

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

Decision notice

Date: 5 October 2020

Public Authority: London Borough of Haringey
Address: Alexandra House
Wood Green
London
N22 7TR

Decision (including any steps ordered)

1. The complainant has requested information about the policy considerations given to people with protected characteristics defined by the Equality Act 2010. The London Borough of Haringey ("the London Borough") originally refused the request as repeated, before later disclosing some information.
2. The Commissioner's decision is that the London Borough holds no additional information beyond that it has already disclosed – although it ought to have dealt with the request under the EIR. Because the London Borough did not disclose all the relevant information it held within 20 working days of receiving the request it breached regulation 5(2) of the EIR.
3. The Commissioner does not require any further steps.

Background

4. On 5 January 2019, the complainant contacted the London Borough via the whatdotheyknow.com website to request information in the following terms:

"Given Haringey Council's Public Sector Equality Duty, please provide any information to indicate whether the Traffic and Transport Planning needs of Disabled people and newly arrived

communities, including Polish people and Romanian people are the same or different to that of the Haringey population as a whole."

5. On 26 June 2019, the London Borough responded and provided some information to the complainant. The complainant was dissatisfied with this response, but did not request an internal review until 5 March 2020.
6. Given the length of time that had elapsed since the response was issued, the London Borough refused to carry out an internal review, but noted that:

"You may wish to submit a new FOI request."

Request and response

7. On 5 March 2020, the complainant contacted the London Borough again via whatdotheyknow.com and, referencing the previous request, sought information in the following terms:

*"I am requesting the previously requested following information:
"Given Haringey Council's Public Sector Equality Duty, please provide any information to indicate whether the Traffic and Transport Planning needs of Disabled people and newly arrived communities, including Polish people and Romanian people are the same or different to that of the Haringey population as a whole."*

8. The London Borough responded to the new request on 6 March 2020. It refused the request as repeated, relying on section 14(2) of the FOIA to do so.
9. The London Borough issued a further response on 6 March 2020. It upheld its original position.

Scope of the case

10. The complainant contacted the Commissioner on 6 March 2020 to complain about the way her request for information had been handled.
11. On 23 July 2020, the Commissioner wrote to the complainant to offer her initial view of the complaint. The Commissioner noted that the complainant appeared to be concerned with the actual content of the London Borough's policies themselves, or that further information *ought* to be held, rather than arguing that further information was, as a matter of fact, held by the London Borough. She considered that, even if the London Borough were not entitled to rely on section 14(2) of the FOIA,

it would not hold any additional information beyond that which it had provided or which was already publicly available.

12. The complainant did not accept the Commissioner's view and asked for a decision notice.
13. Having reflected on the matter, the Commissioner considered that the request should have been dealt with under the Environmental Information Regulations (EIR). Whilst this would not mean that the London Borough was any more or less likely to hold further information, it would be unable to rely on section 14(2) of the FOIA to refuse the request.
14. During the course of the investigation, the London Borough identified some further information. It disclosed this to the complainant but the Commissioner considers that it was already publicly available anyway.
15. The Commissioner therefore considers that the scope of her investigation is to determine whether the London Borough holds further information within the scope of the request.

Reasons for decision

Would the requested information be environmental?

16. 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;*
 - (d) *reports on the implementation of environmental legislation;*

- (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
 - (f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
17. As it is information relating to transport policies, the Commissioner believes that the requested information is likely to be information on "measures" affecting the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.

Is further information held?

18. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
19. 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.
20. 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 complainant's position

21. When responding to the 2019 request, the London Borough had pointed the complainant to two Equality Impact Assessments (EqIAs) that it had carried out. The complainant pointed out that one of these documents refer to an updated EqIA being required, once the draft policy had been formally adopted.
22. The complainant went on to say that:

"To be clear the draft EQA contains no information about the transport needs of Disabled people in Haringey. I have reviewed it

- rather it assumes an impact that policy will have, and without information on which to base the assumption....

