

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 March 2023

Public Authority: London Borough of Brent
Address: Brent Civic Centre
Engineers Way
Wembley
HA9 0FJ

Decision (including any steps ordered)

1. The complainant has requested detailed information about what happens to the recyclable materials, following their collection by the local authorities, namely Brent Council (BC). More specifically, the complainant wanted to know how the recyclates are being processed, what products are made from the recycled materials, which facilities are used for the recycling and the information relating to the number of employees at the facility. The complainant also asked whether the recyclable materials are being sold to other companies and who receives the money. BC provided some information in response to the two requests submitted, but explained that it did not hold some of the information sought. For such information, BC cited regulation 12(4)(a) (information not held) of the EIR.
2. The Commissioner's decision is that, on balance of probabilities, the public authority did not hold any further information falling within the scope of the requests, beyond that provided to the complainant.
3. The Commissioner does not require BC to take any further steps in this case.

Request and response

4. On 7 October 2021 the complainant made the following request for information:
 - "1) Details of the plant, i.e. number of employees. Cost breakdowns etc
 - 2) The details of the breakdown in percentage terms of the material, i.e. glass/metal/plastic/cardboard etc
 - 3) The total tonnage per week. Do you just handle waste from Brent or other boroughs, if so, which ones?
 - 4) Full details of how each of the materials is recycled and what happens to the recycled material."
5. BC responded on 3 November 2021 providing some information within the scope of the request but refusing to provide the remainder. It cited regulation 12(4)(a) of the EIR in relation to point 1 of the request, where it stated that BC does not hold the information.
6. The complainant contacted BC on 23 November 2021 expressing dissatisfaction with the response he received where BC stated that it did not hold the information. By way of explanation BC had stated that:

"We do not hold this information and nor would be able to get this information as the Boroughs waste is not processed by one specific facility. We do not manage the facilities."
7. BC responded on 26 November 2021 explaining further the reasons for why BC did not hold the requested information.
8. On 4 December 2021 the complainant submitted his second request for information where he asked the following questions:

"Question 1.
Brent Council says on it's website 'Once separated, the materials are sent to different companies to create new products

Material
Typical destination
Typical end-product
Paper & cardboard
UK (Kent), Spain, India
Cardboard packaging
Glass
UK (Tilbury)
New glass bottles and jars, road surfacing
Steel cans
UK (Wales), Turkey, India

New cans, car parts, girders

Aluminium cans

UK (Cheshire), Germany

New drinks cans

Plastics

New plastic bottles, piping, fleece UK (Dagenham)

It is not therefore unreasonable for me to ask exactly what products are produced. The above chart I received is sketchy at best. No details of exactly what products are made from the waste and Veolia actually report that some material are shipped abroad, but they don't say what percentage.

Plastic account for nearly 10% of the total tonnage. Plastics are quite complicated to recycle depending on their type, but there is no detail if they are separated or how they are treated.

As glass represents 38% of the total waste the explanation is again vague. Is the glass separated by colour? Is it crushed or reheated?

Since the cardboard/paper also accounts for nearly 40% of the waste, what type of packaging is made?'

Question 2.

Is this recycled material sold to other companies? Who gets the money? Veolia or Brent Council?

I need much better factual reportage."

9. BC responded to the second request on 21 December 2021 informing the complainant that it did not hold the requested information in relation to question 1 relying on the exception under regulation 12(4)(a).
10. BC also confirmed that, in relation to question 2, it did hold the requested information but refused to provide it relying on the exception under regulation 12(5)(e) (confidentiality of commercial information).
11. On the 4 March 2022 the complainant requested an internal review.
12. BC responded to this request on 1 April 2022 maintaining its original position. With regard to the information sought by question 1, BC noted that it:

"...advised you [i.e. the complainant] that we do not hold the level of detail you were seeking. I can confirm that this is also factual. Again, given the volume, changes and complexities regarding the handling and processing of recycled waste, while we seek assurances from Veolia that they process our waste responsibly and in accordance with the law, we do not seek nor hold the level of detail you have asked for from them."

13. On 10 March 2023, in response to the Commissioner's investigation, BC provided its submissions and also informed that it had issued a new, revised response to the complainant in relation to the requests of 7 October 2021 and 4 December 2021.
14. As part of its new response, in relation to question 1 of the 7 October 2021 request BC stated that:

"The plant details are Veolia Southwark IWMF, 43 Devon St, London SE15 1AL.
They have 98 employees.
We are unclear what information you require a "costs breakdown etc" off. For example, are you seeking a cost breakdown of Veolia's employees? Please provide us with clarification of the information you are seeking in relation to Cost breakdown and we shall consider this part of your request further."
15. In relation to question 1 of the 4 December 2021 request, BC confirmed that it did not hold this information and provided a further explanation as to why this was the case. In relation to question 2 of this request BC explained that 'Veolia will sell materials collected to third party organisations and companies. To date, all monies recovered has been retained by Veolia. For the purposes of assistance, Brent Council does not receive data on the monies recovered by Veolia in relation to sold recycled material.' (Although not explicitly stated in its response to the complainant, BC explained to the Commissioner that in light of its revised response to this question, it no longer sought to rely on regulation 12(5)(e)).

