

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 7 March 2023

Public Authority: London Borough of Waltham Forest
Address: Waltham Forest Town Hall
Forest Road
Walthamstow
E17 4JF

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Waltham Forest ("the Council") relating to experimental traffic order ("ETO") schemes. The Council said it had disclosed all the information it held falling within the scope of the request, but the complainant believed that it held more information.
2. The Commissioner's decision is that, on the balance of probabilities, the Council holds no further information that falls within the scope of the request. This is because the information that the complainant said he expected to receive fell outside of the scope of the request. However, the Council was under a duty to provide appropriate advice and assistance regarding how he might access that information (if held). By failing to do so, the Council breached regulation 9 of the EIR.
3. The Commissioner does not require any steps as a result of this decision.

Request and response

4. On 31 March 2022, the complainant wrote to the Council and requested information in the following terms:

“Please send me any email and WhatsApp group correspondence between councillors and others involved in ETO schemes installed under the street space scheme.”

5. At the request of the Council, the complainant clarified the timeframe of his request as being 15 March 2020 to 11 April 2022 (the date he provided clarification). He also clarified what he meant by “the street space scheme”:

“The street space scheme that came into effect when the C19 [Covid 19] virus caused lockdown and LTN [Low Traffic Neighbourhood] emergency traffic measures came into force with planters created [sic] road blocks.”

6. The Council initially refused the request under regulation 12(4)(b) (Manifestly unreasonable) of the EIR. On 17 May 2022, the Commissioner determined that the Council had failed to demonstrate that regulation 12(4)(b) applied, and it was ordered to issue a fresh response which did not rely on regulation 12(4)(b)¹.
7. On 20 June 2022, the Council issued a further response to the complainant, in which it again cited regulation 12(4)(b) of the EIR to refuse the request. Following the Commissioner’s intervention, on 16 September 2022, the Council issued a fresh response, disclosing information falling within the scope of the request.
8. The complainant then told the Council he believed it held more information, which it had not disclosed. Noting that he had only received information on LTN measures in South Leytonstone, he explained that he expected to receive information relating to at least the St James's/Markhouse/Coppermill area LTNs, which he knew had been installed in 2020. He believed these LTNs had been the subject of complaints to the Council which would have generated significant correspondence.

¹ See the decision notice issued under reference IC-128457-H5B1 https://indigoffice.sharepoint.com/sites/CRMDocuments/210910/IC-128457-H5B1/a264afae-b8d5-ec11-813a-0050569d0b47_e64f3496-1fd1-ec11-813a-0050569d0b47_IC-128457-H5B1%20Decision%20Notice.pdf

9. On 18 October 2022, the Council clarified with the complainant that it had disclosed all the information it held which fell within the scope of the request. However, it regarded part of his latest correspondence to be a new request for information, which it said it would respond to separately. It subsequently did so, disclosing some information.
10. On 11 November 2022, the complainant thanked the Council for the fresh disclosure of information. However, he maintained that information on the LTNs installed in the Hilltop, Bell Corner and Coppermill areas remained outstanding.
11. The Council conducted an internal review, and on 24 November 2022, it again said that it had disclosed all the information it held which fell in scope of the request. It referred the complainant to its correspondence of 20 June 2022, in which it had explained to him why it considered that information on other LTNs introduced during 2020 fell outside the scope of the request.

Reasons for decision

Is the requested information environmental?

12. When considering the Council's initial handling of the request, the Commissioner determined that the request fell to be dealt with under the EIR. The rationale for that decision can be found in the decision notice issued under reference IC-128457-H5B1 (see paragraph 6).

