

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 28 February 2022

**Public Authority:** Westminster City Council  
**Address:** Westminster City Hall  
64 Victoria Street  
London  
SW1E 6QP

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Westminster City Council ("the Council") about meetings, phone calls and correspondence with the Prince of Wales ("the Prince") regarding the redevelopment of the Chelsea Barracks site. The Council stated that it did not hold any recorded information falling within the scope of the request.
2. The Commissioner's decision is that the Council should have considered the request under the EIR, rather than FOIA. However, he is satisfied that the Council does not hold the requested information.
3. The Commissioner does not require the Council to take any steps.

#### **Request and response**

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4. On 29 January 2021, the complainant wrote to the Council and requested information in the following terms:

"1. During the aforementioned period [1 January 2009 to 1 January 2010] did the Prince or anyone acting on his behalf (including but not limited to Michael Peat) meet with any council employee, elected representative or legal representative of the council to discuss any of the following: the Chelsea Barracks site; the scheme for the site put forward by Lord Rogers (and his various practices) and Qatari Diar and the CPC Group, any other schemes (actual or proposed) for the site, the Prince's concerns for the site and the proposed development(s), the Prince's

dealings with Qatari Diar, members of the Qatari Royal Family and the Qatari government about the site and the existing proposal(s) and the concerns of local residents. Please do also include meetings which took place remotely via video or audio technology.

2. In the case of each and every meeting can you state whether it took place in an actual single physical location or whether it was conducted via video or audio technology. In the case of each and every meeting can you please provide a full list of those present or taking part. In the case of each and every meeting can you state the date and the time it took place. In the case of each and every meeting can you provide copies of any agendas (either formal or informal) drawn up by any of the parties, copies of any minutes and a copy of a transcript.

3. During the aforementioned period did the Prince or anyone acting on his behalf (including but not limited to Michael Peat) have a telephone conversation with any council employee, elected representative, or any legal representative of the council to discuss any of the issues outlined in question one. In the case of each telephone conversation can you provide the date and time of the call. In the case of each telephone conversation can you provide a full list of those taking part. In the case of each relevant telephone conversation can you provide either a sound recording of the call or a transcript.

4. During the aforementioned period did the Prince of Wales or anyone acting on his behalf (including but not limited to Michael Peat) write to the council about: the Chelsea barracks site, the various existing proposals for the redevelopment of the site, the Prince's concerns about those proposals; the Prince's various dealings with Qatari Diar, members of the Qatari Royal Family and the Qatari government about the proposed scheme(s), residents' concerns and any alternative schemes (proposed or actual) for the site. If the answer is yes can you, please provide copies of this correspondence and communication.

5. During the aforementioned period did the council reply to the Prince (and his representatives) or write to the Prince of Wales and his representatives about any of the points listed in question four. If the answer is yes can you, please provide copies of this correspondence and communication.

6. If information relevant to the request has been destroyed can you please provide the following details. In the case of each piece of correspondence and communication which has been destroyed can you state the date it was generated; can you also provide

details of the authors and recipients as well as a brief outline of its contents. If any destroyed correspondence and communication continues to be held in another form. Can you please provide a copy of that correspondence and communication?

7. If information relevant to the request has been transferred to an archive can you please identify the archive. Can you also provide the title and reference number for any files or papers transferred? Can you state when the material was transferred?"

5. The Council responded on 16 February 2021. It stated that it did not hold the requested information. It also stated it had considered the request under FOIA.
6. Following an internal review the Council wrote to the complainant on 1 April 2021. It maintained its position that it did not hold the requested information.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 1 April 2021 to complain about the way his request for information had been handled.
8. The Council's response to the request for information stated that the request had been considered under FOIA. Its internal review made reference to both FOIA and the EIR but did not state that the request had been reconsidered under the EIR.
9. This decision notice covers whether the requested information, if held, would be environmental, and covers whether the Council holds any recorded information falling within the scope of the request.

### **Reasons for decision**

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#### **Regulation 2(1) – definition of environmental information**

10. Regulation 2(1) of the EIR provides the following definition of environmental information:

"...any information in written, visual, aural, electronic or any other material form 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) and (b) as well as measures or activities designed to protect those elements..."

11. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.
12. The Commissioner has produced guidance<sup>1</sup> to assist public authorities and applicants in identifying environmental information. The Commissioner's well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
13. The Commissioner notes that the requested information comprises information on the redevelopment of the Chelsea Barracks site.
14. The Commissioner is satisfied that the requested information, if held, would relate to both measures and activities affecting the environment.
15. The Commissioner is therefore satisfied that the information, if held, would fall within the definition at regulation 2(1)(c) and that the request fell to be considered under the EIR.
16. In such cases, the Commissioner may require a public authority to issue a fresh response to the requester under the correct regime. However, in

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[https://ico.org.uk/media/fororganisations/documents/1146/eir\\_what\\_is\\_environmental\\_information.pdf](https://ico.org.uk/media/fororganisations/documents/1146/eir_what_is_environmental_information.pdf)

this case, he has first considered whether the requested information is held by the Council.

### **Regulation 12(4)(a) – information not held**

17. Regulation 12(4)(a) of the EIR states 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.
18. The complaint under consideration in this part of the notice relates to the Council's assertion that it does not hold any information within the scope of the request.
19. In cases where there is a dispute over whether information is held, the Commissioner applies the civil test of the balance of probabilities in making his determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held, in cases which it has considered in the past.
20. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether the information is held, and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is held.

### **The complainant's view**

21. The complainant believes that the Council holds information within the scope of his request because the Prince's involvement in the planning process for the redevelopment of the site is a matter of public record and the Council was the principal planning authority for the development.

### **The Council's view**

22. The Council acknowledges that there was publicity around the Prince's interest in the redevelopment. Nevertheless it maintains that it does not hold any of the information requested. The Council's understanding is that the Prince did send a letter that affected the planning process but that this was sent directly to parties involved in the purchase/design aspects of the project rather than the council.
23. The Council believes that it has carried out appropriate searches likely to retrieve any relevant information. It carried out searches of information held by the Planning Department, Chief Executive's Office and Corporate Property Department.

24. Staff in these three areas of the council were consulted and considered able to answer given their knowledge and experience, and the fact that the requested information would be known of, given the high profile of the involved parties. The Planning and Corporate Property Departments confirmed that they did not hold any relevant information.
25. In the case of the Chief Executive's Office, the staff members who would have received this information at the time are no longer at the Council and their accounts are no longer accessible. The Council undertook a search of the available emails and correspondence. The requested information was not located via these searches. The Council also believes that had any such information been held that it would have been passed to Planning at the time as it would relate to that department's core activities.
26. The Council's position is therefore that it does not hold the information requested.

### **The Commissioner's decision**

27. The Commissioner's remit in this case is to establish whether, on the balance of probabilities, the Council held any information falling within the scope of the request.
28. He is satisfied by the Council's explanations as to why no information is held and how it has carried out searches for the information. His decision is that, on the balance of probabilities, it was correct to state that it did not hold the information.
29. He does not require the Council to take any steps.

## Right of appeal

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30. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. 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.
32. 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 .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**