Scope of the case

16. The complainant contacted the Commissioner on 30 December 2021 to complain about the way his requests for information had been handled.
17. Originally, the complainant raised his complaint with the Commissioner based on three grounds. These were:
 - i) Ground 1 related to question 1 of the request made on 7 October 2021
 - ii) Ground 2 related to question 1 of the request made on 4 December 2021
 - iii) Ground 3 related to question 2 of the request made on 4 December 2021
18. In relation to points i) and ii) his view was that BC would hold information falling within the scope of these questions. In relation to

point iii) he disputed BC's reliance on regulation 12(5)(e). In light of the revised response of BC to the complainant, and with regard to the third ground of the complaint, where BC no longer relied on the regulation 12(5)(e), the Commissioner has considered two remaining grounds of the complaint to determine whether, on balance of probabilities, BC held any further information at the time of the requests and whether BC was correct to rely on the regulation 12(4)(a).

Reasons for decision

Regulation 12(4)(a) of the EIR – Information held/ not held

19. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request if it is not subject to an exception.
20. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
21. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-Tier Tribunal decisions, and the civil standard of proof based on the balance of probabilities, must decide whether the public authority holds any information which falls within the scope of the request (or was held at the time the request was made).
22. In this case the complainant expressed his satisfaction about not receiving all the information he requested and the depth he would have expected.

Request of 7 October 2021 – question 1

23. To re-cap, this question sought:

'Details of the plant, i.e. number of employees. Cost breakdowns etc'
24. In its revised response of 10 March 2023, BC provided further detailed information to the complainant about the facilities used for the recycling, including the number of employees. As a result the Commissioner considers that information sought by that part of the request to have been provided. However, in order to consider and respond to the part of the request where the complainant asked for 'cost breakdown', BC asked the complainant for clarification of the information of the 'cost breakdown' he was seeking.

25. The Commissioner accepts this as a reasonable request for the complainant to specify which aspect of the cost breakdown he was interested in, and considers that, if the complainant wished to pursue this part of his information request, this would form a new request dealt with by BC outside of this decision notice. (The Commissioner notes that regulation 12(4)(c) of the EIR provides an exception for public authorities to refuse requests if they are formulated in too general a manner. Whilst BC did not cite this particular provision of the EIR in relation to this aspect of the request, its approach to it, i.e. asking for clarification of the information being sought so that it could process a new request for such information is in line with how the legislation expects public authorities to handle unclear requests).

Request of 4 December 2021 – question 1

26. To re-cap, this question comprised four parts which are repeated here:

'Exactly what products are produced...they don't say what percentage.

detail if they are separated or who they are treated.

Is the glass separated by colour? Is it crushed or reheated?

Since the cardboard/paper also accounts for nearly 40% of the waste, what type of packaging is made?'

27. Further to the investigation and in respect to the regulation 12(4)(a), BC explained why it does not hold the information sought by that part of the request.
28. BC explained that as a public authority it has a statutory duty to collect and to deposit waste / household waste in the borough. This duty also includes informing the Department for Environment, Food & Rural Affairs (DEFRA) on the type and quantity of the collected waste. However, BC is not required to report on the recycling journey, following the collection, beyond ensuring that the waste is recycled, based on an agreement with Veolia.
29. BC confirmed that Veolia has its own, independent contractual arrangements to ensure that the conditions of the agreement with BC are fulfilled. BC confirmed that on its behalf Veolia holds limited information on "what happens to the recycled material" and the typical end product of the waste once it has been collected by them. (BC provided this information to the complainant as part of its revised response to question 4 of the 7 October 2021 request).

30. BC explained that by way of separate contractual agreements, Veolia works with various reprocessing outlets and third-party organisations/companies with respect to the recycling of the waste material collected from the authority. However, BC reiterated that it has no contractual right to have access to information regarding methodologies used, or specification what waste material is recycled into, by third party contractors made with Veolia based on independent contractual arrangements.
31. Following consideration of the information provided by BC in response to the investigation, the Commissioner accepts that BC has no business needs to hold the information sought by question 1 of the 4 December request. Furthermore, the Commissioner understands that whilst BC's contractual arrangements allow it to access some information held by Veolia, such arrangements do not extend to the nature of the information sought by this particular question.
32. Consequently, the Commissioner is satisfied that, on balance of probabilities, BC did not hold any information within the scope of question 1 of the 4 December 2021 request and it was correct to rely on regulation 12(4)(a).

Right of appeal

33. 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

34. 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.
35. 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