

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

Date: 14 September 2022

Public Authority: London Borough of Lambeth
Address: Lambeth Town Hall
Brixton Hill
London
SW2 1RW

Decision (including any steps ordered)

1. The complainant has requested information relating to the London Borough of Lambeth's (the Council) decision to replace windows in the complainant's building. The Council handled the request under FOIA and provided some information. The complainant has alleged that the Council holds further information relevant to their request.
2. The Commissioner's decision is that the Council failed to identify that the information sought by the request falls under the EIR. Furthermore the Commissioner finds that the Council failed to conduct an adequate internal review as required by regulation 11(3) of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Reconsider the request under the EIR and conduct an internal review that complies with the requirements at regulation 11(3). The Council should ensure that it addresses the complainant's arguments as to why they believe further information is held.
 - Provide the complainant with the outcome of the internal review and, if necessary, issue a fresh response to the request under the EIR.

4. The Council 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 FOIA and may be dealt with as a contempt of court.

Background

5. The Council owns the freehold of the complainant's flat; the complainant is a leaseholder. This means that the complainant is liable for ground rent and service charges, including contributions towards repair and maintenance works carried out on the building.
6. The complainant has advised the Commissioner that in 2015/2016 the Council instigated a public consultation for a Major Works Scheme to replace all the windows in their block. The complainant believed this work was due to take place in 2016/2017, at a cost of around £150-200,000. Subsequently the scheme was aborted.

Request and response

7. On 18 November 2020, the complainant wrote to the Council and requested information in the following terms:

"I refer to your 9th paragraph¹. Under the Freedom of Information Act, I request sight of all the documents relating to the Council's decision making process to both incept the project to replace all the windows in [specified address] and also the decision to abort the project. I also seek copies of the internal rules as they apply to making such decisions."

8. The Council responded on 18 December 2020 under reference IRN1127106, stating that there were no plans to commence major works at present and providing a copy of a Feasibility Report for the specified address, dated 2019. The Council explained that interim

¹ 'As previously explained to you via email dated 07 July 2020 at 12:21 hrs, the previously proposed major works were cancelled due to the scale of the whole year's programme and priorities. In any event, this does not change and/or affect your continuing obligation/liability to pay the sums demanded' – Email from the Council to the complainant dated 13 October 2020

repairs would be handled by the responsive repairs team. The Council also referred the complainant to the leaseholder leases and tenancy handbooks for "written processes".

9. The complainant wrote to the Council on 18 December 2020 to request an internal review and advised that their original request for information had been misinterpreted.

"The information you have provided was not that requested under the Freedom of Information Act.

If it is unclear which scheme I am referring to, please provide a list of Major Works Schemes incepted for [specified address] during 2014/15/16, and any Schemes aborted during the same years and also 2017.

I note that last year Pellings considered the windows were in a fair state 4/5 years after they were considered in such a poor state that total replacement was considered necessary. I look forward to seeing the earlier report which gave rise to incepting the project scheduled for 2016/17."

10. The Council responded on 3 February 2021 under reference IRN1567937 providing a second copy of the feasibility report dated 2019 and a photograph of a building, and stating that no further information was held. The Council did not provide an internal review response to the original information request under IRN1127106 .
11. The complainant wrote to the Council on 4 February 2021 to request an internal review in the following terms:

"Thank you. I have already seen the Pelling report as it was enclosed with your response of the 18th December.

You have misstated my request. Please see my email of the 18th November to [redacted]. The following is what I requested and has been agreed will be provided:

" sight of all the documents relating to the Council decision making process to both incept the project to replace all the windows in [specified address] and also the decision to abort the project. I also seek copies of the internal rules as they apply to making such decisions".

The years were quoted as I am unsure when the Major Scheme was either approved or aborted.

I accept that you may not hold a list in the way you have described it but if you refer to my FoI request you have not addressed the specific papers requested. Without narrowing my request, I am seeking the documents that were presented to the relevant Council Committees and the main Council [if applicable] to both incept the project and cancel it. Also I wish to see the 'rules' under which such decisions are made.

I am dissatisfied with the response and wish my request to be subject to an internal review.”

12. Following an internal review the Council wrote to the complainant on 22 March 2021 in respect of IRN1567937. It maintained its position that information was not held.

Scope of the case

13. The complainant contacted the Commissioner on 28 June 2021 to complain about the way their request for information had been handled. The complainant believed that the Council had misinterpreted their information request as it had provided a copy of a feasibility report that post-dated the major works scheme in question. The complainant did not accept that the Council did not hold any information falling within the scope of their request.
14. The scope of this case is to consider the Council’s interpretation of the request for information of 18 November 2020 and whether information is held within the scope of the request further to that which has been provided.

Reasons for decision

Is the requested information environmental?

15. 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;

16. In cases where the existence of information is disputed, the Commissioner has to consider whether the requested information, if it existed, would be environmental.
17. In this case the requested information concerns a planned major works scheme, specifically external works to be carried out to windows. The Commissioner has found in previous cases² that information relating to major external works would constitute 'measures and activities affecting, or likely to affect, the elements and factors of the environment'. Accordingly the Commissioner is satisfied that the requested information, if held, would fall within the definition of environmental information at regulation 2(1)(c) of the EIR. Whilst this does not affect whether information is held, it affects the way the Council ought to have handled the request in procedural terms.

Information held by the Council

The complainant's position

18. The complainant set out their grounds for complaint as follows:

"I do not accept that the Council has NO documentation at all in relation to a Major Works Scheme that required a public consultation e.g surveyors would have been appointed, a report produced, then considered by an Officer or Committee of the Council and then the decision taken not to proceed. I consider that the Council are withholding documents pertinent to my request indeed they have provided nothing which is relevant; and that it is risible to claim that a Major Works Scheme has no documentation whatsoever."

