

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

**Date:** 9 July 2015

**Public Authority:** London Borough of Hammersmith and Fulham  
**Address:** Town Hall  
King Street  
London  
W6 9JU

**Decision (including any steps ordered)**

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1. The complainant has requested from the London Borough of Hammersmith and Fulham ("the Council") all information relating to planning applications of a property.
2. The Commissioner's decision is that the Council has provided the complainant with all the information it holds that falls within the scope of the request.
3. However, the Council has breached regulation 5(1) and regulation 5(2) of the EIR because it did not respond to the request within the timescale for compliance.
4. The Council has also breached regulation 11(4) of the EIR as it failed to carry out an internal review within 40 working days as set out in the legislation.
5. As a full response has now been provided, the Commissioner requires the Council to take no steps.

**Request and response**

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6. On 14 July 2014, the complainant wrote to the Council and requested information in the following terms:

*"Please provide all information you hold in relation to the above application in relation to [redacted address], including all documents,*

*letters, emails, comments from consultees and others, internal memoranda, advice, notes and records of discussions and telephone conversation”.*

7. The Council provided an update to the complainant on 11 August 2014. It explained that an extension of 20 working days was required to respond to the request as it needed to conduct a public interest test.
8. The Council sent its response to the complainant on 9 September 2014. It provided the complainant with information that fell within the scope of the request. However, it explained that some information had been withheld as it was third party personal data and it was therefore exempt under section 40(2) of the FOIA. The Council also explained that some information relevant to the request was available on its website and this information was exempt under section 21 of the FOIA.
9. Upon receipt of this, the complainant asked for an internal review to be carried out on 22 October 2014. In her internal review request, the complainant explained that it appeared that some of the information had been hidden and withheld without any justification and there had been excessive and unnecessary redaction of some of the information that had been disclosed. She also argued that the request should have been dealt with under the EIR and not the FOIA and the request was not dealt with promptly or within the timescales set out in the legislation.
10. The Council provided the outcome of its internal review on 29 December 2014. It initially apologised for the delay in responding to the internal review. It put this down to unplanned staff absence and technical difficulties.
11. In its internal review response, it explained that it had carried out additional searches for information falling within the scope of the request. These searches located further information which it disclosed to the complainant. It also considered that the majority of information that had been redacted on the grounds that it was third party personal data was correctly withheld. However, it determined that some of the redacted information was wrongly withheld and subsequently disclosed this to the complainant.
12. The Council further accepted that the request was wrongly handled under the FOIA and it should have been handled under the EIR. The Council also acknowledged that its initial response was provided on the 40<sup>th</sup> working days. It explained that under the EIR, it may take up to 40 working days to process and respond to a request where it reasonably believes that the complexity and volume of the information requested means it is impracticable either to comply with the request within 20 working days or make a decision to issue a refusal notice.

13. It determined that it may have been appropriate to extend the deadline to 40 working days under the EIR due to the volume of information which needed to be reviewed and checked in order to respond to the request. However, it recognised that it should have informed the complainant that an extension was required before the 20<sup>th</sup> working day, which it failed to do.

### **Scope of the case**

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14. The complainant contacted the Commissioner on 26 January 2015 to complain about the way her request for information had been handled.
15. In her complaint, the complainant raised four concerns. These were:
  - 1) There was an excessive delay in dealing and responding to the request.
  - 2) There was still information outstanding. To support this argument the complainant directed the Commissioner to information that had been disclosed to her which referred to enclosures and these enclosures had not been provided.
  - 3) The complainant considered that there was an inadequate investigation into why the VSC calculations were not disclosed in the Council's initial response to the request.
  - 4) There appears to be a lack of knowledge and understanding at all levels within the Council.
16. The Commissioner acknowledged the complainant's points on 24 February 2014. He further advised her that his investigation would focus on whether the Council held any further information within the scope of her request.
17. The complainant accepted this and also reiterated her concern in relation to 3) above.
18. The scope of the Commissioner's investigation has been to consider whether the Council holds any further information relevant to the request.

## Reasons for decision

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19. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
20. In cases such as this, where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
21. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
22. To reach a decision in this case, the Commissioner has considered the context of the case, the nature of the requested information, the Council's responses, the arguments provided by the complainant, and any evidence to suggest that further information is held by the Council.
23. As explained at paragraph 15 2), the complainant provided the Commissioner with evidence that suggested further information was held by the Council. This evidence consisted of three documents that had previously been disclosed to the complainant and made reference to enclosures.
24. The Commissioner provided the Council with a copy of the evidence and asked the Council to carry out further searches to determine whether further information was held.
25. The Council consequently carried out further searches and located additional information within the scope of the request. The Council disclosed this information to the complainant. In relation to one of the documents described at paragraph 23, the Council explained that it was unsure as to why the enclosures were not disclosed in its response to the request. It explained any omissions were accidental and a result of the high numbers of requests received and documents involved.
26. In relation to another document detailed at paragraph 23, the Council explained that some of the information did not relate to the planning application cited in the original request and that is why the information had not been disclosed.
27. To confirm its position that no further information was held, the Council referred the Commissioner to its internal review response which set out

the searches it had carried out to locate information that fell within the scope of the request.

