

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 2 November 2022

Public Authority: London Borough of Hammersmith and Fulham

Address: Town Hall
King Street
Hammersmith
London
W6 9JU

Decision (including any steps ordered)

1. The complainant has requested information about the schedule of works carried out by London Borough of Hammersmith and Fulham (LBHF) and its contractors on or around a specific residential property.
2. The Commissioner's decision is that, on the balance of probabilities, LBHF has disclosed the information which it holds within the scope of the request. It has therefore complied with regulation 5(1) of the EIR. However, the Commissioner finds that, as LBHF only located and disclosed the information at a later date as part of a SAR response much later than the required 20 working days, it breached regulation 5(2) of the EIR. The Commissioner further finds that LBHF has breached regulation 11(4) as it did not provide its internal review decision within the statutory timeframe.
3. The Commissioner does not require LBHF to take any remedial steps.

Request and response

4. On 23 September 2020, the complainant wrote to LBHF and requested information in the following terms:

"Please provide details of the schedule of works for the refurbishments and work that LBHF, Breyer and its contractors have carried out this year (2020). Specifically to include works carried on or around

[address redacted]. This can include but not limited to, work that would impact by vibrations the mentioned property or the building.

It should also include details of the schedule of work, ie Window replacement, door replacement, asbestos treatment, how tenants and who should be informing them of works.

Any consultation with residents as to where building material, refuse, access points to scaffolding would be located, impact this might have on residents, safety procedures used during Covid 19 lockdown, effects on living conditions to residents due to scaffolding, restrictions to fire escape points due to scaffolding, debris, fencing.

Areas used for storage of equipment that could cause vibrations. A general overview and timeline of works carried out by all agencies specifically the block and surrounding area around [address redacted].

Any individual who were party to knowledge of the works, but not limited to... LBHF. Breyer, contractors, tenants representative, Housing Officers, etc.

Timeframe : 01.01.2019 to 22.09.2020. Unless earlier information is relevant to this request."

5. LBHF responded on 21 October 2020. It stated that it holds information relevant to the request, but that it was relying on section 40(2) (personal information) of FOIA to withhold the information. LBHF also stated that since some of the information within the scope of the request is the complainant's own personal data, that it would release some of the information under separate cover as a Subject Access Request.
6. Following an internal review LBHF wrote to the complainant on 14 July 2021. It stated that it had since provided all information within the scope of the request in a Subject Access Request response on 12 April 2021, however it conceded that some of that information should have been disclosed under FOIA rather than as a Subject Access Request.

Reasons for decision

Correct access regime

7. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR, rather than FOIA, if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.
8. Regulation 2(1)(c) of the EIR states that any information on measures such as policies, legislation, plans, programmes, environmental

agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(1)(a) and 2(1)(b) will be environmental information.

9. The information requested in this case relates to planned improvement works on or around specific residential premises. It is the Commissioner's view that the requested information relates to activities which will, or will be likely to, affect the environment.
10. During the course of the investigation, LBHF accepted that the information is considered to be environmental. Therefore, it should have dealt with the request under the EIR rather than FOIA, however the Commissioner notes that this procedural error would not have made a difference in terms of the information held by LBHF within the scope of the request.

Regulation 5 – Duty to make available environmental information on request

11. Under regulation 5(1) of the EIR, and subject to a number of EIR provisions, a public authority which holds environmental information shall make it available on request. This is subject to any exceptions which may apply.
12. 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. He will also consider the actions taken by the authority to check that the information is not held, and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
13. In this case, the Commissioner has seen a copy of the SAR response and all of the supporting documents which were provided to the complainant by LBHF. The Commissioner is satisfied that LBHF has addressed each aspect of the request by providing copies of relevant information, in what the Commissioner considers to be a very broad natured request for information.
14. The Commissioner notes the arguments put forward by the complainant, such as why some works were started but then left unfinished, and why they weren't made aware of the tenant liaison officer at an earlier point. However, the legislation provides that a public authority need only consider for disclosure information which it already holds in recorded form at the time when it receives the request. It does not provide that a public authority should create information in order to respond to a

request – ie writing explanations to answer questions, if it does not already hold that explanation in a recorded form.

15. The Commissioner also notes the complainants arguments regarding not receiving specific details about the outcome or problems following work carried out on their individual residence. However, the Commissioner does not agree that these details fall within the scope of the original wording of the request, which was very broad in nature surrounding the schedule of planned works on or around the wider property.
16. The Commissioner concludes that, on the balance of probabilities, LBHF has disclosed the information it holds within the scope of the request, and does not require it to take any further steps on this matter.

Right of appeal

17. 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

18. 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.
19. 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 Fletcher
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