² For example, <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4019783/ic-92789-y2h9.pdf>, issued on 7 March 2022, and <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2616086/fer0812296.pdf>, issued on 14 October 2019

The Council's position

19. The Commissioner asked the Council a series of questions regarding the way it had handled the request. These included the searches and consultations the Council had carried out in order to retrieve information falling within the scope of the request.
20. The Council explained that it had checked its SharePoint site where relevant information would have been retained but that no information was held in regards to the windows replacement scheme.
21. The Council provided some background context to the Lambeth Housing Standard Capital Works Programme. It explained that all of the Lambeth Housing stock was placed on this programme, and that the specific property referenced in the complainant's information request had initially been added to the programme to have work carried out on the windows, subject to surveys. The Council continued to explain that, due to changes in funding streams for local authorities, the Lambeth Housing Standard was pushed back. The Council outlined the necessary criteria for deciding when a property is subjected to major works and how the decision to add a property to the scheme is made.
22. The Council did not address the targeted questions set by the Commissioner, despite further exchanges of correspondence. The Commissioner considers that the Council has had an adequate opportunity to present its position, and has decided to proceed to a decision notice.

Regulation 11 – internal review

23. Regulation 11(1) of the EIR states that:

"Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears that the authority has failed to comply with a requirement of these Regulations in relation to the request."

24. The Commissioner would draw the Council's attention to paragraph 60 of the EIR Code of Practice³ which states:

"Any written reply from the application (including one transmitted electronically) expressing dissatisfaction with an authority's response to a valid request for information should be treated as a complaint... These communications should be handled in accordance with the authority's review procedure pursuant to Regulation 11, even if the applicant does not state his or her desire for the authority to review their decision or the handling of their application."

25. The Commissioner is of the opinion that the complainant's correspondence of 18 December 2020 clearly set out their grounds for dissatisfaction. Therefore the Council ought to have treated it as a request for internal review, rather than a new request for information.

26. Regulation 11(3) further states that:

"(3) The public authority shall on receipt of the representations and free of charge—

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

27. In addition to the correspondence of 18 December 2020, the complainant provided further explicit representations in their correspondence of 22 December 2020:

"I note that last year Pellings considered the windows were in a fair state 4/5 years after they were considered in such a poor state that total replacement was considered necessary. I look forward to seeing the earlier report which gave rise to incepting the project scheduled for 2016/2017."

28. The Council did not consider the complainant's reasons for believing that more information was held, namely that they believed a report had been produced four to five years prior covering the condition of the windows. Instead, the Council provided the complainant with a

³ https://ico.org.uk/media/for-organisations/documents/1644/environmental_information_regulations_code_of_practice.pdf

second copy of the feasibility report dated 2019 that it had provided in its original response.

29. In light of the above the Commissioner finds that the Council failed to conduct an internal review that meets the requirements of regulation 11(3)(a). The Commissioner observes that the Council focused on providing a narrative response to the complainant's issues, presumably because of the underlying dispute.
30. During the course of the Commissioner's investigation, the Council provided details of the searches conducted on its SharePoint system to retrieve the information provided to the complainant in its response of 18 December 2020.
31. In the Commissioner's view, these searches are insufficient and do not consider information held locally on personal computers used by key officials or in emails.
32. The Commissioner has identified a policy document⁴ from 2016 which details the delivery of the capital works project and makes reference to the Keystone asset management database. This is partly populated by the Northgate housing management database, and 'allows us [the Council] to store our stock condition data, calculate levels of decency, project future costs, identify 'repairs-hungry' properties, and plan for different scenarios'. The Commissioner notes that the Council's searches did not extend to a search of this database. However he considers that the Council ought reasonably to have included it for completeness.
33. The Commissioner has also identified the Council's review of Leasehold Services and Major Works⁵ document dated 18 October 2016 which discusses the delivery of the Lambeth Housing Standard programme.
34. The Commissioner considers that the existence of these documents renders it reasonable to question whether the Council holds further recorded information from the period specified by the complainant. For this reason the Commissioner considers that the Council's searches

⁴ <https://www.lambeth.gov.uk/sites/default/files/hr-lambeth-asset-management-strategy-and-policy-dec-2016.pdf>

⁵

<https://moderngov.lambeth.gov.uk/documents/s87287/05b%20Major%20works%20Assoc%20services%20review%20-%20Oct%2016.pdf>

were insufficient. However, it is important to note that while further information from this specific time period may exist, the Commissioner has not seen any evidence that confirms that the Council does in fact hold information specific to the request.

35. As set out above the Commissioner finds that the Council to failed to conduct an adequate internal review. It ought to have addressed the complainant's representations and if necessary, conducted further searches. The Council would then have been more likely to meet the requirements of regulation 11(3), focusing on the extent to which recorded information is held.
36. The Commissioner strongly recommends that the Council keeps a detailed record of the internal review, including any further searches, so that it may be easily retrievable should the complainant make a separate complaint to the Commissioner following receipt of the internal review outcome.

Other matters

37. The Commissioner wishes to express his disappointment with the Council's level of engagement with his investigation. In particular the Commissioner has found the quality of the responses provided to be ambiguous and contradictory in nature. The Commissioner also notes that the Council failed to respond to his further enquiries, as set out at paragraph 22 above.
38. The Commissioner acknowledges that public authorities are under sustained pressure to deliver public services in difficult circumstances. However he expects that authorities will engage effectively with his investigations. Failure to do so increases the likelihood of an adverse decision notice, as in this case. It also uses precious time and resources that could be better spent on other activities.

Right of appeal

39. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

40. 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.

41. 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