

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

Decision notice

Date: 15 February 2017

Public Authority: London Borough of Merton (the council)
Address: Civic Centre
London Road
Morden
SM4 5DX

Decision (including any steps ordered)

1. The complainant made a number of requests to the council during 2016 for information, some under the FOIA and some under the EIR. With the exception of one, the council failed to respond within 20 working days.
2. The Commissioner's decision is that, in respect of all but one of the requests contained in this decision notice, the council failed to comply with section 10(1) of the Act and regulation 5(2) of the EIR in that it did not provide the information to the complainant within 20 working days.
3. As the council has now provided the complainant with the requested information the Commissioner does not require the council to take any steps.

Requests and responses

4. The complainant wrote to the council for information on the following dates and under the following legislation:
 - 12 January 2016 (EIR)
 - 30 January 2016 (EIR)
 - 30 May 2016 (FOIA)
 - 24 August 2016 (EIR)
 - 29 September 2016 (FOIA)
 - 23 October 2016 (FOIA)

5. The Council responded to the requests on the 19th, 28th, 21st, 42nd, 31st and 52nd working day respectively, providing the requested information.

Scope of the case

6. The complainant contacted the Commissioner on 11 November 2016 to complain about the way his requests for information had been handled. His complaint was that the information should have been disclosed to him sooner and at the latest within 20 working days of each request.
7. In relation to his request dated 12 January 2016 the complainant advised the Commissioner that whilst he had received a response from the council he was unable to open the attachments to the email which contained some of the requested information and so the council resent the information to him on 9 March 2016, outside the 20 working day timeframe prescribed by the EIR.
8. At the time of contacting the Commissioner the council had not responded to his latter two requests, however during the course of the Commissioner's investigation responses were provided.
9. Although the Council has now responded to all of his requests the complainant requires a decision notice in order to demonstrate that there have been significant delays before the information was provided in response to the requests.
10. The Commissioner therefore considers that the complaint is that the council failed to provide the complainant with the relevant information within the time limits set by section 10(1) of the Act and regulation 5(2) of the EIR.

Reasons for decision

11. Section 10(1) of FOIA states that

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

12. 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."

13. The Commissioner contacted the council on 24 January 2017 to notify it of the complaint made by the complainant. The council responded by advising the Commissioner that the complainant had made sixteen requests under the FOIA and EIR during 2016 and, that in respect of eleven of these, responses had been issued within 20 working days of receipt. The council provided this information to provide some context to complainant's complaint. The council did however acknowledge that in respect of all of the requests listed in this decision notice save for the request dated 12 January 2016, responses were issued outside the 20 working days provided for by the FOIA and EIR.
14. The Commissioner is satisfied that these disclosures fall outside of the 20 working days from the date that the requests were received.
15. The Commissioner is therefore satisfied that the council did not comply with the requirements of section 10(1) and regulation 5(2) when responding to these requests.
16. In respect of the request dated 12 January 2016 the council informed the Commissioner that it responded to the complainant on 8 February 2016, 19 working days following receipt of his request. The council provided the Commissioner with a copy of the request and the response, including the attachment. The council informed the Commissioner that it did not therefore consider that its response to this request was outside the 20 working days prescribed by the EIR.
17. The council further explained that it was contacted by the complainant following receipt of the response to advise that he was experiencing difficulty accessing the information, which the council noted as being due to a problem with the complainant's IT system being unable to open the attachment. The Commissioner notes from the response that some of the requested information is contained within the body of the response, and some contained within the attachment. As a consequence of the difficulties experienced by the complainant the council sent a further copy of the email to him on 9 March 2016. The complainant considers that this is the date of the response for the purposes of regulation 5(2).
18. The Commissioner notes that the request of 12 January 2016 was sent via email from the complainant's email address and did not specify any particular format for the response. The council responded using the same email address and attached information using pdf format. The Commissioner received a copy of this response and the attachment and she was able to open it.
19. The Commissioner considers that if a request is made by email and the information is contained in an electronic document, and in standard

form, it is reasonable for a public authority to reply using email and attaching the information. That is, unless, the applicant makes a specific preference for communication at the time the request is made and it is not unreasonable or impractical for the public authority to do so. As stated above, in this case, the complainant made no preference for communication at the time the request was made.

20. It is therefore the Commissioner's view is that it was reasonable in this case for the council to respond using email and by attaching information in a standard format (pdf). Accordingly the Commissioner is satisfied that the council's response of 8 February 2016 to the request of 12 January 2016 complied with the requirements of regulation 5(2) of the EIR.
21. As the requested information has been provided to the complainant in respect of all requests listed in this decision notice the Commissioner does not require the council to take any steps.

Right of appeal

22. 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

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

23. 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.
24. 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
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SK9 5AF