

Environmental Information Regulations 2004 (EIR)

Decision Notice

Date: 4 June 2021

Public Authority: London Borough of Lambeth
Address: Lambeth Town Hall
Brixton Hill
London
SW2 1RW

Decision (including any steps ordered)

1. The complainant requested measurements of a kerb in a specified location. The Council provided the requested information but the complainant believed it to be inaccurate.
2. The Commissioner's decision is that the Council has complied with regulation 5(2) in that it has provided the complainant with the recorded information that it holds. No steps are required.

Request and response

3. The Commissioner understands that the complainant has been in correspondence with the Council's planning enforcement service regarding an accident that occurred on 25 September 2019.
4. On 24 March 2020 the complainant requested the following information from the Council:
 1. *Confirmation of the exact kerb height at the location of the incident as detailed my [sic] me inc 4 colour photographs supplied and the legal kerb height road tarmac surface to top of sharp edged kerbstone you installed.*
 2. *Confirmation of the actual intensity of the street lighting at the location of the incident 8:00pm on the 25th September 2019 and the official legal street lighting requirements relating E.G actual light on that night and legal requirement.*
 3. *Reports on any pedestrian accidents occurring in this location over the period installed.*

- 4. Reports on any complaints of poor street lighting pedestrian and motorists in this location over the period installed.*
5. The complainant sent chasers on 10 April 2020 and 4 May 2020. On 5 May 2020 the Council's Planning Enforcement Officer advised that he would forward the request to the Council's FOI team.
6. The complainant sent further chasers to the Council's FOI email address on 17 May 2020 and 24 May 2020 since he had not received a substantive response to his request. The complainant also contacted the Commissioner for advice.
7. The Council responded to the complainant on 3 June 2020 as follows:
 - 1. The kerb height noted and recorded is 100mm height.*
 - 2. The intensity of the light as requested is not held on record however typical street lighting levels are 10 lux.*
 - 3. The Risk and Insurance department is not notified of accidents. They would only deal with claims that are received.*
 - 4. No reported issues with the lamp columns at this location since 2017, when the lanterns were upgraded to LED's.*
8. The complainant did not challenge, or request an internal review of, this response at this time. On 8 June 2020 he submitted a further information request to the Council:

I have been requested to ask you for accurate kerb information measurements at the incident location you may wish to forward a copy of this e-mail to Highways department as the photographs we hold indicate the kerb height to be over the Rules and Regs Limit therefore we are required to obtain accurate measurements of it's height from tarmac surface to the top edge.

It would also be appreciated if we could have a Hard Copy of Street Lighting Rules and Regs in cities as I said before the Street Lighting at the incident location ate the time - 8.00pm 25th September 2019 was very low indeed.
9. The Council responded to the request of 8 June 2020 on 6 July 2020. It provided the complainant with web links to the Design Manual for Roads and Bridges, and the Well-Maintained Highway Infrastructure Code of

Practice.¹ It did not however explicitly state whether or not these links would provide access to the specific requested information. In any event the Commissioner observes that these web links provided access to information that was not published by the Council.

10. The complainant wrote to the Council on 30 June 2020, 3 August 2020 and 28 August 2020 to request a hard copy of the information provided in the web links. However the Council advised on 7 July 2020 and 12 August 2020 that it was at that time unable to print documents since staff were working from home.

Scope of the case

11. The complainant contacted the Commissioner on 30 June 2020, 24 July 2020 and 3 August 2020 to complain that he had not received a hard copy of the Council's response to the request of 8 June 2020 and the information disclosed (ie the web links).
12. The complainant also raised a concern that the Council had provided him with information which he believed to be inaccurate in response to his request for the exact height of the specified kerb. The complainant subsequently provided the Commissioner with photographs of the kerb in question which did appear to indicate that the information provided by the Council on 3 June 2020 was not correct. The complainant said that the Council should be obliged to provide evidence that its measurement was accurate, or the Commissioner should require the Council to measure the kerb. The complainant was of the view that the kerb height he had measured was higher than the information provided by the Council, and the street lighting did not comply with the relevant regulations.
13. The complainant did not dispute the Council's statement that it did not hold a measurement of the intensity of the street light. Nor did the complainant dispute that the Council did not actually hold the information published online, in respect of which it had provided web links.
14. The Commissioner explained to the complainant that the EIR provides a right of access to information held by that public authority, subject to exceptions. The Commissioner can only provide her view on the complaint relating to access to information, and not the accuracy or

¹ <https://standardsforhighways.co.uk/dmrb/> and <http://www.ukroadsliaisongroup.org/en/codes/>

quality of any information published or provided in response to a request for information. A public authority will have complied with its obligations under the EIR where it has provided the recorded information that it holds in relation to a request irrespective of whether this information is accurate or not. Therefore the Commissioner cannot assess the accuracy of information disclosed in response to a request. Nor can the Commissioner require a public authority to obtain or generate information.

