

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 August 2023

Public Authority: London Borough of Merton

Address: Civic Centre
London Road
Merton
SM4 5DX

Decision (including any steps ordered)

1. The complainant requested information from London Borough of Merton (the public authority). By the date of this notice, the public authority had not issued a substantive response to this request under the EIR.
2. The Commissioner's decision is that the public authority has failed to issue an adequate response under the EIR within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner requires the the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response to the request in accordance with its obligations under the EIR.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. On 23 February 2023, the complainant made the following request for information to the public authority:

"1. Pursuant to the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004, I am writing to request the below information. I will also submit this request via the online form shortly. This is an amended FOI / EIR request following Merton Council's refusal of my initial request [redacted].

2. Please provide the following information:

(i) confirm whether you have received any complaints about damage caused by the street trees on Hamilton Road (SW19) since 2017;

(ii) if so, please:

(a) confirm which property (or properties) on Hamilton Road lodged the complaint(s)?

(b) summarise the remedial action taken by the Council (e.g. pollarding or removal).

(c) confirm whether the Council paid (voluntarily or otherwise) any sums to the residents of those properties in relation to the damage (and if so, the amount paid).

(iii) confirm whether any of the street trees on Hamilton Road (SW19) have been removed in the last 10 years (and if so, briefly explain why);

(iv) confirm the month/years in which the street trees on Hamilton Road have been pollarded prior to the recent pollarding in November 2022, in the last 10 years; and

(v) confirm how many street trees in the London Borough of Merton have been removed in the last 10 years (and briefly explain the reason for the removal).

3. Please do not hesitate to contact me on [redacted] should you require any clarification.

4. In the event you consider any of the above overly broad or time consuming to respond to (which I do not accept they should be) please respond within the statutory period to those requests which you are able to."

6. On 10 March 2023, the public authority responded to the request under FOIA but following an internal review of its handling of the request, it overturned its original response and on 13 April 2023, it advised the complainant that as the request "mainly relates to trees", it would provide a new response under the EIR by 13 May 2023. It explained that it had not carried out sufficient searches for the information.
7. As no new response was provided, the complainant contacted the Commissioner to complain on 16 July 2023.

Reasons for decision

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

"a public authority that holds environmental information shall make it available on request."
9. 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."
10. The Commissioner contacted the public authority on 20 July 2023, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 20 working days. Despite this intervention, the public authority has failed to respond to the complainant.
11. From the evidence provided to the Commissioner in this case, it is clear that the public authority did not deal with the request for information in accordance with the EIR. The Commissioner's decision is that the public authority has breached regulation 5(2) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the EIR.

Right of appeal

12. 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

13. 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.
14. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF