

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

Date: 21 August 2018

Public Authority: London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant requested information related to a particular planning application.
2. The Commissioner's decision is that London Borough of Croydon ("the London Borough") has failed to carry out a reconsideration (internal review) of the way it handled the request for information within 40 working days and also failed to respond to the request within 20 working days. It has therefore breached Regulations 11(4) and 5(2) of the EIR.
3. The Commissioner requires the London Borough to take the following steps to ensure compliance with the legislation.
 - Complete its review of the complainant's request and inform him of the outcome of that review.
4. The London Borough must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 9 January 2018, the complainant contacted the London Borough via the whatdotheyknow.com website and requested information in the following terms:

"Please provide copies of all information regarding consultation on the above planning application [17/05464/FUL] and of all comments provided by consultees (statutory or otherwise)."

6. The London Borough issued its substantive response on 26 April 2018. It provided the complainant with some redacted information. It stated that the redacted information was exempt from disclosure under Regulation 13 (Third Party Personal Data).
7. On 30 April 2018, the complainant requested an internal review as he felt that the London Borough had not provided all the information within the scope of his request.
8. The London Borough did not acknowledge the request for an internal review and had not informed the complainant of the outcome of its review at the date that this notice was issued.

Scope of the case

9. The complainant contacted the Commissioner on 29 June 2018 to complain about the way his request for information had been handled.
10. In line with her usual practice, the Commissioner wrote to the London Borough on 5 July 2018 to ask it to complete its internal review and inform the complainant of the outcome within 10 working days. The correspondence was neither acknowledged nor responded to.
11. The Commissioner has not yet investigated whether all the requested information has been provided, or whether the London Borough was entitled to withhold the information that it has done. She therefore takes no position, on either question, in this notice – which focuses solely on the procedural aspects of the way the London Borough handled the request.
12. The scope of this decision notice is to consider whether the London Borough has complied with Regulations 5(2) and 11(4) of the EIR.

Reasons for decision

Is the information environmental?

13. Regulation 2(1) of the EIR defines environmental information as being information 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)...as well as measures or activities designed to protect those elements;*
14. The Commissioner has not seen the requested information but, as it is information relating to Planning matters, she believes that it is likely to be information about "measures" affecting the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.

Timeliness of Response

15. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
16. Regulation 5(2) states that such information shall be made available *"as soon as possible and no later than 20 working days after the date of receipt of the request."*
17. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
18. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the London Borough has breached Regulation 5(2) of the EIR

Internal Review (Reconsideration)

19. Regulation 11 of the Regulations states that:

- (1) *Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*
- (2) *Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*
- (3) *The public authority shall on receipt of the representations and free of charge—*
 - (a) *consider them and any supporting evidence produced by the applicant; and*
 - (b) *decide if it has complied with the requirement.*
- (4) *A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
- (5) *Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*
 - (a) *the failure to comply;*
 - (b) *the action the authority has decided to take to comply with the requirement; and*
 - (c) *the period within which that action is to be taken.*

20. From the evidence provided to the Commissioner in this case, it is clear that the London Borough has failed to notify the complainant, of the outcome of the internal review that he requested, within 40 working days and has therefore breached Regulation 11(4) of the EIR.

Right of appeal

21. 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

22. 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.
23. 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

**Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**