

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

Decision notice

Date: 01 May 2012

Public Authority: London Borough of Havering

Address: Town Hall
Main Road
Romford
Essex
RM1 3BB

Decision (including any steps ordered)

1. The complainants made a request to the London Borough of Havering ('LBH') for information about a Decent Homes bid made to improve sound installation at their property (and other similar properties), specifically for the monies awarded and how this had been spent. LBH advised that it does not hold the requested information. The Information Commissioner has investigated the complaint and concluded, on the balance of probabilities, that LBH does not hold the requested information. He therefore requires no steps to be taken.

Background

2. At the beginning of July 2006 responsibility for the management of LBH's Council properties transferred to an Arms Length Management Organisation ('ALMO') known as Homes in Havering, which is a separate authority for the purposes of FOIA and the EIR.
3. The Decent Homes initiative is a government programme aimed at bringing social housing to a set standard of decency through prescribed elements, such as housing being in a reasonable state of repair, with reasonably modern facilities and services, with social landlords encouraged to consider regeneration and mixed communities schemes when applying the Decent Homes standard. Local authorities and ALMOs bid for Decent Homes funding.

4. The complainants have also requested the same information from Homes in Havering on 22 October 2011, and that request is currently being processed by that public authority. Although the complaint considered in this notice centres on LBH, the transfer of responsibility for housing stock between the two public authorities has necessitated contact with Homes in Havering as part of the Information Commissioner's investigation, which are referenced accordingly in this notice.

Request and response

5. On 22 June 2011 the complainants wrote to LBH and requested information in the following terms:

"How much money did the London Borough of Havering receive from the government decent homes monies when [named employee] made the bid for the money from the Government for the money to improve the sound installation in [address redacted] and properties of similar construction?"

Where was the money spent, as no maisonettes in [address redacted] had any improvements made to the noise installation?"

6. LBH responded on 18 July 2011. It stated that it did not hold the requested information, explaining that in July 2006, the management of its Council properties had been transferred to Homes in Havering. It suggested that that public authority might hold the information, and provided the relevant contact details.
7. The complainants requested an internal review on 22 October 2011, part of which included details as to where named employees were working (LBH or Homes in Havering) during specified dates. LBH wrote to the complainants on 10 November 2011 with its internal review outcome, although the complainants have advised that they did not receive the review outcome letter. LBH upheld the original decision that none of the requested information was held and confirmed those individuals who were working at LBH, highlighting that Homes in Havering would be able to provide information about the individuals it employed.

Scope of the case

8. The complainants contacted the Information Commissioner to complain about the way their request for information had been handled. Their complaint referenced that they did not receive LBH's response of 18 July

2012 to their request until the Information Commissioner's involvement. They also maintain that they did not, and have not, received the internal review result of 10 November 2011.

9. During the course of the investigation the complainants contended they had been advised by a Councillor that a bid had been made, such that the requested information should exist.
10. The Information Commissioner has considered whether, on the balance of probabilities, LBH held any information relevant to the request which it had not disclosed to the complainants.

Reasons for decision

11. The Information Commissioner has first considered whether the requested information would, if held, be environmental information and therefore whether the EIR should apply. Environmental information is defined in regulation 2(1) of the EIR of which the relevant sections provide that:

“environmental information’ has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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) and (b) as well as measures designed to protect those elements.”

12. The Information Commissioner is mindful of the fact that since LBH maintains it does not hold the requested information it is not possible to say with absolute certainty what the nature of the information may be. In view of the fact that the request is about noise insulation (regulation

2(1)(b)), and that any bid containing a request for funding for noise insulation would fall under regulation 2(1)(c), the Commissioner has concluded that the information does constitute environmental information.

13. Section 5(1) of EIR states that:

"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request."

14. In cases such as this, where there is some dispute as to whether a public authority holds information falling within the scope of the request, the Information Commissioner has been guided in his approach by a number of Tribunal decisions which have used the civil standard of the balance of probabilities, ie whether on the balance of probabilities the Information Commissioner is satisfied that no further information is held. In deciding where this balance lies the Information Commissioner will take into account the scope, quality, thoroughness and results of the searches carried out by the public authority, as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.
15. LBH explained that checks were made with its senior officers within Housing Services on receipt of the request to ascertain whether such a bid had been made, and was advised that it had not been. It advised that electronic searches were not undertaken.
16. LBH confirmed that the information did not exist because no bid for noise insulation funding was ever made. It explained that had a bid been made, it would have been required to keep budgetary records of the funding received and how this funding had been spent.
17. In response to the Information Commissioner's question, LBH clarified that the requested information was not transferred to Homes in Havering because it did not exist. It confirmed that all information relevant to the management of the Council's housing stock, including housing files, addresses of the properties to be managed, asset information and details of current tenants and leaseholders, transferred at the time of creation of the ALMO to Homes in Havering.
18. At this point, the Information Commissioner formed a preliminary view that LBH, on the balance of probabilities, did not hold the requested information. He asked the complainants to consider withdrawing their complaint; however, the complainants declined to do so.

19. One of the complainants contacted the Information Commissioner to discuss his remaining concerns about the complaint. He clarified that sound tests had been carried out at his property on 12 November 2007, explaining that the noise is so bad that he can hear the people downstairs using the toilet. He advised the back bedroom had failed and that the testing company had recommended extra flooring and soft furnishings to absorb some of the noise.
20. He drew the Information Commissioner's attention to a memo dated 28 November 2007 entitled "*Re: Complaint to the Ombudsman*" from an LBH employee to other named individuals, concerning the sound issues with the complainants' property, which included the following paragraphs:

"Notwithstanding the above, the desire to improve noise insulation for the properties in [address redacted] and others of similar construction type, has been identified in the bid made by the Council to the Government for Decent Homes monies.

