

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

**Date:** 24 August 2018

**Public Authority:** London Borough of Enfield  
**Address:** Civic Centre  
Silver Street  
Enfield  
EN1 3XA

**Decision (including any steps ordered)**

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1. The complainant requested information relating to a contract for the construction of a cycle lane.
2. The Commissioner's decision is that the London Borough of Enfield ("the London Borough") has provided all the information it holds within the scope of the request. However, it failed to issue an adequate refusal notice and has therefore breached Regulations 14 of the EIR.
3. The Commissioner does not require the London Borough to take any further steps.

**Request and response**

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4. On 16 November 2017, the complainant wrote to the London Borough via the [whatdotheyknow.com](http://whatdotheyknow.com) website and requested information about the construction of a cycleway along the A105 in the following terms:

*[a] "Please may I see complete unpriced call off documentation for the construction works with Ringway Jacobs, including full call off description by all parties to the contract."*

*[b] I also request clarification on the type of contract that is formed by this call off. Is it a priced contract, a target contract or a cost-reimbursable form of contract and*

*[c] is it with or without Bills of Quantities? If it is with quantities may I see an unpriced BOQ?*

*[d] If there are programme requirements may I also see these?*

*[e] If Ringway Jacobs has issued a letter of acceptance to this call off, may I see a redacted copy?*

*"This information was first requested on 5th April 2017 and the response of 19th May 2017 claimed that this information was awaiting finalisation."<sup>1</sup>*

5. The London Borough responded on 21 November 2017. It provided some information but refused the request, citing Section 14(2) of the Freedom of Information Act (Repeat Request).
6. Following an internal review the London Borough wrote to the complainant on 22 November 2017. It upheld its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 15 February 2018 to complain about the way his request for information had been handled.
8. Following discussion with the Commissioner, the London Borough dropped its reliance on Section 14(2) of FOIA. It stated that it had provided all the information that it held within the scope of components [a] and [c] of the request and that it didn't hold any information in respect of elements [d] and [e]. It did however provide the requested information in respect of element [b].
9. From her correspondence, the Commissioner considers that the complainant is satisfied that elements [b], [d] and [e] of the request have been complied with in that the complaint believes that all the requested information has been provided in respect of [b] and he does not appear to dispute that the London Borough holds information in

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<sup>1</sup> The Commissioner has divided the original request into its component parts to make the analysis which follows clearer.

respect of elements [d] and [e]. Therefore the scope of the Commissioner's investigation was to determine whether the London Borough had provided all the information it held within the scope of elements [a] and [c] of the request.

## Reasons for decision

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### Procedural Matters

*Is the requested information environmental?*

10. 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;*
11. The recent Court of Appeal judgement in *Henney*<sup>2</sup> examined the extent to which information can be claimed to be "on" a "measure" affecting or likely to affect the elements of the environment. Information is "on" a measure if it is about, relates to, or concerns, the measure in question. The judgement in *Henney* found that it is wrong to ask whether the information is "primarily" on the relevant measure. It is also wrong to impose "a requirement that the information in question is directly or immediately concerned with a measure which is likely to affect the environment."

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<sup>2</sup> *BEIS v IC and Henney* [2017] EWCA Civ 844

12. The complainant in this case has requested information relating to the construction of a cycle lane along an existing stretch of public highway. The construction would be a "measure" that would affect the elements of the environment. Contracts and related information would be information "on" that measure and therefore the request should have been dealt with under the EIR.

*Refusal Notice*

13. Regulation 14 of the EIR states that:

- (1) *If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.*
- (2) *The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.*
- (3) *The refusal shall specify the reasons not to disclose the information requested, including—*
  - (a) *any exception relied on under regulations 12(4), 12(5) or 13; and*
  - (b) *the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).*

14. The London Borough's refusal notice of 21 November 2017 failed to cite a valid exception under the EIR (there is no EIR equivalent of Section 14(2) of FOIA), nor did it state that it did not hold information within the scope of the request. The Commissioner therefore considers that the refusal notice did not meet the requirements of Regulation 14 and the London Borough has thus breached that regulation.

Regulation 5(1) – Duty to supply information

15. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"
16. In respect of element [a] of the request, the London Borough provided a document titled "Call-off agreement". In respect of element [c], the London Borough provided the Schedule of Rates to the contract.

