

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 20 June 2022

**Public Authority:** London Borough of Lewisham  
**Address:** Laurence House  
1 Catford Road  
Lewisham  
SE6 4RU

#### **Decision (including any steps ordered)**

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1. The complainant has requested information held by the London Borough of Lewisham (the council) in relation to the 'observation period' allowed prior to the issuing of a Penalty Charge Notice (PCN) in a parking enforcement zone.
2. The Commissioner's decision is that, on the balance of probabilities, the council has provided the complainant with all the information that is held that is relevant to the request.
3. However, as it failed to provide this information within the statutory 20 working days, the Commissioner has found that the council has breached section 10(1) of the FOIA.
4. The Commissioner does not require the council to take any action as a result of this decision notice.

## Request and response

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5. On 13 January 2021, the complainant wrote to the council and requested information. The request, together with the council's response (the latter in bold) of 24 February 2021, is set out below:

'London Councils Code of Practice when enforcing SYL/DYL [single yellow line/double yellow line] is to allow 5 minutes observation period before a PCN is issued. Based on PCNs issued, of which LBL [the council] and their contractor NSL has refused cancel, these PCNs are issued after 2 minutes of observation, thereby undercutting the Code of Practice by 60% .

Undercutting this code of practice is unfair to motorists, especially those forced to stop on yellow lines for reason beyond their control.

- Was London Borough of Lewisham ever compliant with the minutes observation period as stated in the London Councils Code of Practice? If yes, please supply the period that LBL was compliant

**Council Response: We confirm the grace period was given up until July 2020.**

- Please supply me a link to LBL Code of Practice which states that the observation period is 2 minutes.

**Council response:**

**<https://lewisham.gov.uk/my services/parking/parking-reports-and-policies>**

- When did LBL decide to undercut this code of practice? What was the rationale behind this? Based on the information available, I am unable to identify any blatant abuse or disregard of this 5 minutes observation period by motorists. If there were, I believe you can also supply this data.

**Council response: The 5 minutes observations is only guidance and we have a number of difficult enforcement locations, so the decision was made to only give 2 minutes observation. Further observation time can be given if loading / unloading is seen. As confirmed above this was in July 2020.**

- Was London councils and the British Parking Association consulted or informed of this divergence? Please provide information and data of when these organisations were notified or consulted. You should be aware that motorists consult the websites of these bodies for parking guidance. There It is chaotic and confusing when some councils decide to go rogue by not complying to good practice

**Council Response: We have our own code of practice we do not have to inform London Council or the British Parking Association.**

- Was there a public notice regarding the significant deviation from this code of practice, which is detrimental to motorists? Where and when was this published/publicised. Please provide information, which you should have at hand if there was a publication.

**Council Response: The code of practice was changed in June 2020, however it seems that the new code of practice was not uploaded on the Lewisham Website, this has now been rectified.**

- How many 01 contravention PCNs (waiting on SYL/DYL) have been issued since this "2 minutes" observation came into practice

**Council Response: We do not record information in regard observation time. However, we can advise that 6,758 PCNs were issued**

- How many PCNs were paid?

**Council Response: 3,918**

- How many PCNs were cancelled?

**Council Response: 446**

- How many of these PCNs were challenged?

**Council Response: Information Not Held. We confirm that London Borough of Lewisham, does not record the requested information**

- How many PCNs were cancelled at the informal/challenge stage?

**Council Response: Information Not Held. We confirm that the reports we are able to produce, do not show the stage**

- How many PCNs were cancelled at the formal/representation stage

**Council Response: Information Not Held We confirm that the reports we are able to produce, do not show the stage.**

- How many PCNs were cancelled at the ETA stage

**Council Response: We confirm that 2 cases were withdrawn by the appellant**

- What was the major reason(s) for these cancellations if there were any:

- Major reason for cancellation at informal stage?

**Council Response: Information Not Held. We confirm that the reports we are able to produce, do not show the stage**

- Major reason for cancellation at formal stage?

