

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 January 2023

Public Authority: London Borough of Lambeth
Address: Lambeth Town Hall
Brixton Hill
London
SW2 1RW

Decision (including any steps ordered)

1. The complainant submitted a series of refined requests for copies of communications between a local councillor and a building developer. The London Borough of Lambeth (the Council) initially relied on regulation 12(4)(b) and later 12(4)(a) to refuse the requests, stating that it was unable to identify information within scope. However, during the course of the Commissioner's investigation the Council was able to identify and disclose some information to the complainant.
2. The Commissioner's decision is that the Council has now complied with the request, however it has breached regulations 5(1) and 5(2) by failing to provide the information to the complainant within the statutory timeframe of 20 working days.
3. The Commissioner does not require any steps.

Request and response

4. On 28 October 2021 the complainant submitted the final in a series of refined requests to the Council which had been refused under both section 12 (cost limit) of FOIA and regulation 12(4)(b) (manifestly unreasonable) of the EIR. The full request history is included in the appended annex. The complainant made their refined request in the following terms:

"Dear Sir/Madam

Request for information under the Environmental Information Regulations and Freedom of Information Act.

This request relates to the development of the site known as Land East of Montford Place, London SE11, in Oval Ward, Lambeth ("The Site") which will directly affect hundreds of people living in Oval Ward. The Developer of the site is Connected Living London.

Timeframe: 1 March 2019 to present.

Request: Please supply a copy of electronic correspondence between Oval Ward Local Councillor [name redacted], and any personnel at Connected Living London.

I anticipate this information can be found quickly using the search function to search the Councillor's e-mailbox for messages to/from/containing the domain connectedlivinglondon.co.uk

Please include attachments to emails.

Please supply the information electronically if possible.

If this request is any way problematic please could you contact me to provide advice and assistance so as to make the request successful.

Please also advise me of the ultimate cost of fulfilling this request.

Yours sincerely,
[name redacted]"

5. The Council responded on 19 November 2021. It stated that it was refusing the request under regulation 12(4)(b) of the EIR. The Council explained that, from preliminary assessment, the cost of compliance with the request would exceed the appropriate limit as outlined at section 12 of FOIA¹ (£450). The Council stated that it acknowledged the factors in favour of disclosure as regards increasing Council openness and transparency, however maintained that the factors in favour of

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/12>

withholding the information, namely the disruption it may cause to other workloads, outweighed the public interest in disclosure.

6. The complainant contacted the Commissioner on 2 December 2021 to complain about the way their information request had been handled. The Commissioner advised the complainant to contact the Council to request an internal review.
7. Following the outcome of an internal review the Council wrote to the complainant on 5 January 2022. It maintained reliance on regulation 12(4)(b) to refuse the request.

Scope of the case

8. The Commissioner accepted the case for investigation on 11 January 2022.
9. During the course of the investigation the Council amended their position and sought to rely on regulation 12(4)(a) – information not held, before later identifying and disclosing information within scope of the complainant's earlier request of 30 September 2021.
10. As the Council are not seeking to rely on regulation 12(4)(a) or regulation 12(4)(b) the Commissioner will not make a finding in respect of either exception in this decision notice.
11. The Commissioner considers the scope of the investigation to be whether the Council has complied with regulations 5(1) and 5(2), which set out the statutory timeframe given for complying with an information request.

Reasons for decision

The complainant's position

12. In their grounds of complaint, the complainant explained that they had submitted six requests for information, each reducing in scope, however all had been refused under either section 12 of FOIA or regulation 12(4)(b) of the EIR. The complainant noted that in the majority of their responses the Council had neglected to provide them with advice and assistance with regards to refining their requests.
13. The complainant explained that they believed there to be significant public interest in the disclosure of the information as it related to a large and controversial development scheme that would affect many existing

residents in the local area. The complainant stated that they had attempted to contact local councillors directly via email to discuss their issues however had not received responses, and the councillors had made little effort to engage with residents.

14. The complainant stated that they believed the time and resource required to perform searches of the relevant inboxes was not disproportionate to the value of the request.
15. In support of their complaint, the complainant provided the Commissioner with a copies of emails between Lambeth Councillors and personnel at Transport for London (TfL) regarding the development, disclosed via an information request made to TfL. The disclosure includes emails in which "Connected Living London" is referred to extensively.

