copy of your current road maintenance policy relating to that road. Please send me the full policy, but this should include details of the intended frequency of road safety inspections, how these inspections should be conducted and the maximum time between identification of a defect and repairs being carried out.*
 - 2. A copy of the road repair history for that road over the past year. Again, please send me the full road repair history, but this should include:*
 - dates of all safety inspections between 18 January 2018 until 22 March 2018*
 - details of how safety inspections were undertaken (walked or driven, speed of inspection vehicle etc)*
 - details of all carriageway defects identified, with description, date and time*
 - details of how the authority handled these defects, what repairs were undertaken and the time between the identification of each defect and a repair being carried out."*
6. The London Borough responded to the request on 5 July 2018. It provided the complainant with some redacted information. It cited Regulation 12(3) of the EIR as its basis for withholding the information.
7. The complainant wrote to the London Borough on 25 July 2018. He requested an internal review of the London Borough's response and challenged the extent to which Regulation 12(3) applied to the withheld information. The London Borough acknowledged this correspondence but had yet to complete its reconsideration at the date of this notice.

Scope of the case

8. The complainant first contacted the Commissioner on 26 June 2018 to complain about the lack of a response from the London Borough. Following the Commissioner's intervention, a response was issued but the complainant exercised his right to ask for a reconsideration of that response.
9. The complainant contacted the Commissioner again on 10 September 2018 to complain about the delayed internal review.
10. In line with her usual practice, the Commissioner contacted the London Borough on 13 September 2018 to highlight the outstanding review. She requested that the London Borough complete its reconsideration and provide the complainant with a copy of the outcome within 10 working days. The correspondence was neither acknowledged nor responded to.
11. Because the internal review remains outstanding despite her intervention, the Commissioner considers that a decision notice is appropriate in this case.
12. The Commissioner considers that the scope of her investigation is to determine whether the London Borough has complied with Regulations 5(2) and 11 of the EIR.
13. For the avoidance of doubt, the Commissioner has not considered and takes no position on whether or not the London Borough was entitled to withhold the information it has done.

Reasons for decision

14. 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;

15. The Commissioner has not seen the requested information but, as it is information relating to road maintenance, she believes that it is likely to be information about a "measure" affecting the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.

Timeliness of response

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

17. Regulation 5(2) states that such information shall be made available *"as soon as possible and no later than 20 working days after the date of receipt of the request."*

18. The Commissioner considers that the request in question constituted a valid request for information under the EIR.

19. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the London Borough has breached Regulation 5(2) of the EIR

Reconsideration (Internal Review)

20. Regulation 11 of the EIR states that:

(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

(2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

(3) The public authority shall on receipt of the representations and free of charge—

(a) consider them and any supporting evidence produced by the applicant; and

- (b) decide if it has complied with the requirement.*
 - (4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
 - (5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*
 - (a) the failure to comply;*
 - (b) the action the authority has decided to take to comply with the requirement; and*
 - (c) the period within which that action is to be taken.*
21. The complainant's letter of 25 July 2018 was clearly a request for the London Borough to carry out a reconsideration. As the London Borough has not completed its reconsideration within 40 working days it has therefore breached Regulation 11 of the EIR.

Right of appeal

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

Website: 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

Ben Tomes
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Information Commissioner's Office
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Water Lane
Wilmslow
Cheshire
SK9 5AF