"...My suspicion is that Haringey Council wish to avoid stating that there is no information because they will be embarrassed to say that they have no information on which to base their decisions about Disable people other than prejudice and assumptions. As a result, it is easier to find spurious reasons to deny requests for informations. Haringey Council clearly should have information about the transport needs of disabled people. However, I do not believe that Haringey Council has any information about the transport needs of disabled people. Haringey Council confirmed that they actually have a policy of not allowing Disabled people to identify themselves when conducting consultation surveys. The residents survey showed that Disabled residents and newly arrived residents were more more dissatisfied with Haringey Council's transport." [sic]

The London Borough's position

23. When asked by the Commissioner, the London Borough located several other EqIAs that it had carried out since the previous request in 2019. Whilst the Commissioner notes that all these documents appear to be publicly available already, the London Borough provided copies to the complainant.
24. In response to the complainant's point about the EqIA, the London Borough responded to say that:

"Neither of the EqIAs have been updated. The consultation report on the LIP can be found here - <https://www.haringey.gov.uk/parking-roads-and-travel/travel/transport-strategy/haringey-local-implementation-plan-2019-2022-consultation>. You will note that the LIP was not substantially changed as a consequence of the consultation and therefore the EqIA was not amended. Any issues raised regarding our protected characteristic groups were responded to in the LIP consultation summary document. The Transport Strategy has not been amended and therefore there is no requirement to update the EqIA."

25. The London Borough also pointed to the results of the Local Implementation Plan consultation which were available on its website.
26. Finally, the London Borough commented that:

"It is not a requirement for consultations to include monitoring information or to collect this data and for the purpose of the EqIAs

mentioned above, this information was not collected. It is also worth noting that whilst disability is a protected characteristic and has been considered in the EqIAs, newly arrived migrants are protected under the race/ethnicity characteristic which are considered in our EqIAs."

The Commissioner's view

27. In the Commissioner's view, the London Borough has provided all the information it holds and, on the balance of probabilities, holds no further information.
28. The complainant's arguments as to why more information is held are in essence an argument that the London Borough is failing to comply with its duties under the Equality Act 2010. Such matters are not for the Commissioner to determine and she offers no judgment on the matter either way. Her only concern is whether more information is, as a matter of fact, held.
29. The Commissioner considers it a reasonable inference that such information that the London Borough held *"to indicate whether the Traffic and Transport Planning needs of Disabled people and newly arrived communities, including Polish people and Romanian people are the same or different to that of the Haringey population as a whole"* would be contained within its EqIAs. The fact that the complainant appears to believe that the London Borough's EqIAs are inadequate for the purpose does not, in itself, indicate that further recorded information is held.
30. The Commissioner considers that all the information that the London Borough has now provided was available to the complainant already but the complainant has been provided with copies anyway.
31. It is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or on the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information is held by the public authority. On that point, the Information Tribunal in the case of *Johnson v Information Commissioner EA/2006/0085* commented that the FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold."

32. The Commissioner is now satisfied that, such information as the London Borough held at the time it responded to the request has now been provided. On the balance of probabilities, the London Borough holds no further information within the scope of the request.

Procedural matters

33. As the London Borough did not provide all the information it held within 20 working days of receiving the request it breached regulation 5(2) of the EIR.

Other matters

Section 14(2) of the FOIA

34. Because the London Borough should have handled the request under the EIR, the Commissioner is not required to make a decision about the use of section 14(2) to refuse the request. However, she considers it helpful to offer following comments.
35. Section 14(2) of the FOIA allows a public authority to refuse a request when it has previously provided information (or stated that it did not hold the information) in response to a similar request and a reasonable interval has not elapsed between the two requests. The term "reasonable interval" is not defined in the legislation and the Commissioner considers that each case will turn on its own specific facts.
36. In this particular case, had she been required to make a decision, it is likely that a nine-month interval was reasonable – given the evolution of the London Borough's transport strategies. She also notes that, in encouraging the complainant to make a fresh request when refusing to carry out an internal review of the previous request, the London Borough would have created a reasonable expectation that it would process such a request.

Right of appeal

37. 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

38. 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.
39. 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

Phillip Angell
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