

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 20 October 2022

Public Authority: Department for Levelling Up, Housing and Communities

Address: Fry Building
2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested various information in respect of a Building Safety application for Kingsland Wharves from the Department for Levelling Up, Housing and Communities ('DLUHC'). DLUHC confirmed that it holds relevant information in respect of some aspects of the request, but refused to disclose it, citing sections 40(2) (personal information), 41 (information provided in confidence) and 43 (commercial interests) FOIA. It also informed the complainant that it did not hold information in respect of one item of their request. During the course of the Commissioner's investigation, DLUHC re-considered the request under the Environmental Information Regulations 2004, ('the EIR') and disclosed redacted copies of the information to the complainant citing regulation 13 (personal information) for the remaining withheld information. It also disclosed information relevant to the request it had not held at the time of its internal review. The complainant queried the absence of certain documentation they considered fell within the scope of their request. DLUHC confirmed to the complainant that it does not consider that this documentation falls within its scope.
2. The Commissioner's decision is that any supporting information to the application for funding received before the funding had been approved is within the scope of the original request. Any information received following this date, is not within the scope of the request. In respect of the Grant Funding Agreements, if the amount awarded is less than the amount claimed, the Commissioner's decision is that they are within the scope of the request.

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Consider the supporting information to the application received before funding had been approved and either disclose the information or issue a valid refusal notice that complies with regulation 14 of the EIR.
 - Consider any Grant Funding Agreements where the amount awarded is less than the amount requested and either disclose the information or issue a valid refusal notice that complies with regulation 14 of the EIR.
4. The public authority 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 17 July 2021, the complainant wrote to DLUHC and requested the following information:

“Please provide the following information:

- (i) a copy of the application made to the Building Safety Fund in respect of the Affected Property (which is part of the Kingsland Wharves complex ;
 - (ii) the total amount claimed by L & Q in relation to the Affected Property and Kingsland Wharves (broken down by building);
 - (iii) the amount awarded L & Q by the Building Safety Fund in relation to the Affected Property and Kingsland Wharves (broken down by building);
 - (iv) information pertaining to the decision and reasons for it where the amount awarded is less than the amount claimed.”
6. Following an internal review, DLUHC wrote to the complainant on 25 November 2021. It made significant amendments to its original position and confirmed it held information in respect of items (i), (ii) and (iv) of the request citing sections 40, 41 and 43 FOIA. In respect of item (iii)

DLUHC informed the complainant that it did not hold relevant information.

Scope of the case

7. The complainant originally contacted the Commissioner 15 October 2021 to complain about the way their request for information had been handled. Following confirmation on 7 November 2021 that they had not received the outcome of the requested internal review, the complaint was accepted as valid. As noted in paragraph 6 of this notice, the internal review was issued on 25 November 2021.
8. As also noted elsewhere in this notice, following the Commissioner's investigation, DLUHC reconsidered the request under the EIR and abandoned its reliance on the FOIA exemptions previously cited. It provided redacted copies of the information, citing regulation 13 of the EIR in respect of the small amount of information withheld.
9. There followed a chain of correspondence between the complainant and DLUHC. The complainant queried the absence of certain documentation they considered fell within the scope of their request, with DLUHC maintaining that it is not within its scope.
10. As the complainant has not challenged DLUHC's reliance on regulation 13 of the EIR, the scope of the Commissioner's investigation is to consider whether the information the complainant referred to in correspondence to DLUHC following its amended response, is within the scope of their original request.

Reasons for decision

Regulation 12(4)(a) –Information not held

11. Regulation 5 of the EIR requires that a public authority that holds environmental information shall make it available on request. This is subject to any exclusions or exceptions that may apply.
12. Regulation 12(4)(a) of the EIR says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
13. Following DLUHC's recent amended response to the complainant, the complainant queried the absence of the following information:

- "I understand from L & Q that it submitted a range of supporting material via an online portal as part of the application for funding. Please can you disclose this information too. This would fall under (i) and (iv) of my request.
 - The letteralso requested that copies of the funding agreement pertaining to the grants are also disclosed. Please can you disclose this information. This would fall under (iv)."
14. DLUHC has confirmed that it holds relevant information, but does not accept that it falls within the scope of the original request, and has advised the complainant to submit a new request for this information.
15. The Commissioner will therefore consider whether the above information falls within the scope of the original request.

L & Q supporting material

16. The Commissioner has considered the wording of both items (i) and (iv) of the request, and reproduced the relevant parts below:
- (i) "a copy of the application made to the Building Safety Fund...
 - (iv) information pertaining to the decision and reasons for it where the amount is less than the amount claimed."
17. DLUHC confirmed to the Commissioner that it holds a large number of documents submitted directly by L & Q (not via an online portal) following their application. It has further stated that:
- "Some of the documents were only supplied after funding had already been approved. Furthermore, the Department does not agree that this material falls within the scope of part (iv) of the request as this would be stretching the definition of 'pertaining to' too far."
18. DLUHC is of the view that these documents do not form part of the application itself, but supporting information. It added that the complainant was provided with five separate application forms which make up the application.
19. The complainant however has stated that the application was a complex process, which required much supporting information before DLUHC decided whether to make a grant of funding. They added that a lot of the information would have been iterative in nature, particularly in respect of the underlying costings. Therefore the figures would have changed over the course of the application, yet there is no visibility from the information on the application forms how the decision was taken.

20. Looking at item (i) of the request, it is clear to the Commissioner that there is a difference in interpretation of the definition of 'the application' between both parties, with the complainant interpreting it as the supporting information supplied by L & Q, and DLUHC taking a more narrow view that it is solely the application forms.
21. In the Commissioner's view, 'the application' means more than the application forms themselves and would include the supporting information supplied to DLUHC up to, and including the date the funding application was approved. Anything after that date, would be out of the scope as the application had already been approved.
22. In terms of item (iv) of the request, the Commissioner has interpreted 'information pertaining to the decision' to mean 'information pertinent to the decision to approve the application for grant funding'. He therefore considers that it is likely that there would be material within the supporting information up to the date that the application was approved, which would have been significant in DLUHC making its decision.
23. Based on the above discussion, the Commissioner has therefore concluded that the supporting information received up to, and including the decision to approve the application for grant funding is within the scope of both items (i) and (iv) of the complainant's original request.

Grant Funding Agreements

24. DLUHC has confirmed to the Commissioner that it does hold Grant Funding Agreements, but does not consider them pertinent to item (iv) of the request.
25. The complainant, however, considers that the Grant Funding Agreements are all part of the same decision and although not specifically referred to in item (iv) of the request, directly relevant to it.
26. The Commissioner has considered the arguments from both parties, as well as item (iv) of the original request. In his view the Grant Funding Agreements, although not explicitly referred to in the request, are part of the decision to award funding. As such, in any cases where the amount awarded is less than the amount claimed, the Commissioner considers that the Grant Funding Agreements are within the scope of the original request.

Right of appeal

27. 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

28. 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.

29. 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

Catherine Dickenson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF