

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 July 2014

Public Authority: London Borough of Richmond-upon-Thames
Address: Civic Centre
44 York Street
Twickenham
TW1 3BZ

Decision (including any steps ordered)

1. The complainant requested information associated with how the London Borough of Richmond-upon-Thames ('LBRUT') had handled his earlier request. LBRUT initially refused the later request on the basis that it considered it to be vexatious (section 14(1) of FOIA). Having carried out an internal review during the Commissioner's investigation, LBRUT provided some information, but withheld the remainder on the basis that the request was manifestly unreasonable (regulation 12(4)(b) of the EIR). At the Commissioner's request, LBRUT subsequently disclosed the remaining information, with minor redactions for personal information under section 40(2) which the complainant has not disputed.
2. The Commissioner finds that by disclosing the previously withheld information, LBRUT has complied with the request. Although the Commissioner does not agree that the request should have been handled under the EIR, he does not require the public authority to take any remedial steps to ensure compliance with the legislation as all relevant information has now been provided.

Background

3. The complainant had made a previous request for information relating to School Travel Plans ('STPs'), which is the subject of decision notice

reference FER0524908¹. This request was made on 4 July 2013 and was for:

"I wish to request under the Freedom of Information Act electronic copies of the School Travel Plan templates in MS Excel submitted to the Highways and Transport department by all primary and secondary schools in the borough in the years 2010-2011 and 2011-2012. It will be helpful (but not essential) if the files are provided in two zip files – one for each year."

4. In FER0524908 the Commissioner found that LBRUT had breached regulation 5(2) of the EIR by failing to provide the requested information within 20 working days and that it had breached regulation 11 of the EIR by failing to carry out an internal review.
5. In the case which is the subject of this notice, the complainant made a further request for information about how LBRUT had handled his initial request of 4 July 2013.

Request and response

6. On 25 November 2013 the complainant wrote to LBRUT and requested information in the following terms:

"As the response to the FOI request was substantially overdue, you are now requested to provide the following additional information in your capacity as [job title redacted] Manager:

1. *Was it necessary for any personal information to be redacted in order to fulfill the FOI request?*
 2. *Was it necessary for any information to be compiled or manipulated in order to fulfill the FOI request?*
 3. *Why was it not possible to fulfil the FOI request within the statutory period?*
 4. *What is the name of the Senior Transport Planner who was involved in the fulfillment of this request (this is now the this [sic] time that this name has been requested from you)?*
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http://ico.org.uk/~media/documents/decisionnotices/2014/fer_0524908.aspx

5. *Copies of all electronic communications sent between any of the following persons in respect of the processing and fulfillment of FOI request 0613-1314 during the period from 5 July 2013 to 25 November 2013: [Four individual's names redacted], any members of the Traffic and Transport department."*
7. LBRUT responded on 20 December 2013. It stated that the request was vexatious citing section 14(1) of FOIA.

Scope of the case

8. The complainant initially contacted the Commissioner on 18 December 2013 to complain about the way his request of 4 July 2013 had been handled. Included in this complaint was a second request, namely the request of 25 November 2013. Following further correspondence with the complainant, the Commissioner determined that he was actually dissatisfied with LBRUT's handling of the second request.
9. As the complainant had complained to the Commissioner prior to asking LBRUT to carry out an internal review, the Commissioner asked LBRUT to do so.
10. LBRUT carried out an internal review, the result of which it relayed to the complainant on 2 April 2014. It said that because this request was "*so inextricably linked with the initial request*" that it should also have been considered under the EIR, as opposed to FOIA.
11. The Commissioner asked for the complainant's views following completion of the internal review. Having reviewed his comments about the processing and timing in relation to parts 1-3, the Commissioner is satisfied that the issues have already been considered as part of his earlier investigation which concluded in decision notice *FER0524908*. The Commissioner has therefore not given any further consideration to parts 1-3 of the request during this investigation. The subject of the timing of this request is covered in the 'Other matters' section of this notice.
12. The complainant confirmed that he did not object to the withholding of the Senior Transport Planner's name. The Commissioner has therefore disregarded part 4 of the request for the purposes of this investigation.
13. In relation to question 5, LBRUT said there are approximately 50 emails which it had previously refused to supply on the basis that the request was "vexatious", as per section 14(1) of FOIA. As LBRUT now considered the request to fall under the EIR it said that this part of the request was "manifestly unreasonable" and instead applied regulation 12(4)(b) of the

EIR. It explained that to print, redact, scan and send these emails would be *"an unreasonable burden on the local authority in the light of the time and resources already spent in dealing with this request"*.