Regulation 5 – duty to make environmental information available on request

13. Under regulation 5(1) of the EIR, and subject to a number of EIR provisions, a public authority which holds environmental information shall make it available on request.
14. The Council has told the complainant that it has disclosed to him all the information it holds which falls within the scope of his request. However, the complainant has persistently said that he expects to receive correspondence on ETOs relating to particular, named, LTN schemes.
15. The Council has explained to the complainant, and to the Commissioner, why it believes that it does not hold any further information falling within the scope of the request. These arguments are concerned with the timeframe covered by the request and the extent to which individual schemes were created specifically in response to the Covid 19 pandemic.
16. It told the complainant:

"The Council have considered your request as a request for correspondence between Councillors and Officers/other parties for any Low Traffic Neighbourhood (LTN) measures/schemes specifically developed and implemented in response to or following the onset of the Covid-19 pandemic, using a different approach to how the Council would have typically developed and progressed schemes of this nature, including advanced community engagement, prior to the pandemic. On this basis, the Council considers the only eligible scheme to be the "South Leytonstone Low Traffic Neighbourhood (LTN) – Areas 1-4", which was developed following the onset of the pandemic and implemented between August and October 2020.

It should be noted that the Council implemented a number of other LTN schemes during 2020, following the onset of the pandemic, however, these were pre-existing schemes that had been in development throughout 2018 and 2019. These other LTN measures/schemes had been taken through extensive design and advanced community engagement process before the start of the pandemic and had also been approved for implementation via the councils established delegated powers governance processes before the start of the pandemic. While these schemes were implemented following the onset of the pandemic the Council considers them to be pre-existing [sic] schemes and as such not relevant to your request."

17. The Council has explained that the LTNs that the complainant has specified, while introduced during the timeframe covered by his request, were conceived and developed in the preceding years, using established protocols for developing such measures. They were not developed and introduced specifically in response to the pandemic. Consequently, it said that any information it held on these LTNs fell outside of the scope of the request.
18. The request asked for correspondence relating to special traffic schemes installed under the Streetspace scheme. The Commissioner has found the following summary of the Streetspace scheme online:

"The Streetspace for London programme is supported by funding to allow London's boroughs to create new protected cycle lanes, extend pavements and reduce through-traffic in residential areas as a response to the coronavirus pandemic."²

² <https://tfl.gov.uk/info-for/boroughs-and-communities/streetspace-funding>

19. The complainant provided some background information to the Commissioner, including an official leaflet discussing the Coppermill scheme, which states the following:

"In 2018, Waltham Forest Council was successful in securing initial funding from Transport for London (TfL) to develop a Liveable Neighbourhood scheme in the Coppermill Area. At the same time the Council also secured funding to redirect the existing Quietway 2 (soon to be renamed Cycleway 27 by TfL) cycle route. The aim of both schemes is to encourage residents, businesses and visitors to use sustainable modes of transport more often, so that together we can reduce congestion, tackle air pollution and improve the health and wellbeing of local people.

The Coppermill Area Liveable Neighbourhood Scheme encompasses the area bounded by Forest Road and Blackhorse Road Station to the north, St James Street to the east, Argall Industrial Estate to the south/southwest and the Lower Lea Valley/Walthamstow Wetlands to the west. The new Quietway 2 (Cycleway 27) route alignment uses South Access Road, the Argall Business Estate and Lea Bridge Road to link St James Street with the London Borough of Hackney, instead of the current route alignment along Coppermill Lane and through the Lower Lea Valley. This change is being made due to accessibility and personal safety concerns within the Lower Lea Valley.

...

However, due to the Covid-19 pandemic we have seen a substantial reduction, and in many cases complete withdrawal, of funding for transport and highway improvements. This includes funding that we were expecting from TfL to deliver schemes like the Coppermill Area scheme. As a result we are unfortunately unable to progress some of the schemes we were originally planning to, and have had to prioritise which measures and proposals to take forward based on their expected benefit and amount of funding now available.

Funding for this scheme will now be supported via the TfL "London Streetspace Plan" (LSP), which is aimed at providing emergency funding for implementing lower cost, high impact highways infrastructure schemes that will address various issues related to the Covid-19 pandemic. The LSP schemes aim to encourage and enable social distancing and ease potential pressure on London's streets and transport system by encouraging the use of sustainable and active modes of travel".

20. The Commissioner understands from this that the Coppermill scheme was a pre-existing cycleway scheme, and that it was not developed as a response to the pandemic. It was already due to be implemented, with

funding expected to be obtained from TfL, through the usual channels. However, following the pandemic, traditional funding for all such developments was paused and the scheme instead received government-backed pandemic funding.

