

## Freedom of Information Act 2000 (Section 50) The Environmental Information Regulations 2004

### Decision Notice

Date: 7 May 2009

**Public Authority:** London Borough of Enfield  
**Address:** Civic Centre  
Silver Street  
Enfield  
EN1 3XJ

### Summary

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The complainant submitted a series of requests to the public authority which were mainly focused on housing issues relating to the 'Edmonton Partnership Initiative' regeneration project and as a consequence of the responses received made several complaints to the Information Commissioner ("the Commissioner"). On 19 and 22 August 2006 the complainant requested information relating to the size of the play area and liability for communal areas. The complainant alleged that the public authority failed to respond to this request. Following intervention by the Commissioner, the public authority confirmed that it did not hold the information requested, a position which the Commissioner upheld. The Commissioner investigated and found that the public authority breached the Environmental Information Regulations 14(3)(a) and 14(2) for not initially informing the complainant that no information was held but does not require the public authority to take any action.

### The Commissioner's Role

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1. The Environmental Information Regulations ("EIR") were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

### The Request

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2. On 19 August 2006, the complainant wrote to various staff at the public authority requesting the following information:

- i) "Can you please provide full details and revert how the size of play area at the heart of and for social housing residents and children can be returned to as agreed in 2001 i.e. 2670sq.mtrs – so that children of all ages have appropriate and adequate playarea."
  - ii) "Kindly advise unequivocally without ambiguity why Council will not adopt the landscaped areas?"
  - iii) "Kindly advise who will be responsible for maintaining which areas?"
  - iv) "Kindly advise who will be responsible for paying for maintenance & cleaning of this areas?"
  - v) "Please advise, when Council will adopt estate roads and footways most of which have been ready for over an year at least."
3. The complainant made the same request to the Chief Executive of the public authority on 22 August 2006.
  4. As the complainant has made a series of requests and complaints regarding the Edmonton Partnership Initiative to the public authority since early 2004 there is a great deal of correspondence between the two which displays the inability of the parties to reach a settlement on the issues. Not all of these pieces of correspondences are relevant to the complaints made to the Commissioner and so are not recorded here.
  5. In response to part i) of the request, the public authority, by letter dated 26 September 2006, informed the complainant that; "There have been two amendments to the size and/or location of the landscaped areas since the original detailed planning permission was granted under ref. TP/99/1320. Each has been encompassed in a new planning application, (TP/01/0605 & TP/03/2290), and each application has been approved as a development that meets the relevant physical planning standards. There are no 'promises and assurances' to social housing residents in these planning permissions, and you will appreciate that it is not their function to provide a means for management of the estate". In a letter dated 1 February 2007, the public authority further informed the complainant that; "The configuration of the play area agreed in 2001 is the first of three different proposals put forward by the estate owners between 2001 and 2004. Each has been considered acceptable for planning purposes and received planning permission. The choice of scheme to be implemented would be for the estate owners to make, subject to any planning conditions and within the bounds or any other (non-planning) constraints. Their implementation of the most recent scheme would obviate a reversion to the 2001 proposal and there would be no planning justification to do so."
  6. In response to parts iii) and iv) of the request, by letter to the complainant dated 20 October 2006, the public authority stated; "I understand that you have a particular concern about the future maintenance of the landscaped areas. These provide no highway purpose but are intended, as I understand it, to enhance the amenity of the area. There is therefore no question that the Council should be maintaining these areas in its capacity as highway authority". This has been clarified to mean that the council will not be maintaining the landscaped areas.

The Commissioner understands this to mean that the council will not be maintaining the landscaped areas in any capacity.

## The Investigation

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### Scope of the case

7. On 12 October 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. Due to the interrelated nature of the complaints it has been difficult to extrapolate the specific thread of complaint usually associated with freedom of information requests. This has been further complicated by the public authority's attempt to deal with the requests in the normal course of business and not follow the specific steps related to freedom of information requests. The complainant was unable to isolate a specific complaint but simply wished the Commissioner to investigate the fact that the requests had allegedly been ignored, or at least, not substantially answered.
8. The Commissioner is considering the outcomes to part i), iii) and iv) of the request made on 19 and 22 August 2006. Requests for the same information as parts ii) and v) were made by the complainant to the public authority on 5 August 2006 and are dealt with in the Decision Notice reference FS50209357 as requests iii) and ii) respectively.

### Findings of fact

9. As a result of submissions from the complainant, the Commissioner identified six different complaints between the parties requiring their own investigation. This has generated a substantial amount of cross referenced and interrelated correspondence.
10. The 'Edmonton Partnership Initiative' was a multi phased regeneration programme across three sites in Edmonton. The initiative was a broader aspiration to improve the housing, shopping, transport, environment, community, social and economic conditions in Edmonton.

