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

Decision notice

Date: 20 February 2017

Public Authority: London Borough of Richmond upon Thames

Address: Civic Centre
44 York Street
Twickenham
Middlesex
TW1 3BW

Decision (including any steps ordered)

1. The complainant requested information pertaining to Twickenham Riverside redevelopment scheme. The public authority provided the complainant with the information held within the scope of his request. The complainant has submitted that the public authority holds additional information.
2. The Commissioner has concluded that on the balance of probabilities, the public authority does not hold additional information within the scope of the complainant's request. On a procedural note, she has further concluded that the request ought to have been handled under the terms of the EIR, rather than the FOIA.
3. No steps are required.

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Request and response

4. The complainant submitted the following handwritten request to the public authority on 25 July 2016:

"Please could I see the statement of requirements/summary (3-5 [pages]) for the riverside scheme e.g. link with river, Twickenham a destination, number of parking spaces, town square/public open space, etc (E.g. as given to the architects in the 'competition' last year + as given to [named person]) Including any ranking/scoring of each requirement."

5. This request was handed in by the complainant in person at one of the pop up shops set up by the authority next to Twickenham Riverside, the proposed site for redevelopment.¹ According to the public authority, pop up shops have been set up near the site to enable the public to see the proposals and speak to relevant officers or raise queries.

6. The Head of Communications wrote to the complainant on 26 July 2016. She explained that a similar request for information had previously been submitted and all of the requested information published online.² However, although she was of the view that information pertinent to the request had been published previously, she forwarded it nonetheless to the public authority's Freedom of Information Team (FOI Team) in the event that was not actually the case.

7. The complainant wrote back to the public authority on the same day having looked at the link to the Freedom of Information log provided to him by the Head of Communications. He wrote back in the following terms:

"The FoI request last November asked for the research, public consultation responses and other work that formed the basis for the brief to the architects and a copy of the full brief sent to the architects. The council's response to that request provided the Invitation to Tender document [ITT] which contains about a dozen general requirements under the heading 'Objectives'.

¹ http://richmond.gov.uk/twickenham_rediscovered

²

http://www.richmond.gov.uk/home/council/open_richmond/freedom_of_information/foi_log/foi_case_details.htm?id=18270

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Freedom of Information request.

I see that the ITT refers to the architects consulting with LBRuT to establish detailed parameters and requirements. I shall be grateful for details of those parameters and requirements supplied by Richmond Council to the competing architects."

8. His email above was forwarded to the FOI Team by the Head of Communications. The Team acknowledged receipt on 26 July 2016 and advised the complainant he would receive a response within 20 working days.
9. The complainant wrote back to the FOI Team on 27 July 2016 and further clarified his request in the following terms:

"This FOI request about requirements is in the context of Twickenham as a destination (for shoppers and visitors etc), parking, town square and public/open spaces etc which I gave you as written examples of requirements for this project. For clarity, this request is for the full requirements, not limited to the examples I gave. Please would you indicate those requirements, not limited to the examples I gave. Please would you indicate those requirements that were provided to practices that were invited to tender in the Architectural Competition."

10. The FOI Team provided the public authority's response on 10 August 2016. Although the Team referred to "Your request for information which was received on 25 July 2016", it quoted the clarified request submitted by the complainant on 26 July – ie:

"I see that the ITT refers to the architects consulting with LBRuT to establish detailed parameters and requirements. I shall be grateful for details of those parameters and requirements supplied by Richmond Council to the competing architects."

11. The Team explained that it was for the architects to establish the detailed parameters and requirements, not the public authority. It further explained that there was no specific requirement for this to be put in writing and/or to be available in writing within the context of the ITT. Rather, "it was an expectation of the architects to consult and their consideration of this within the overall feasibility study." On that the basis it concluded that the authority did not hold the information requested.
12. The complainant wrote back to the public authority on 11 August 2016 expressing dissatisfaction with the handling of the request. He noted that his handwritten request of 25 July had not been quoted in the response issued by the FOI Team. He submitted that additional information should be held within the scope of the request given the size

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and complexity of the development amongst other reasons. He also asked the authority to provide him with "a copy of the requirements document used to check each tender for compliance with all the requirements of the ITT. (A blank copy will be fine if the council will not release the copies used in this evaluation.)"

13. The public authority wrote to the complainant on 11 August 2016 and advised him that his email would be treated as a request for an internal review of the response issued to him by the FOI Team. The complainant wrote back on the same day with the following statement amongst others:

"I reserve my position to reply formally to your response yesterday but I do not challenge your response at this time and hope that we can find a way to resolve my request for quite straightforward information about the scheme's requirements, without a protracted process of internal review. In the meantime please will you confirm that your email yesterday is a direct response to my original handwritten request as clarified by email."

14. The public authority responded to this email on 12 August 2016. It confirmed that it had received the original handwritten request of 25 July and follow up email of 26 July. It also provided the following explanation: "no detailed parameters or requirements on the design existed over and above what is published on our website and in the ITT document that you referred to. However, I appreciate from what you have stated that the scope of your request may be wider than this. This is why it is necessary to carry out an internal review to establish what is being requested and whether any further information is held within the scope of your request."
15. The public authority provided the complainant with details of the outcome of the internal review on 7 September 2016 noting that it was a review of the decision of 10 August in response to his handwritten request of 25 July. The letter containing the outcome of the review sets out the chronology of the complainant's contact with the authority with regard to his request for information first submitted on 25 July.
16. The review confirmed that no additional information was held within the scope of the request. It explained that because the ITT sets out what the requirements of the scheme are in a shortlist of bullet points under objectives, it was felt that a separate requirements document was unnecessary. It added that the ITT stated that responses to clarifications sought would be circulated to all tenderers. Copies of these responses to clarification requests were issued to the complainant as part of the review. The authority further explained that there were no formal pre-application meetings with LBRuT planning officers to test designs. A

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blank copy of the tender evaluation requested by the complainant was also issued to him as part of the review.