21. Having regard to all the above, the Commissioner considers that the determination of this complaint rests on the interpretation of the request. The complainant essentially regards it as being for LTN schemes installed between the specified dates; the Council considers that it was for schemes specifically designed and developed as a response to the pandemic (the only one being the South Leytonstone scheme, for which it disclosed information).
22. The Commissioner is satisfied that the Council interpreted the request in line with its wording and the clarification provided by the complainant. He considers that the phrase "installed under the street space scheme" strongly implies an interest in projects created to respond to the particular issues created by the pandemic, and that the complainant's subsequent clarification that the scheme "came into effect" at the start of the pandemic, reinforced this emphasis. Whilst some pre-existing LTN projects were considered suitable to receive pandemic funding, the South Leytonstone LTN was the only scheme to be developed and installed following the guidance issued under the Streetspace scheme.
23. The Commissioner notes that the Council did explain this interpretation of the request to the complainant. While he complained about its response, the complainant did not argue against the interpretation itself. Rather, he appeared to believe that the schemes he referred to would fall within the scope of that interpretation. From the information provided to him, the Commissioner is satisfied that they do not.
24. The Commissioner can rarely prove beyond doubt that a particular piece of information is or is not held. He is only required to determine whether it is more likely than not that the public authority has provided all the information it holds in response to a request.
25. The request specifies the "street space scheme that came into effect when the C19 [Covid 19] virus caused lockdown". From the information before him, the Commissioner is satisfied that the Council has located all the information it holds that is relevant to the complainant's request, as clarified by him. He concludes that, on the balance of probabilities, the Council has disclosed all the information that it holds that falls within scope of the request.

Procedural matters

26. Regulation 9 of the EIR requires a public authority to provide reasonable advice and assistance to those making, or attempting to make, requests for information. The EIR Code of Practice³ covers various options for advice and assistance.
27. In the circumstances of this case, the Commissioner considers that it would have been reasonable for the Council to advise the complainant on revising the scope of his request, since it was clear that he was interested in receiving information which fell outside of the scope of its existing wording. Doing so would have allowed him to submit a fresh, more precise request for that information, should he have wished to do so.
28. Although he considers this was a breach of the duty to advise and assist under regulation 9, the Commissioner does not consider it proportionate to order a remedial step. The complainant has now been alerted to the reasons that information about other schemes fell outside the scope of his request. He may make a fresh request, specifically for information on the LTNs he is interested in, should he wish to do so.
29. The Commissioner would add that he is unaware of whether or not the Council holds that information.

Other matters

30. The Council confirmed to the Commissioner that it dealt with this request under FOIA. However, in the decision notice issued under reference IC-128457-H5B1, it was established that the request was for environmental information, and should be dealt with under the EIR.
 31. In this case, the Commissioner does not consider that the complainant was disadvantaged by the Council considering the matter under the wrong access regime, as it does not make it any more or any less likely that information is held. However, as a general point, on receipt of a request for information, the Council must, at the outset, properly establish whether it falls to be dealt with under the EIR or FOIA.
 32. For future reference, the Commissioner's guidance on dealing with requests for environmental information can be found at:
-

³ <https://ico.org.uk/media/for-organisations/documents/2013835/eir-regulation-16-code-of-practice.pdf>

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

33. His guidance on FOIA can be found at: <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>.
34. The Commissioner is also concerned that the Council's response of 20 June 2022, which was issued in order to comply with the steps ordered in the aforementioned decision notice, reiterated its reliance on regulation 12(4)(b) of the EIR. The decision notice had stated that, when complying with the steps, the Council must not rely on that exception.
35. This suggests that the Council failed to properly engage with the steps specified in that decision notice. The Commissioner was forced to intervene, and it resulted in further delays before the complainant was furnished with a compliant response to his request.
36. The Commissioner served a practice recommendation on the Council in 2020⁴, in which he noted that it was "making minor but avoidable errors which are resulting in complaints to [his] office."
37. The Commissioner has made a separate record of the Council's handling of this request, for monitoring purposes. He may revisit it, should he note similar outcomes in any future cases relating to the Council.

⁴ https://ico.org.uk/media/action-weve-taken/practice-recommendations/2617991/fpr_0918092.pdf

Right of appeal

38. 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

39. 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.

40. 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

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