*The Complainant's position*

17. The complainant's position is that the documents provided by the London Borough are not the documents he requested.

18. In respect of the document titled "Call-off agreement", the complainant believes that this document (which covers a wide range of construction tasks) is relevant to this particular construction project. In correspondence with the Commissioner, he stated that:

*"The call off documentation sent to me is applicable to work of a cyclic (maintenance) and reactive (emergency) nature. It does not include the third category of work, projects, which is contained within the overarching LoHAC contract from which these works were called off.*

*"The A105 cycle lane construction however is a 'project' and is in fact called a 'major project' by Enfield Council.*

*"Of course it is possible for the project works to be carried out and paid for as a 'task' under the call off documentation supplied to me and the works carried out as dayworks, but minuted statements made on 10th February 2016 in respect of the works stated -*

*"Minute 5.12.2 Subject to Cabinet approval, the detailed design and construction will be undertaken by Ringway Jacobs via the London Highways Alliance Contract (LoHAC). **This contract was the subject of a competitive tendering process** and is expected to deliver significant long-term benefits."* [complainant's emphasis]

19. In respect of element [c], the complainant points out that he has been provided with a Schedule of Rates and not the Bill of Quantities which he asked for.

*The London Borough of Enfield's position*

20. The London Borough's view is that it has disclosed the information, relevant to the request, which it holds.
21. The London Borough has told the Commissioner that it does not tender contracts for individual items of work and did not do so in respect of the particular cycle lane in question. Rather it relies on the contract it has signed through the London Highways Alliance Contracts (LoHAC)
22. The LoHAC is a joint initiative between Transport for London (TfL) and London's boroughs. Work under the LoHAC contract is divided between four area-based highways contractors. Ringway Jacobs is the contractor for the north eastern area of London which includes the borough of Enfield.
23. The agreement includes both local and TfL road maintenance and improvement works. TfL has stated that the saving to London boroughs and TfL from LoHAC have been estimated as being up to £450 million

over the eight years of the contracts. The contract is an 8 year framework commenced on 1 April 2013 and aims to improve consistency in the quality of works and materials used, and to minimise disruption by sharing best practice and coordinating works. London boroughs can join at any time, up to the end of Year 7.

24. Essentially, the LoHAC contractors carry out specified core services and for each such service they are paid an agreed TFL specific lump sum. In addition LoHAC contractors may be required to carry out other works, such as re-surfacing schemes, which are not covered by the lump sums and the price of works is calculated by reference to the contractor's schedule of rates and percentage adjustments.
25. The London Borough joined the LoHAC on 9th December 2014 and signed the call off agreement with Ringway Jacobs.
26. The London Borough states that it has not created its own separate contract to deliver the Cycle Enfield programme, therefore there is no specific contract for the A105 works (which formed part of the Cycle Enfield programme). Cycle Enfield works are delivered using the LoHAC.
27. In relation to the Bill of Quantities, the London Borough has stated that the pricing of the project was determined according to the Schedule of Rates for the contract – of which it has provided a blank copy (which does not include the prices paid for each task).

*The Commissioner's view*

28. The Commissioner's position is that the London Borough has disclosed all the information it holds within the scope of the request.
29. The London Borough of Enfield has, like several other London boroughs, entered into a contractual relationship through LoHAC to provide its highway construction, repair and maintenance needs. The A105 cycleway is covered by this overarching contract and the Commissioner has seen no convincing evidence to the contrary.
30. The Commissioner is not convinced by the complainant's argument that the statement in the London Borough's minutes suggests a further contract was entered into. The Commissioner's reading of the statement is that the sentence beginning "this contract..." refers to the overarching agreement with Ringway Jacobs and not to a separate contract which was drawn up to deal with this specific project. As the complainant has been provided with the documentation he requested in relation to the overarching contract, the Commissioner therefore concludes that the London Borough has provided the information it holds in respect of element [a].

31. Turning to element [c], both parties accept that a Schedule of Rates was provided rather than a Bill of Quantities and that the two types of documents are not the same.
32. In layman's terms, a Schedule of Rates is commonly attached to contracts such as those entered into through LoHAC – where the client and the contractor agree a list of prices which the client agrees to pay the contractor for specific tasks. This may be in the form of a lump sum, an agreed rate per unit or an agreed time rate. The Schedule will be drawn up without knowing the quantities of each task the client will request from the contractor. There is no guarantee that the client will call on every task which has been priced and the client may call on some tasks multiple times, but each time, the cost will be calculated by reference to the original schedule of rates.
33. By contrast, a Bill of Quantities tends to be drawn up for a specific project and will include not only the unit cost for each item, but the specific quantities of each task that are required (or thought to be required) in order to complete the project.
34. The London Borough has stated that the LoHAC contract does not include a Bill of Quantities but does have its own Schedule of Rates – a blank copy of which has been provided to the complainant. It has explained that any further pricing decisions will be based upon this Schedule. The Commissioner sees no reason to doubt this explanation and therefore concludes that the London Borough has complied with its Regulation 5(1) duties.

## Right of appeal

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35. 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)

36. 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.
37. 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  
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