### Chronology

11. As stated above, due to the involved and related nature of the complaints involving these parties, there is a large volume of correspondence. The Commissioner does not consider it necessary or beneficial to detail each of these communications but has instead chosen to highlight those relevant for consideration in this case.
12. The interrelated nature of the complaints and correspondence has led to confusion as to which of the numerous requests had been answered. The Commissioner was not helped by the complainant being unable to clearly identify which requests had been dealt with.

13. The initial request was made on 19 August 2006. The public authority responded to the complainant, as stated in paragraphs 5 and 6 however, it did not confirm whether it held recorded information.
14. By letter dated 17 July 2008, the public authority confirmed to the Commissioner that the information communicated to the complainant is from officer knowledge of the history and development of the site and there is no recorded information that can be communicated to the complainant.
15. Following intervention by the Commissioner, the public authority in a letter dated 12 March 2009 confirmed to the complainant that no recorded information was held in relation to part i) of his request. In correspondence with the ICO the public authority had previously confirmed that no recorded information was held in relation to all parts of the request as stated in paragraph 14. The letter of the 12 March 2009 to the complainant also referred to copies of planning documents previously supplied to him in order to answer his questions and informed him to refer any enquiries regarding the amenity space to the developers.

## Analysis

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16. Information relating to the size of the play area and liability for communal areas falls within the EIR as the information itself need not be environmental, it is sufficient for the information to be on an issue which is environmental.

### Request i)

17. The Commissioner is satisfied that information is not held in relation to the request. If the size of the play area was going to be returned to as agreed in 2001 then it would be reasonable for the complainant to expect that information was held in a recorded form. However, the size of the play area is not going to be returned to as agreed in 2001 as the original planning permission has been superseded by later planning permissions therefore on the balance of probabilities it is reasonable to accept that no recorded information is held by the public authority.
18. The Commissioner recognises that the public authority provided information to the complainant in the spirit of advice and assistance but this was provided outside of the statutory time limit for dealing with requests.

### Request iii)

19. The Commissioner is satisfied that information is not held in relation to the request. The public authority has confirmed that the information communicated to the complainant is from officer knowledge and that there is no recorded

information and the complainant has offered no specific evidence to the contrary. In view of this, and the fact that the council will not be maintaining the landscaped areas, which has been further evidenced by the public authority referring the complainant to the developers for enquiries regarding the amenity space, it is reasonable for the Commissioner to accept that on the balance of probabilities no recorded information is held by the public authority.

20. Any written question put to a public authority is technically a freedom of information request as recorded information could exist which answers the question. The Act does not require public authorities to answer questions generally, only if they already hold the answers in recorded form. The public authority attempted to answer the question in the spirit of providing advice and assistance. However, the answer of 'there is therefore no question that the Council should be maintaining these areas in its capacity as highway authority' is ambiguous as it could be taken to mean that either the council are or are not maintaining the areas. In addition, this answer was provided outside of the statutory time limit for dealing with requests.

#### **Request iv)**

21. The Commissioner is satisfied that recorded information is not held in relation to the request. The public authority has confirmed that it will not be maintaining the areas referred to in the request and has confirmed that the information communicated to the complainant is from officer knowledge and that there is no recorded information that can be disclosed. As the public authority are not adopting the areas there can be no associated maintenance payments. The complainant has offered no evidence in opposition. Therefore, it is reasonable for the Commissioner to accept that on the balance of probabilities no recorded information is held by the public authority.
22. Any written question put to a public authority is technically a freedom of information request as recorded information could exist which answers the question. The Act does not require public authorities to answer questions generally, only if they already hold the answers in recorded form. The public authority attempted to answer the question in the spirit of providing advice and assistance. However, as stated in paragraph 20, the answer is ambiguous and was provided outside of the statutory time limit for dealing with requests.

#### **The Decision**

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23. The Commissioner's decision is that the public authority did not deal with parts i), iii) and iv) of the request in accordance with regulation 14 (3)(a), by virtue of regulation 12(4)(a), and regulation 14 (2) of the EIR, in that it did not inform the complainant that no recorded information was held within the statutory time limit.

## Steps Required

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24. The Commissioner requires no steps to be taken.

## Right of Appeal

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25. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 7th day of May 2009**

**Signed .....**

**Gerrard Tracey  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Environmental Information Regulations 2004

#### Regulation 12(4)

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

#### Regulation 14(2)

The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

#### Regulation 14(3)

The refusal shall specify the reasons not to disclose the information requested, including-

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).