

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 October 2022

Public Authority: London Borough of Bromley
Address: Civic Centre
Stockwell Close
Kent
BR1 3UH

Decision (including any steps ordered)

1. In a multi-part request, the complainant has requested information about a planning assessment of a local playground upgrade. The London Borough of Bromley ('the Council') disclosed information relevant to the request and has advised it does not hold recorded information within scope of any retrospective planning permission.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, the Council holds no further recorded information relevant to the complainant's request and has complied with section 1(1) of FOIA.
 - However, the Council breached regulation 5(2) of the EIR by failing to respond within 20 working days to the request for information.
3. The Commissioner does not require the Council to take any corrective steps as a result of this decision notice.

Request and response

4. On 22 May 2021, the complainant wrote to the Council and requested information in the following terms:

"In 2020 a planning officer attended to the property block at 107 Westmoreland rd BR2 0UY to assess if retrospective planning permission was required following a major playground upgrade.

1. What date and time was the assessment made and by whom?
2. Please provide evidence that demonstrates the planning officer attended site as the playground is locked and gated
3. Please provide a copy of the planning officers report
4. What specific assessments were carried out to determine planning permission of the playground was not required? Specifically I am looking for items aligned to
 - 4a. The ground elevation levels
 - 4b. The valley the playground resides in
 - 4c. Noise acoustics
 - 4d. Close proximity of the playground to surrounding properties
 - 4e. Estimated number of occupants to use the playground
 - 4f. The hours of use?"
5. The Council responded to the request on 30 July 2021 and disclosed some information relevant to the request. They cited regulations 6(b) and 12(5)(b) of the EIR to withhold some information regarding Q3.
6. Following an internal review, the Council wrote to the complainant on 28 September 2021. It provided some further information and explained that Q3 had been incorrectly answered, stating "As there was no planning application required for the upgrade of equipment at an existing playground site, there has been no official report generated by the site visit." However, they did provide an extract of the findings of the site visit.
7. The Council further explained why they did not require planning permission for the upgrade to the playground, due to it being assessed as an existing playground area.

Scope of the case

8. The complainant contacted the Commissioner on 1 November 2021 to complain about the way their request for information had been handled.
9. The Commissioner has considered whether, on the balance of probabilities, the Council holds recorded information within scope of parts 3 and 4 of the complainant's request and whether it has complied with section 1(1) of FOIA.

Reasons for decision

10. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
11. As the FOIA/EIR concerns recorded information only. It does not require a public authority to answer general questions, provide opinions or explanations.
12. The Commissioner has reviewed parts 3 and 4 of the complainant's request and notes that, the Council has explained the reason planning permission was not required in the circumstances and provided an extract of the site visit to the complainant for transparency.
13. The Council advised the Commissioner that it has conducted thorough searches and had not identified any other relevant information, other than that disclosed in response to the request. The Commissioner sees no reason to doubt the Council's explanation. The complainant has not provided any evidence or reasoning that would indicate that the Council does hold further relevant information.
14. Having considered all the circumstances, the Commissioner therefore accepts the Council's position that, on the balance of probabilities, it does not hold any further recorded information in scope of the complainant's request. As such, the Commissioner has decided that the Council has complied with section 1(1) of FOIA.

Regulation 5(2) – time for compliance

15. Regulation 5(2) states: "Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

16. The complainant made the request on 22 May 2021. The Council did not provide a response until 30 July 2021.
17. The Commissioner has therefore decided that the Council did not comply with the requirements of Regulation 5(2).

Right of appeal

18. 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

19. 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.
20. 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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Wycliffe House
Water Lane
Wilmslow
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SK9 5AF