**Council Response: Information Not Held. We confirm that the reports we are able to produce, do not show the stage.**

- Major reason for cancellation at ETA stage?

**Council Response: Information Not Held. We confirm that the reports we are able to produce, do not show the stage.**

6. On 27 March 2021, the complainant requested an internal review, and on 11 May 2021, the council provided its internal review response. It provided answers to the questions that had been asked by the complainant, and explained why some of the information referred to was not held. The council also confirmed that the London Councils' code of practice is only guidance, and that it also follows its own code of practice.

7. On 13 May 2021, the complainant contacted the council again. He stated that his 'motivation' was the code of practice, and that all he wanted was for the council to supply a copy of the legal Traffic Management Order (TMO).

### **Scope of the case**

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8. The complainant first contacted the Commissioner on 10 June 2021, to complain about the way the council had handled his information request.
9. The complainant stated that he was concerned that the council had failed to provide a TMO, or a Traffic Regulation Order (TRO), which covered the specific location where he had received a PCN. He also stated that he believed that the council had acted unfairly and dishonestly when changing the 'observation period' to two minutes, and that it had not met its obligations under the FOIA.
10. On 1 July 2021, the Commissioner contacted both parties to confirm that the case had been accepted for further investigation. On 13 July 2021, the council sent further correspondence to the complainant, attaching copies of four documents. The first document was a TMO with the title 'The Lewisham (Free Parking Places, Loading Places and Waiting, Loading and Stopping Restrictions)(Consolidation) Order 2017'; the second document was a TMO with the title 'The Lewisham (Charged-For Parking Places)(Consolidation) Order 2017'. The remaining two documents were a map, which recorded the times of a restricted parking zone in the area of relevance to the complainant's PCN, and a screenshot of the map schedule legend associated with the TMO's.
11. The Commissioner will decide whether, on the balance of probabilities, the council has provided the complainant with all the information held that is relevant to the request.
12. As the complainant has also raised concerns about the time which it took the council to provide information, the Commissioner will also consider the timeliness of the council's response.

## Reasons for decision

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### Section 1 – General right of access to information

13. Any person making a request for information to a public authority is entitled—
  - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.
14. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
15. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
17. In this case, the complainant has made specific reference to the council's failure to provide a copy of a TMO, or a TRO, as the reason for making their complaint to the Commissioner.
18. The Commissioner is satisfied that this is information which does not fall within the scope of the request that is being considered. However, he notes that the council did provide this information to the complainant in its response of 13 July 2022.
19. The complainant is clearly aggrieved by the council's decision to reduce the permitted waiting time in a parking enforcement zone to 2 minutes, and believes that it was unfair to have issued the PCN in the circumstances of their case. He claims that the council implemented a change of procedure without notification to the London Councils, or the public, and that it failed to update information about policies until after it had received their information request.

20. However, any claims that the council acted incorrectly, or unfairly, or was not sufficiently transparent about the changes that were introduced in respect of the waiting time periods in parking enforcement zones, are not matters for the Commissioner.
21. The only matter to be determined in this decision notice is whether the complainant was provided with all the relevant information in response to their request. It should be noted that he is not required to consider whether a public authority should hold information that has been requested but whether, on the balance of probabilities, it does, or does not, hold it.
22. The council has already provided the complainant with explanations as to why certain information that it had advised in its original response to the request was not held. These explanations are, in the Commissioner's view, entirely reasonable. Furthermore, the council has tried to address the questions that the complainant raised following the submission of the request.
23. There is no evidence that has been made available to the Commissioner that would indicate that any further information relevant to the complainant's request should be held, or would be likely to be held, by the council.
24. As a result, having considered all the available information, it is the Commissioner's view that, on the balance of probabilities, the council has supplied all the information which it holds that within the scope of the complainant's request of 13 January 2021.
25. However, as the council failed to provide its initial response to the request within 20 working days, the Commissioner has found there to be a breach of section 10(1) of the FOIA.

## Right of appeal

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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: 0203 936 8963

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)

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 .....**

**Suzanne McKay**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**