

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

**Decision Notice**

**Date:** 27 March 2019

**Public Authority:** London Borough of Haringey  
**Address:** Haringey Civic Centre  
255 High Road  
Wood Green  
London N22 8LE

**Decision (including any steps ordered)**

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1. The complainant requested information regarding Alexandra Palace and Park. The London Borough of Haringey (the Council) stated that it did not hold the requested information in its own right, but on behalf of the Alexandra Park and Palace Charitable Trust (the Trust). Following the Commissioner's intervention the Council accepted that it did in fact hold the requested information for the purposes of the FOIA and the EIR.
2. The Commissioner's decision is that the public authority has failed to respond to the request in accordance with the FOIA and the EIR. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Respond to the complainant's request: the public authority must either disclose the requested information or issue a response stating that it does not hold the requested information.
  - If the public authority wishes to withhold any information, or to refuse to confirm or deny that it holds information, it must issue a refusal notice in relation to that part of the request it wishes to refuse and disclose the remainder (if held).
  - The public authority must ensure that its response meets the requirements of the FOIA and the EIR as applied respectively to the specific requested information.

3. 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 FOIA and may be dealt with as a contempt of court.

## Request and response

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4. On 5 February 2018 the complainant requested the following information from the Council:

*"Minutes of Meeting of the Alexandra Palace and Park Board, 2 November 2017.*

*Minuted Items*

*164,165,166,168,169,170,171,172,174,176,177,178,179,180.*

*I ask to be provided with a list of all documents and reports used in compiling the reports above, as well as a full meaningful description and summary of the issues raised and decisions taken."*

5. On 13 March 2018 the Council advised the complainant that it had considered the request under the FOIA. The Council said that it did not hold the requested information in its own right, but on behalf of the Alexandra Park and Palace Charitable Trust (the Trust). The Council referred the complainant to the Trust.
6. The complainant requested an internal review on 15 March 2018, and the Council provided him with the outcome of that review on 16 April 2018. The Council maintained that the request fell to be considered under the FOIA, and that it held the information on behalf of the Trust.

## Scope of the case

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7. The complainant contacted the Commissioner on 15 June 2018 to complain about the handling of his request. The complainant argued that the request ought to have been considered under the EIR rather than the FOIA. In addition he argued that the Council held the requested information in its own right rather than merely on behalf of the Trust.
8. The Commissioner has considered whether the request ought to have been handled under the FOIA or the EIR. She has then gone on to consider whether the Council was entitled to claim that it did not hold the information in its own right.

## Reasons for decision

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### Access regime

9. As set out above, the Council responded to the request under the FOIA. However, on inspection of the correspondence the Commissioner was of the opinion that some of the requested information was environmental information.
10. The Commissioner asked the Council to reconsider whether any part of the request ought to have been dealt with under the EIR rather than the FOIA.
11. The Council subsequently advised the Commissioner that it remained of the view that the majority of the information would fall under the FOIA as concerning issues such as governance, fundraising and business strategy. It accepted that reports that deal with planning applications are likely to constitute environmental information.
12. In light of the above, the Commissioner finds that the Council ought to have considered the request under the FOIA and the EIR since parts of the requested information fell under different access regimes.
13. The Commissioner has gone on to consider whether the requested information is held by the Council for the purposes of the FOIA and EIR, since if it is not then the Council cannot be required to respond to the request under either access regime.

### Is the information held by the Council?

14. Section 3(2) of the FOIA provides that information is held by a public authority if it is held by that authority, otherwise than on behalf of another person, or if it is held by another person on behalf of the authority. Regulation 3(2) of the EIR provides that environmental information is held by a public authority if it is in the authority's possession and was produced or received by the authority, or if it is held by another person on behalf of the authority.
15. In this case the requested information relates to a charitable trust, the Alexandra Park and Palace Charitable Trust. The Council has confirmed that it is the statutory trustee of the Trust. In its response to the complainant the Council referred to the Commissioner's published guidance, which at that time indicated that information held by an authority only in its capacity as a trustee is not held for the purposes of FOIA.

16. On receipt of the complaint the Commissioner wrote to the Council and drew its attention to the First-tier Tribunal's comments in the case of *Hutchinson v ICO and Kirklees Metropolitan Council*<sup>1</sup>. This case involved a request for information physically held by the public authority in its capacity as trustee of a charitable trust. The Tribunal found that treating a charitable trust as another person was incorrect since a trust cannot be a legal person in its own right. It went on to find that there was no distinction between the public authority acting as a trustee and the public authority fulfilling its other functions. The Tribunal concluded that

*"...if information is held by Kirklees as a charitable trustee, then it is held for FOIA purposes because functions as a trustee are part of its functions as a local authority"* (para 29).

17. The Commissioner invited the Council to reconsider the request in light of the Tribunal's findings in *Hutchinson*. The Council did so, and confirmed to the Commissioner that it was now prepared to accept that it held the requested information for the purposes of the FOIA and the EIR.

18. The Commissioner has recently updated her published guidance on when information is held by a public authority as trustee of a charitable trust:

*"When a local authority is the sole trustee of a charitable trust, the information is held for the purposes of FOIA. There is no distinction between the functions the local authority is performing as trustee and the functions it is performing as a local authority. A charitable trust is also not 'another person' in law. It is a legal arrangement whereby trustees act in their own name, using charity funds."*<sup>2</sup>

19. The Commissioner considers this equally applicable to section 3(2) of the FOIA and regulation 3(2) of the EIR.

20. Accordingly, the Commissioner finds that the Council in this case does hold the requested information for the purposes of the FOIA and the EIR. She requires the Council to consider the request under the FOIA and the EIR as appropriate and issue a fresh response to the complainant.

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<sup>1</sup> Appeal EA/2017/0194, promulgated 5 February 2018

<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1148/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.pdf](https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf)

## Right of appeal

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21. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

22. 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.
23. 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

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**