15. The complainant asked the Commissioner to issue a decision notice as he remained dissatisfied with the accuracy of the information provided by the Council.
16. In light of the above the scope of the Commissioner's decision is whether the Council's response to the request of 8 June 2020 complies with the requirements of the EIR. The Commissioner has considered whether the Council has provided the complainant with the information it holds (whether or not this information is factually accurate) which falls within the scope of his requests of 24 March 2020 and 8 June 2020.

Reasons for decision

Regulation 5: duty to make environmental information available

17. Regulation 5 of the EIR sets out a general duty for a public authority to make environmental information available on request. If a public authority does not hold the requested information, or wishes to withhold information that it does hold, it must issue a refusal notice under regulation 14.
18. The Commissioner explained to the Council that the complainant had provided her with evidence suggesting that the information provided was not accurate. The Commissioner asked the Council to clarify how it had identified and located the requested information.
19. The Council confirmed to the Commissioner that it had checked with the relevant business area, who had in turn confirmed that the kerb height measurement provided to the complainant was the information held by the Council at the time the request was made.
20. The Commissioner understands that the complainant is involved in a personal dispute with the Council in respect of an accident. However the Commissioner cannot comment on this wider matter; her decision can only relate to the request for information and the requirements of the EIR.

21. Where there is a dispute about the extent to which information is held by a public authority, the Commissioner uses the civil standard of proof, ie the balance of probabilities. In this case the Commissioner is satisfied, on the balance of probabilities, that the Council has provided the complainant with the information that it actually holds in response to his request of 8 June 2020. The Council has therefore complied with regulation 5(2) of the EIR.
22. The Commissioner accepts that the complainant has provided evidence which suggests that the information held by the Council is inaccurate. However the Commissioner has in previous cases found that a public authority will have complied with its obligations under the EIR where it has provided the recorded information that it holds in relation to a request irrespective of whether this information is accurate or not.²
23. The Commissioner also observes that regulation 5(4) of the EIR requires that where information made available in response to EIR requests "is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes". However, the Commissioner is of the opinion that this regulation only applies when:
 - the request is for current factual data;
 - the public authority is collecting this information on an ongoing basis for its own business purposes; and,
 - the authority is or should be aware that the information is not accurate, up-to-date or comparable.
24. The Commissioner is not aware that all of these criteria are satisfied in this case, in particular the requirement that the public authority is collecting the data on an ongoing basis for its own business purposes. Therefore the Commissioner cannot require the Council to take any further action under the EIR. The Council may of course choose to undertake a fresh measurement of the height of the kerb, but if it did so and found it to be different from the information actually held at the time of the request then the Commissioner would not be able to require the Council to disclose it to the complainant.

² For example decision notice FS50801349, issued 18 June 2019.

Other matters

25. The Commissioner wishes to comment more generally on the way the Council handled the other parts of the complainant's request of 8 June 2020. The Commissioner notes that the web links provided by the Council on 6 July 2020 did not provide the requested information. The information linked to a website containing general information about building standards. The Commissioner observes that this general information was not in fact held by the Council, and would not actually answer this part of the request.
26. Similarly, the Commissioner observed that the Code of Practice referred to by the Council is a 256 page document and the Council had not indicated how the complainant could identify and access the specific information he requested.
27. During the course of the Commissioner's investigation the Council confirmed to the Commissioner that it did not hold street lighting rules or regulations as requested by the complainant. It clarified that its contractor was expected to comply with the British Lighting Standards, the relevant standard being BS5489.
28. The Commissioner would remind public authorities that they are required to consider whether or not they hold the requested information. If the authority does not hold recorded information that would answer the request then it should make this clear to the requester. If the request falls under the EIR then the authority should issue a refusal notice citing regulation 12(4)(a) of the EIR.
29. The Commissioner understands that the Council provided links to information available online in an effort to assist the complainant. However this does not mean that the Council holds this information. Rather it is published by third parties and is available via the internet. The Commissioner accepts that the Council does not hold this information, but in the absence of clarity the Council's response unfortunately served to confuse matters.
30. The Commissioner would recommend that if a public authority wishes to provide links to related information held elsewhere, it should make it clear to the complainant that this is offered as advice and assistance under regulation 9 of the EIR. If the authority believes that the requested information is held by another public authority then it should consider how to proceed in accordance with regulation 10.

31. The Commissioner notes that regulation 10(1)(a) provides that the authority could choose to transfer the request to the other authority, but if the requester is an individual then the authority would need to be mindful of the data protection implications of transferring the request. Therefore the Commissioner would recommend that in such cases the authority advise the requester how they can contact the other public authority, as set out in regulation 10(1)(b).

Right of appeal

32. 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@justice.gov.uk

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

33. 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.
34. 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

Sarah O’Cathain
Senior Case Officer
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