

Environmental Information Regulations 2004 (EIR) Decision notice

Date: 28 October 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 correspondence about a specific property.
2. The Commissioner's decision is that the London Borough of Lambeth (the Council) is not entitled to rely on regulation 12(5)(b) – the course of justice - to withhold the requested information. The Commissioner also finds the Council has breached regulation 5(2) by exceeding the timescale to respond.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
 - Provide the complainant with a list of communications with the relevant parties, to include date, time and type of communication, for example, telephone call.
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.

Request and response

5. On 9 February 2022, the complainant wrote to the Council and requested information in the following terms:

"A record of all communications between Lambeth Borough Council, specifically but not limited to, customer services and legal services teams, and Lester Aldridge solicitors firm.

(<https://www.lesteraldridge.com/>) in relation to the property of [address redacted]

This is to include, but is not limited to, all letters, emails, telephone call transcripts, meeting notes and all other documents. Interested in things between 1st November 2020 and 10th February 2022."

6. The Council responded on 30 March 2022 and refused to provide the requested information citing regulation 12(5)(b) of EIR as its basis for doing so.
7. In their request for internal review the complainant raised several concerns about how their request had been dealt with, including the appropriate access regime. Following an internal review the Council wrote to the complainant on 10 May 2022 and maintained its position.

Reasons for decision

Is EIR the correct access regime?

8. The Commissioner's guidance¹ explains what is considered to be environmental information and based on this he accepts that the EIR is the correct access regime.

Regulation 12(5)(b) – the course of justice

9. Regulation 12(5)(b) of EIR provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –
- the course of justice, ability of a person to receive a fair trial or

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/>

- the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.
10. In this case, the request is for "...A record of all communications between..". Furthermore, when requesting an internal review, the complainant clarified that the information they were seeking was:
- "...communication solely relating to this charge...as I need to fully understand the timeline of events.."
11. If the Council was unclear of what was being requested, it should have contacted the complainant to seek clarification. From an objective reading of the request, it appears to the Commissioner that the request is not for the communications themselves, but rather a timeline of communications and in what format.
12. As a list of communications would not contain any detail of the content of those communications, it follows that no legal advice would be disclosed. Therefore the exception is not engaged.
13. As the exception is not engaged, the Commissioner does not need to consider the public interest test.

Regulation 5(2) – time for compliance

14. Regulation 5(2) EIR 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."
15. In this case the complainant initially requested information on 9 February 2022. The Council does not appear to have advised the complainant that it needed to extend the time required to respond and it did not issue its refusal notice until 30 March 2022.
16. The Commissioner's guidance² states:
- "You must consider all relevant public interest arguments within the normal time for compliance – no later than 20 working days after the date you receive the request.

² <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/refusing-a-request/>

Unlike the Freedom of Information Act, the Regulations do not permit any extension beyond this for you to specifically consider the public interest.

The only circumstance under which you can have more time is if the complexity and volume of the information make it impracticable for you to comply, or decide to refuse to do so, within the 20 working days.”

17. In this case the Commissioner does not consider it was reasonable to take more than 20 working days to respond to the request. He therefore finds that the Council has breached regulation 5(2) EIR.

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: 0300 1234504

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

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