

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

Decision notice

Date: 9 July 2019

Public Authority: London Borough of Southwark
Address: PO Box 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant has requested information relation to specific planning matters. The London Borough of Southwark (the "Council") provided some of the information, denied holding other information and argued that it was excepted from its obligation to provide the remaining information. The complainant challenged part of its response at internal review and the Council upheld its position. During the Commissioner's investigation, the Council revisited its position and made further disclosure to the complainant. The complainant was dissatisfied with the extent of this disclosure and argued that further information was still held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council holds no more information within the scope of the requests.
3. No steps are required.

Request and response

4. On 27 April 2018 the complainant requested information of the following description:

"This is a request made under the Environmental Information Regulations 2004 ("EIR"). We request the following information held by the London Borough of Southwark ("the Council"):

1. copies of all written and electronic communications between officers and members of the Council and any third parties regarding matters of or associated with pre application planning reference 18/EQ/OI 06; and
2. copies of all written and electronic communications between the Council's planning officers and Cllr Peter John and [named individual] in relation to pre-application planning reference 18/EQ/OI 06; and
3. copies of all written and electronic communications between officers and members of the Council any internal and external consultants and any third parties regarding matters of or associated with planning application ref 16/AP/4051 and 16/AP/1232; and
4. copies of all written and electronic communications between Council officers and members of the Council and any third party regarding PINS planning appeal references APP/ASB40/W/16/3164823 and APP/ASS-40/Q/16/3166766 which are not on the Council's planning portal as of today's date; and
5. a full copy of the email dated 6 November 20 17 at 12:18 pm from the Legacy Foundation to [named individuals]; and
6. a full copy of the email dated 12 December 2017 at 15:10:27 from [named individual] to [named individuals]".
5. On 13 June 2018, the Council responded.
6. In response to request 1, it confirmed holding information but withheld it under EIR exceptions 12 (4)(d) (information in the course of completion) and 12 (5)(e) (commercial confidentiality).
7. In response to request 2, it said there were no such communications. In response to request 3, it cited EIR exception 12(5)(b) (course of justice) as its basis for refusing to provide this.
8. In response to request 4, it provided some information within the scope of the request but withheld some on the basis of EIR exception 12(3) (personal data).
9. In response to requests 5 and 6, it withheld this information under EIR exception 12 (5)(e) (commercial confidentiality).
10. The complainant requested an internal review on 10 July 2018 in respect of requests 1, 3, 5 & 6. The Council sent them the outcome of its internal review on 28 August 2018. It revised its position and disclosed information in respect of requests 5 & 6 but upheld its position with respect to requests 1 and 3.

Scope of the case

11. The complainant initially contacted the Commissioner on 17 September 2018 to complain about the way their request for information had been handled, specifically, they disputed the use of EIR exceptions. During the course of this investigation, the Council made further disclosure to the complainant and explained that it held no further information within the scope of the request. The complainant disputes this.
12. The remaining issue in this case is whether the Council holds more information than it has already provided to the complainant during the course of the Commissioner's investigation.

Reasons for decision

13. Under regulation 5(1) of the EIR a public authority that holds environmental information shall make it available on request, if it is not excepted from its duty to do so.
14. It is not disputed between the parties that the information described in the request is environmental information subject to the requirements of the EIR. Environmental information is defined at regulation 2(1) of the EIR. The requested information relates to planning matters, and the Commissioner is satisfied that it is information on (concerning, relating to, or about) a measure which is likely to affect the elements of the environment as set out in regulation 2(1)(a).
15. As explained above, during the course of the Commissioner's investigation, further information was disclosed – this included related information created after the date of the request and which was therefore outside the scope of the request.
16. The complainant contends that there is further information held within the scope of the requests beyond what was disclosed and has argued the following in support of its position:
 - It had copies of emails which fell within the scope of request 2 which the Council had never given to it.
 - This was high profile and controversial local matter and the Council's conduct called its statements and commitment to transparency into question.
 - The Leader of the Council had tweeted about this matter several times.

17. It did not supply the Commissioner with copies of these emails or with screenshots or copies of the tweets in question. It clearly has concerns about the planning process and how the Council conducted that process. The Commissioner has no remit to investigate how a public authority carries out its planning obligations.
18. The Commissioner's remit, in this case, is to make a decision to the civil standard (that is, on the balance of probabilities) as to whether the Council holds more information within the scope of the complainant's requests of 27 April 2018. If it does, it should disclose this or explain to the complainant why it is excepted under the EIR from its obligation to do so.
19. In order to reach this decision, the Commissioner asked the Council a number of detailed questions as to the extent and thoroughness of its searches as well as about its records management policies for information of this nature. She asked it about any business purposes and/or statutory requirements which might have required it to retain this information. Having considered its response, she then asked it further questions because there appeared to be an inconsistency in what it had said. It provided a further response to the Commissioner apologising for the perceived inconsistency and including a clarification as to what it had meant.
20. The Council explained in detail what searches it had undertaken, who it had asked within the Council and what its record retention schedule was in respect of planning files. It explained its statutory obligations in respect of retaining planning applications. It explained that it did not have a business purpose for retaining emails that were limited to expressions of points of view made by individuals who were not involved in the planning process.
21. The Commissioner then asked specifically how expressions of points of view were recorded on planning files. The Council said that where the point of view was expressed by a person involved in the planning process, for example, when seeking legal advice, this would be retained on the file.
22. The Commissioner would observe that if the complainant already holds information within the scope of request 2 which have been obtained from another source – namely emails, this does not mean that the Council retained them at the time of the request. The Council explained that it had deleted information which would have been caught by the scope of request 2 at some point in December 2017 or early in 2018 but that these were expressions of opinion which it had no business need to retain. The Commissioner is satisfied that "early in 2018" means prior to the requests in this case which were made in April 2018.

23. It explained that a planning file would only retain emails which were emails between planning officers and third parties or emails between planning officers and "other sections within the council where planning officers have requested professional advice". It said that other emails did not need to be retained. It also said the Director of Regeneration (a person who, in the complainant's view, is a relevant person in this matter) did not have a part in the planning process.

The Commissioner's conclusion

24. The Commissioner, considering the matter to the civil standard, is satisfied with the Council's explanation as to why it holds no further information within the scope of the requests. She is also satisfied with the thoroughness of its searches for further information which might have been held.
25. The complainant is convinced that more information is held but has provided no evidence beyond its own assertions that this is the case. The complainant is clearly aware of emails sent between senior officers at the Council but, if these are not pertinent to the planning decision making process, the Commissioner is satisfied that the Council would not have a business need to retain them, even if other persons retained them and supplied them to the complainant by a separate route. The Commissioner is also satisfied with the Council's statement that they were deleted before the requests in this case were made.

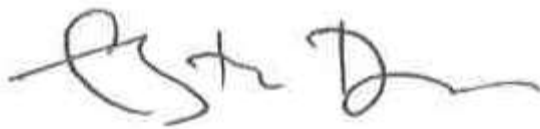
Right of appeal

26. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

Elizabeth Hogan
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