When such resources are made available, a programme of noise insulation improvements can be implemented. However, it should be noted that noise transmission between properties is not identified as a major elemental failure by the Government and as such would receive a low priority for funding."

21. In addition to the reference above that the bid for Decent Homes' monies had included LBH's desire to improve noise insulation at certain properties, the complainant also confirmed that a named Councillor had informed him that LBH had made a bid.
22. The Information Commissioner made some further enquiries by telephone which included contacting Homes in Havering, given that it is now responsible for housing stock in the area. He was informed that both LBH and Homes in Havering had misinterpreted the request in that they had read it as being for information about a bid which was made for noise insulation, hence their previous confirmations that no such bid had been made.
23. Homes in Havering clarified that the Decent Homes funding is for improvements in kitchens, bathrooms, central heating etcetera to make the housing stock decent, and that the funding does not include noise insulation. Homes in Havering confirmed that no sound improvement works have been carried out on any properties in their remit and that its priority is to focus on the "basics". The individuals dealing with the request at both LBH and Homes in Havering told the Information Commissioner that they had not been aware of the existence of the 2007

memo until now, and Homes in Havering advised that unfortunately the officer who had written the memo had made a mistake in stating that the bid did include the *"desire to improve noise insulation for the properties in [address redacted]"*, for which it apologised.

24. The Information Commissioner contacted the complainant to relay the above; however, the complainant expressed his continued dissatisfaction stating that it was *"too easy"* for LBH and Homes in Havering to give such an explanation and that both public authorities had *"blatantly lied."* The Information Commissioner advised the complainant that he had requested an explanation in writing and would assess whether any further investigation was required on receipt of the explanation, and either update the complainant accordingly or proceed to a decision notice.
25. For the sake of completeness, the Information Commissioner made some enquiries about the Decent Homes bid and was advised that two bids for Decent Homes funding were made, the first being made on 31 July 2006 and the second in February 2011; however, both bids did not contain any provision for noise insulation. In addition, the Information Commissioner had sight of both bids and can definitively confirm that neither contains any reference to sound insulation.
26. The Information Commissioner carried out his own checks to determine what the Decent Homes standard encompasses and found a reference to 'external noise insulation' which he queried with both LBH and Homes in Havering. In reply, the Information Commissioner was advised that LBH and Homes in Havering have a larger issue with windows, heating, kitchens and bathrooms which were a priority in their bid. They acknowledge that the Decent Homes guidelines state external noise (traffic/factory) as a factor but *"only where there is a problem"*, but clarified that sound insulation is not classed as a component of 'decency' under the Decent Homes standard and is therefore not mentioned in either bid. Furthermore, the complainants' issues with noise are concerned with noise between two properties and there is no reference to external noise insulation in either bid.
27. LBH and Homes in Havering explained that the Decent Homes funding bid was not made by the individual who signed the memo of 28 November 2007, and was instead made by LBH with assistance from relevant technical officers from Homes in Havering. Both parties maintain that they did not make any reference to the Decent Homes bid in their responses to the complainants because they were aware that such a bid would not, and indeed did not, include any reference to funding for sound insulation works.
28. In support of its view that the officer had erred in stating in the memo of

28 November 2007 that the bid would identify the need to improve noise insulation for properties in the complainant's area and others of a similar construction type, Homes in Havering submitted the following:

"It seems the officer concerned has stated information about the 'Decent Homes' funding without first consulting with our Property Services department. Our Director has explained that sound 'installation' or proofing works to which [the complainant] is referring are not part of the 'Decent Homes Standard' we therefore would not and have not put a programme for these works together as we cannot spend the funding on these works when we have to bring our stock up to a reasonable level of decency. The officer must have assumed that the funding could be used for other purposes, however this is not the case as there are particular guidelines for its use."

29. Homes in Havering also advised it understands that *"the Memo [sic] would have given [the complainants] the impression that these works would be done and can only apologise for the confusion it has caused"*.
30. The Information Commissioner wrote to the complainants again on 26 March 2012 to update them with the additional clarification he had gained, explaining that this had not changed his preliminary view that LBH does not hold the requested information on the balance of probabilities. In light of the additional explanations the Information Commissioner again asked the complainants to consider withdrawing their complaint, but they declined.
31. Given that the Information Commissioner has concluded that the request should have been handled under the EIR, LBH's handling of the review within 40 working days was compliant with regulation 11(2) of the EIR.
32. LBH also omitted to include the right for applicants to request an internal review in its response of 18 July 2011. The Information Commissioner would remind the public authority of the requirement to advise applicants of their entitlement to an internal review in future responses.
33. In coming to a conclusion in this case, the Information Commissioner has considered the explanations provided by LBH (in conjunction with those from Homes in Havering), together with the submissions from the complainants. He is mindful that the statement in the 2007 memo is misleading, and that LBH erred in the intended objective reading of the request; however, having had what he considers to be a reasonable explanation about both the memo and the interpretation of the request, and having had sight of the actual bids themselves, the Information Commissioner has concluded, on the balance of probabilities, that the requested information is not held by LBH.

Right of appeal

34. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

35. 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.
36. 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

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