The Council's position

16. The Commissioner wrote to the Council with a series of questions under regulation 12(4)(b) with a view to establish its position regarding the complainant's request of 28 October 2021.
17. In its response, the Council explained that Cllr [name redacted], formerly Leader of the Council, was no longer a Lambeth councillor. Accordingly, their email account was deactivated in August 2022.
18. The Council stated that it had contacted its IT department to retrieve the account and perform a search for communications between the Councillor and "Connected London Living". The Council stated that the searches did not retrieve any information and therefore it was amending its position and applying regulation 12(4)(a), information not held.
19. The Commissioner contacted the Council to remind it that the complainant had requested email correspondence between Cllr [name redacted] and "Connected Living London" and not "Connected London Living". He asked the Council to confirm whether the correct searches had been performed and provide their response within five working days.
20. The Council responded to the Commissioner and stated that, after conducting further searches, the Council had identified email correspondence sent "on behalf of" Connected Living London by its representatives, [business name redacted]. The Council asked the Commissioner whether he considered this information to fall within scope of the complainant's request of 28 October 2021.
21. In his response to the Council the Commissioner took the position that, while the information located by the Council may fall outside of the

scope of the request of 28 October 2021, when considering the request history in a holistic manner the information does fall within scope of the complainant's earlier request of 30 September 2021 which had previously been refused under regulation 12(4)(b).

22. The Commissioner also advised the Council that if the email communications identified were considered to be suitable for disclosure there was nothing within the legislation to prevent the Council from proactively making the information available to the complainant, and reminded the Council that the EIR hold a presumption in favour of disclosure. The Council subsequently disclosed the information to the complainant.

The Commissioner's position

23. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."

24. Regulation 5(2) of the EIR states that:

"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."

25. As the Council did not provide the complainant with the information sought by their request of 30 September 2021 within 20 working days the Commissioner finds that it has breached regulation 5(2) of the EIR. As explained at paragraph 2 and 3 above, the Council has now disclosed the information to the complainant. The Commissioner does not require any steps.

Other matters

26. The Commissioner has had sight of the full request and response history. The Commissioner notes that throughout the Council's responses are inconsistent with regards to the choice of appropriate access regime under which to handle the request.
27. The Commissioner would remind the Council that a primary step in handling a request for information is to determine which access regime the request falls under from the outset.

Right of appeal

28. 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

29. 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.
30. 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

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

31. Request history

On 25 March 2021, the complainant wrote to the Council and requested information in the following terms:

"Dear Sirs

This request relates to the site known as Land East of Montford Place, London SE11 in Oval Ward, Lambeth ("The Site").

Timeframe: 1 April 2019 to present

Parties:

(1) "The Councillors": Oval Ward Local Councillors [name redacted] and [name redacted];

and

(2a) "The Developer": Any personnel at any of the companies Connected Living London, Transport for London, and [business names redacted]

(2b) "The Developer's representatives": Any personal at any of the companies [business names redacted], being companies employed by the developer in the context of the Site.

Request:

Pursuant to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 please could you supply me with the following information:

(1) Any correspondence (whether email, letter or other format) related to the Site or its development, between either of the Councillors and anyone from The Developer or the Developer's representatives.

(2) A list of meetings where either or both of The Councillors met anyone from The Developer or the Developer's representatives, and any associated meeting notes if present..

Please supply the information electronically if possible.

In accordance with section 16 of the FOI Act ("Duty to provide advice and assistance") if any clarification of limitation of this request is required please let me know."

32. The Council responded on 23 April 2021. It stated that it was refusing the request under section 12(1)² of FOIA. The Council also stated that it was aggregating the complainant's requests as permitted by section 5(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees regulations 2004)³. The Commissioner has not seen evidence that the complainant submitted more than one request.
33. On 4 May 2021 the complainant contacted the Council to refine their request. The complainant noted that they believed the request should have been handled under the EIR, and that the Council had not met their duties at section 16 of FOIA to advise the complainant on how they may bring their complaint in line with the appropriate limit.
34. On 9 June 2021 the Council responded. It refused the request under section 12(1) of FOIA. The Council stated: "I can advise that we may be able to provide information if you were to narrow the scope of your request which would allow us to provide information within the limits set out in s12."
35. On 27 July 2021 the complainant submitted a further refined request to include "correspondence between either of The Councillors and anyone from The Developer". The complainant identified The Developer as Connected Living London, [business names redacted].
36. On 19 August 2021 the Council responded. It refused the request under regulation 12(4)(b) of the EIR.
37. Following an internal review the Council wrote to the complainant on 20 September 2021. It stated that it was maintaining reliance on its original response.
38. On 21 September 2021 the complainant wrote to the Council to query how to obtain advice and assistance with regards to narrowing the scope of their complaint. The Council responded on 28 September 2021 and advised that if the complainant refined their request to information from a shorter time frame, or information about one Councillor rather than

² <https://www.legislation.gov.uk/ukpga/2000/36/section/12>

³ <https://www.legislation.gov.uk/ukxi/2004/3244/made>

two, they may bring their request in line with the appropriate limit for compliance.

39. On 30 September 2021 the complainant submitted a further refined request with a reduced focus on communications between one Councillor and the Developer.
40. On 18 October 2021 the Council responded. It refused the request under section 12 of FOIA.