14. In this case, the Commissioner initially set out to determine whether the request falls under the remit of the EIR, and whether LBRUT had properly applied regulation 12(4)(b) (manifestly unreasonable) of the EIR in its handling of part 5 of the request. Having secured a copy of the information held by LBRUT in relation to part 5, the Commissioner formed a preliminary view that LBRUT should not have relied on regulation 12(4)(b).
15. The Commissioner's initial view was that the 'burden' in this case resulted from LBRUT's misinterpretation of the complainant's original request of 4 July 2013. He contacted LBRUT and discussed his preliminary view of its approach to the request of 25 November 2013 and said that a decision notice at this point would be unlikely to uphold LBRUT's reliance on regulation 12(4)(b).
16. With a view to informally resolving this case, LBRUT agreed to provide the complainant with copies of the information held relevant to part 5 with redactions of any personal information being made in line with section 40(2) of the FOIA. On 20 June 2014, LBRUT sent these.
17. The complainant wrote to the Commissioner again on 7 July 2014 declining informal resolution and setting out his reasons. Many of these relate to the earlier request of 4 July 2013 which has already been considered by the Commissioner in FER0524908 so will not be considered again here.
18. The complainant did not raise any objections in respect of the redaction of personal data in the disclosed emails, so this has not been further considered.
19. The Commissioner will therefore consider whether the request of 25 November 2013 should have been handled under the EIR, and whether, having now disclosed the previously withheld emails in response to part 5 of the request, there are any remaining steps in relation to this request.

Reasons for decision

20. LBRUT decided at internal review stage that because this request is *"inextricably linked"* with the initial request that it should have been

handled under the EIR. The Commissioner initially considered whether part 5 of the requested information constitutes environmental information.

Regulation 2 - is any of the information environmental?

21. Information is environmental if it meets the definition set out in regulation 2(1) of the EIR which states:

"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 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)".

22. In this case, the Commissioner requested copies of the withheld emails in order to determine whether the information held constitutes environmental information. Having read them, it is not obvious to the Commissioner that they fall under the EIR. In addition, LBRUT has not

provided any arguments in line with regulation 2(1) above to support its view that they constitute environmental information.

23. The Commissioner acknowledges that LBRUT originally handled the 25 November 2013 request under the FOIA, but that it changed its stance at internal review. However, having considered the emails concerned, he has concluded that part 5 of the request should have been handled under the FOIA.

Part 5 of the request

24. As LBRUT has now disclosed the emails in full to the complainant, who has not objected to the section 40(2) redactions, the Commissioner has not considered LBRUT's previous reliance on regulation 12(4)(b) of the EIR any further.
25. The Commissioner is satisfied that part 5 of the complainant's request of 25 November 2013 has been dealt with.

Other matters

26. Although the FOIA is purpose blind, the Commissioner is aware that the complainant had requested the STP information in preparation for a planning application meeting, where the proposed development was next to his property. While the Commissioner understands the frustrations of the complainant in relation to both requests, this notice can only deal with those concerning the second request of 25 November 2013, as he has previously considered the request of 4 July 2013 in his decision notice of FER0524908.
27. The Commissioner has seen no evidence to support the complainant's view that LBRUT intentionally withheld the requested information in relation to the 25 November 2013 request. Instead, the Commissioner acknowledges that LBRUT revised its position at the internal review which shows that it took a fresh look at its handling of this request. LBRUT also subsequently agreed to disclose the emails held in relation to part 5 of the request.
28. The Commissioner acknowledges that the complainant believes that there has been a significant delay in handling this request because LBRUT only disclosed the emails in June 2014. The Commissioner, however, notes that the request was responded to within the 20 working day time limit, albeit LBRUT revised its position during the process.
29. The Commissioner notes the complainant's wish for this decision notice to be sent to specified named individuals at LBRUT, but he will instead

issue the notice in line with his current practices. As part of these practices, the notice will be published on the Commissioner's website (with the complainant's personal details redacted) so any interested parties will be able to access it at this stage.

30. The Commissioner would remind LBRUT of the need to ensure that it handles future requests under the correct legislative regime.

Right of appeal

31. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
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SK9 5AF