

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

### **Decision notice**

**Date:** 19 December 2019

**Public Authority:** London Borough of Waltham Forest

**Address:** Town Hall  
Forest Road  
London  
E17 4JF

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

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1. The complainant had requested information from London Borough of Waltham Forest (the London Borough) about the "Mall Walthamstow" development.
2. The Commissioner's decision is that the London Borough did not breach of either Regulations 5(2) or 6(1) of the Environmental Information Regulations (EIR).
3. The Commissioner does not require the London Borough to take any steps in response to this notice.

## Request and response

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4. On 8 December 2017, the complainant wrote to the London Borough and requested information in the following terms:

*"Councillors [sic] are currently able to allocate £10,000 of funding for each ward to spend on local initiatives. In that regard, can you please provide me with the following: –*

*(1) The financial viability assessment/s for the Mall Walthamstow development. I would like the above information to be provided to me in paper format"*

5. The London Borough responded to the request via email on 10 January 2018, applying an exception to the disclosure of the requested information as at Regulation 12(5)(e) of the EIR (Confidentiality of commercial or industrial information).
6. The London Borough completed an internal review of the handling of this request on 25 September 2019. The London Borough states that this was in response to 27 August 2019 correspondence from the complainant. The complainant stated to the Commissioner that they made no such request. It is beyond the scope of this notice to consider whether or not a request for review was solicited by the complainant.

## Scope of the case

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7. The complainant contacted the Commissioner on 27 September 2019 to complain about the way their request for information had been handled. They alleged that the London Borough had breached section 10 and section 11 of the FOIA.
8. The Commissioner considers that the first step in assessing this complaint is to determine the extent to which the information requested was environmental. If the requested information was environmental in nature, then the London Borough was entitled to issue its response under the EIR. The question of compliance with the FOIA would therefore fall away, and the relevant question for the Commissioner to consider would be whether there was any breach of the equivalent Regulations under the EIR.
9. For reasons set out in the Other Matters section of this notice, the Commissioner has elected to issue a decision notice in this case.

## Reasons for decision

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10. Regulation 2(1) of the EIR defines environmental information as being information 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)...as well as measures or activities designed to protect those elements;*
  - (d) *reports on the implementation of environmental legislation;*
  - (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
  - (f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
11. The Commissioner has not seen the requested information but, as it is information relating to the financial viability of a particular development, she believes that it is likely to be information about cost-benefit analyses, used within the framework of measures, which affect or are likely to affect the state of elements of the environment. The Commissioner is therefore satisfied with the London Borough's decision to handle the request under the EIR.

### *Regulation 5 – Duty to make available environmental information on request*

12. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"

13. Regulation 5(2) states that such information shall be made available "as soon as possible and no later than 20 working days after the date of receipt of the request."
14. The relevant definition of "working day" is found at section 10(6) of the FOIA:

*"any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom"*
15. Taking into consideration United Kingdom bank holidays on 25 and 26 December 2017 and 1 January 2018, and a Scottish bank holiday on 2 January 2018, the twentieth working day following the date of receipt of the request would be 11 January 2018.<sup>1</sup>
16. As the London Borough issued its response on 10 January 2018, the Commissioner finds that no breach of Regulation 5(2) occurred.

#### *Regulation 6 – Form and format of information*

17. Regulation 6(1) of the EIR states that "*where an applicant requests that the **information** be made available in a particular form or format, a public authority shall make it so available [...]*" [emphasis added]
18. It is clear that the scope of Regulation 6 is the extent to which public authorities must provide *information* to an applicant in one form or another. If a public authority *declines* to provide requested information, Regulation 6 will place no obligation on them to issue a refusal notice in compliance with any particular form and format preference.
19. As the London Borough declined to provide the requested information and issued a refusal notice citing Regulation 12(5)(e), there was no obligation under Regulation 6 to provide this refusal to the complainant in any particular form or format. Therefore, on the evidence provided to the Commissioner, no identifiable breach of Regulation 6(1) has occurred.

#### **Other matters**

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20. Under section 50 of the FOIA and Regulation 18 of the EIR, anyone may complain to the Commissioner regarding a public authority's response to their information request. However, section 50(2)(b) of the FOIA sets out that the Commissioner is under no duty to deal with a complaint if

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<sup>1</sup> <https://www.gov.uk/bank-holidays>

she considers that there has been undue delay in bringing it to her attention. The Commissioner expects complaints to be submitted to her within three months of a public authority's refusal of, or failure to respond to, an information request.

21. Given the age of the request, the age of the London Borough's response, and the significant delay between this response and the apparently unsolicited internal review, the Commissioner considered that undue delay had occurred in bringing this matter to her attention.
22. However, the provisions of section 50(2) do not *preclude* the Commissioner from reaching a decision where she is otherwise not obligated to do so.<sup>2</sup>
23. Given the usual circumstances surrounding the completion of an internal review in this case, the Commissioner has elected to, as an exception, issue a decision notice in this case.

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<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2000/36/notes/division/4/4/1>

## Right of appeal

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24. 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)

25. 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.
26. 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 .....**

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