

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

**Decision notice**

**Date:** 31 July 2019

**Public Authority:** London Borough of Camden  
**Address:** Town Hall  
Judd Street  
London  
WC1H 9JEX

**Decision (including any steps ordered)**

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1. The complainant has requested correspondence information. The London Borough of Camden ("LB Camden") provided some but withheld other information citing the personal data exception as its basis for doing so. The complainant argued further information within the scope of the request was held at internal review and LB Camden denied holding it.
2. The Commissioner's decision is that on the balance of probabilities, LB Camden is correct when it says that it holds no further information within the scope of the request.
3. No steps are required.

**Request and response**

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4. On 23 April 2018, the complainant requested information of the following description:  
  
"Any electronic correspondence which refer or relate to Travis Perkins and/or 156 West End Lane (West Hampstead):  
  
(i) To or from [named individual 1] over the period 19 November 2014 to 3 December 2014 inclusive  
  
(ii) To, from, or between [named individual 2] or [named individual 3] over the period 15 September 2015 to 15 March 2016 inclusive."

5. On 16 May 2018, LB Camden responded. It disclosed some information to the complainant but redacted some from it under the exception in Regulation 12(3) (Unlawful/unfair disclosure of personal data) of the EIR.
6. On 21 May 2018, the complainant requested an internal review and identified information which they argued was missing.
7. On 12 June 2018, LB Camden responded. It said that it had "already previously supplied a copy of the email from [individual 1] to [individual 4] (03/12/2014 13:41) to the complainant in response to enquiries raised by the ICO (FER0694844)." It attached a further copy. It said that it had either provided him already with email copies of information it held within the scope of his request and did not hold anything beyond that.
8. There then followed an exchange of correspondence between the complainant and LB Camden where it explained its document retention and deletion policies.

## **Scope of the case**

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### **Background**

9. The complainant has made other requests to LB Camden of a similar nature and some have resulted in complaints to the Commissioner. LB Camden referred to one of these above.
10. The complainant contacted the Commissioner on 29 October 2018 to complain about the way his request for information had been handled.
11. Specifically, he disputed LB Camden's assertion that it held no further information within the scope of the request.

### **Reasons for decision**

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12. It is not disputed by either party that the information described in the request would, if held, be environmental information. Previous requests made by the complainant to LB Camden have been dealt with under the EIR.
13. Regulation 5(1) of the EIR states that:  
  
Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these

Regulations, a public authority that holds environmental information shall make it available on request.

14. 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.
15. 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.

*The public authority's arguments*

16. LB Camden set out the following points:
  - we have conducted extensive searches [it supplied evidence of this<sup>1</sup>] and there is none.
  - we would give the information if we had it because it is less arduous to do so in contrast with repeatedly explaining that we do not hold it.

*The complainant's arguments*

17. The complainant argued that LB Camden held the information until 2015 and its destruction of it is questionable.
18. The Commissioner explained to the complainant that even if this were the case, this predated the request under consideration in this case and, even if this were deliberate rather than in accordance with its standard policy, there was a clear timebar of 6 months on prosecutions under section 77 of the FOIA. The request took place after the apparent destruction of the information. The Commissioner has spoken publically on a number of occasions about the difficulties this can raise.

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<sup>1</sup> It explained that a relevant email box of a former member of staff was recovered from its archive and searched as were the email boxes of current staff. It also provided the search terms used to interrogate its records.

19. The complainant countered that LB Camden admitted holding the information in May 2018 although it did not provide clear evidence of this.

*The Commissioner's conclusion*

20. The Commissioner assumes that the May 2018 correspondence that the complainant is referring to is the above mentioned correspondence regarding the request where LB Camden withheld some information because to do so would contravene its data protection obligations. It disclosed the other information it held with personal data redacted. The complainant did not dispute these redactions and instead focussed on what they believed was other material held within the scope of the request. The Commissioner is not clear in this case as to how information that is acknowledged but withheld because an EIR exception applies is conclusive proof that other information within the scope of a request is also held.
21. Having considered LB Camden's explanation and the evidence of searches that it provided and having considered the complainant's arguments as to why further information is held, the Commissioner is satisfied on the balance of probabilities that no further information within the scope of the request is held.

## Right of appeal

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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@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Gerrard Tracey  
Principal Adviser  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**