17. Following the review, the complainant wrote to the public authority on 9 and 14 September 2016 and asserted that the review, just like the original response to his request, had not addressed his handwritten request of 25 July. He suggested that, had the review addressed his handwritten request, it would have concluded that the public authority held additional information within the scope of his request.
18. The public authority responded on two separate occasions on 13 and 14 September 2016. It reiterated categorically that it did not hold "a separate statement/summary of Requirements document".

Scope of the case

19. The complainant contacted the Commissioner on 3 October 2016 to complain about the way his request for information had been handled. He specifically disagreed with the public authority's decision that it did not hold additional information within the scope of his request.
20. During the course of the Commissioner's investigation, the public authority agreed with her that the request ought to have been handled under the EIR rather than the FOIA.
21. The Commissioner has concluded that the information requested relates to measures, specifically plans pursuant to the proposed redevelopment of Twickenham Riverside, which are likely to affect the state of elements listed in regulation 2(1)(a) EIR, and therefore falls within the scope of the definition of environmental information contained at regulation 2(1)(c) EIR.³

³ <http://www.legislation.gov.uk/uksi/2004/3391/regulation/2/made>

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Reasons for decision

Regulation 12(4)(a) EIR

22. By virtue of regulation 12(4)(a), 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.
23. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – in accordance with a number of First-Tier Tribunal decisions – applies the civil standard of the balance of probabilities. In other words, the Commissioner will determine, on the balance of probabilities, whether the public authority holds additional information within the scope of the complainant's request.
24. The complainant asserts that the public authority holds additional information within the scope of his request on a number of grounds. The Commissioner has summarised the complainant's submissions below.
 - "This is a multi-million pound scheme to deliver open spaces, offices and residential accommodation, catering facilities, retail premises, riverside improvements, traffic access and parking, so a simple list of a dozen or so bullet points would not provide the necessary understanding of the requirements for producing professional, detailed architectural designs as required in the ITT. Further information about requirements is likely to be stated somewhere and to be available from council documents."
 - "This requirements information is important for managing the project – scoping this large development scheme, preventing scope creep and controlling costs – so more comprehensive details are very likely to be recorded as part of the council's project management plan."
 - "The original response and the internal review wrongly restricted the request to information supplied to the competing architects so it is probable that other requirements information held by the council may have been overlooked."
 - The public authority "provided a hyperlink leading to the ITT document but the bullet-point requirements listed are incomplete. E.g. references to access and parking for motor traffic on the riverside embankment are missing from the ITT. Other requirements are likely to be missing from the ITT too, meaning it is likely there is another, complete source or list stating the requirements."

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- The public authority “has not provided details of requirements added since the Twickenham Area Action Plan was formally adopted by Richmond Council in 2013. E.g. the sources and creation/approval dates of those additional requirements are not disclosed.”
 - “Information about the sources of requirements, when they were approved/added, which ones are important and which ones is good practice in project management and is likely to be documented for control purposes. This information is likely to be available with the council’s project team.”
 - “Apart from just two documents, no actual requirements specifications, statements or emails, other communications or requirements documents have been provided.”
25. The complainant’s position is based on a couple of assertions. First, he considers that, given the size of the redevelopment and the importance of requirements information, the public authority should hold more information that has been provided to him. Secondly, he considers that the public authority has restricted the scope of his request to the clarification he provided in his email of 26 July to the Head of Communications. This, in his view, explains why the public authority has not provided him with all of the information in scope.
26. The complainant’s view that the public authority should hold additional information given the scale of the redevelopment and the importance of requirements information is not an unreasonable one. However, his expectation of the amount of information that the authority should hold is not relevant to determining whether additional information is held by the public authority on the balance of probabilities. It is seldom possible to prove with absolute certainty that a public authority does not hold additional information within the scope of a request. Nevertheless, it can be clear from the public authority’s explanations to the complainant and subsequent submissions to the Commissioner that additional information is highly unlikely to be held by the authority. Having carefully considered the exchanges between the complainant and the public authority as summarised earlier in this notice, it is clear to the Commissioner that although the complainant may be right that there is a business need for the authority to hold additional requirements information, by all indications it does not. The public authority’s explanation to the Commissioner pursuant to her investigation is also persuasive.
27. Furthermore, it is clear from those exchanges and the public authority’s submissions that the handwritten request of 25 July was considered along with the subsequent clarifications provided by the complainant in relation to the scope of his request. The emails of 12 August 2016 and 7 September 2016 indicated that was the case. The additional

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clarifications issued to the complainant on 13 and 14 September 2016 were categorical. These emails pointed out that there were no additional requirements information held by the public authority.

28. The handwritten request was clearly for requirements information, and the subsequent clarifications merely emphasised this (adding that it was a request for the full requirements), so it is not clear to the Commissioner why the complainant considers that the public authority restricted the scope of his request.
29. The Commissioner has therefore concluded that on the balance of probabilities, the public authority does not hold additional information within the scope of the complainant's request.

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Right of appeal

30. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

31. 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.
32. 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

Alexander Ganotis
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Wycliffe House
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Wilmslow
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SK9 5AF