28. The Council firstly checked the planning application database for information relevant to the particular planning application referred to in the request. The Council confirmed that the planning application database usually holds all information relevant to planning applications. For example, copies of correspondence about the application including emails are uploaded to the relevant application record.
29. The Council then explained that the Council's Transport and Technical Services (T&TS) printed copies of all information held on the planning application database which was relevant to the planning application in question and which was not available to the public via the Council's planning portal. This information was then reviewed and any personal data was redacted.
30. The Council confirmed that at the time the request was received the planning team did not carry out searches on the Council's email archive service (EAS) or physical paper files for the two applications as it assumed all the relevant information would have been uploaded on to the planning database. However upon receiving the complainant's internal review request, the Council explained that it contacted its T&TS Planning team to discuss the concerns raised and further searches were undertaken.
31. The Council reviewed its planning portal which is available to the public. It considered that the complainant could already access this information and therefore regulation 6(1)(b) applied.
32. The Council further reviewed its electronic shared folders. It determined that no information was held on here by the Planning team as information relating to planning applications was held on the planning application database.
33. The Council also carried out a search on its EAS. The search was limited to date parameters and included search terms such as the address of the application and the application reference number. It also searched four of the Council's officer's mailboxes who may have had some involvement in the processing of the two planning applications.
34. The search returned over 150 emails. Emails that related to a different planning application or were duplicates were removed. This resulted in 27 emails remaining, some with attachments and email chains. Any information that had not previously been provided to the complainant was redacted to remove any personal data and disclosed.

35. A search was also undertaken on the Council's physical files. The Council checked the information that had previously been disclosed to the complainant against the information that was held in the physical planning application files. This resulted in two further documents being provided to the complainant. The Council explained that these two documents had been missed as they had not yet been uploaded to the Council's planning application database and the physical paper files were not checked as usually all information relevant to a planning application would be uploaded to the planning application database.
36. The Council was satisfied that it had carried out searches on all systems where information relevant to the request would be held and all information that could be disclosed under the EIR had now been provided to the complainant.

*The Commissioner's view*

37. The Commissioner is aware that the complainant remains concerned that some information, specifically the VSC documents had been missed by the Council upon its initial handling of the request.
38. The Council has reassured the Commissioner that the failure to provide these documents in the first instance was a genuine mistake. The Council acknowledged that the mistake could have been avoided if a search had been undertaken on the EAS and the physical files when the request was received rather than at internal review.
39. It explained that a Senior Information Management Officer met with the Planning Officers and explained how they could improve subsequent searches for information when handling requests. The Officers concerned have agreed to do this and also to be more vigilant when disclosing requested information to ensure all the appropriate documents have been provided.
40. The Commissioner does acknowledge that an internal review is there to review the handling of an information request and determine whether it was handled in accordance with the relevant legislation. He also considers that it is not unusual for further information to be located during the internal review process.
41. However, in this instance the Commissioner must express the importance of carrying out thorough and proper searches on all electronic systems and paper files where information relevant to the scope of the request may be held. This will help ensure that all information relevant to a request is provided in the first instance.
42. After reviewing the submissions provided by the Council and in light of the further information that has been disclosed to the complainant, the

Commissioner is satisfied that on the balance of probabilities, the complainant has now received all the recorded information held by the Council that falls within the scope of her request.

## **Regulation 5**

43. Regulation 5(1) of the EIR says that:

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

44. Regulation 5(2) of the EIR says 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".*

45. In this case, the Council did not make available to the complainant all the information that fell within the scope of her request until the Commissioner intervened. A full response was provided to the complainant on 20 April 2015. This is a clear breach of regulation 5(1) and 5(2) of the EIR. As a full response has now been provided, the Commissioner requires the Council to take no steps.

## **Regulation 11**

46. Under regulation 11(4), a public authority must inform a requester of the outcome of an internal review within 40 working days. An internal review was requested on 22 October 2014. The outcome of the internal review was sent to the complainant on 29 December 2014. The time taken to respond to the internal review request is over 40 working days and therefore a breach of regulation 11(4). As an internal review has been carried out, the Commissioner requires the Council to take no steps.

## Right of appeal

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47. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

48. 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.
49. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**SK9 5AF**