

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

Date: 22 November 2022

Public Authority: London Borough of Barnet

Address: Hendon Town Hall
The Burroughs
Hendon
London
NW4 4BG

Decision (including any steps ordered)

1. The complainant has requested information about a complaint made to the public authority regarding a particular property.
2. The Commissioner's decision is that London Borough of Barnet was entitled to rely on regulation 12(5)(b) to withhold the requested information.

Request and response

3. On 19 January 2021, the complainant wrote to London Borough of Barnet ("the public authority") and requested information in the following terms:

"... I am making this formal request under FOI for myself to be provided with your letter to the landlords of [Address house number redacted] in response to my complaint to the council about their rented property, [Address redacted]. Please forward this request to your FOI team who can deal with it appropriately".

4. On 2 February 2021, the public authority responded. It refused to provide the requested information, citing the following exception as its reason for doing so:
 - Regulation 12(5)(b) (The course of justice)
5. The complainant requested an internal review. The public authority sent him the outcome of its internal review on 6 May 2021. It upheld its original position.

Reasons for decision

6. The following analysis sets out why the Commissioner has concluded that the public authority was entitled to rely on regulation 12(5)(b) in this particular case.
7. Regulation 12(5)(b) states that:

“For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect-

(b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.”
8. The public authority explained that the withheld information was concerned with potential offences under Building Act 1984 and/or Environmental Protection Act 1990. The information was relevant to inquiries made by it, as to whether there had been a breach, which would be an inquiry of a criminal nature. Disclosure would, therefore, potentially affect its ability to conduct such an inquiry, and the course of justice more generally.
9. The Commissioner’s published guidance explains that this exception is broad and may encompass a wide variety of judicial or quasi-judicial processes that a public authority may conduct or be involved in.
10. Covering first whether the exception is engaged, the issue here is whether disclosure of the requested information would adversely affect any of the matters referred to in regulation 12(5)(b). In order for the Commissioner to accept that an adverse effect would result, this outcome must be more likely than not.
11. The Commissioner accepts that “an inquiry of a criminal or disciplinary nature” is likely to include information about investigations into potential breaches of legislation, for example, planning law or environmental law.

12. From viewing this correspondence, it is clearly sensitive and confidential information, and could be used as evidence if any criminal proceedings took place. The Commissioner therefore considers that disclosure of this information would adversely affect the course of justice by jeopardising those proceedings. The exception is therefore engaged.
13. Even where disclosure would have an adverse effect, environmental information must still be disclosed unless the balance of the public interest favours maintaining the exception.
14. Having found that disclosure would adversely affect the course of justice, the Commissioner is required to give inherent weight to the public interest in preventing that from happening. However he must also consider whether there are sufficiently strong grounds for disclosure.
15. The Commissioner understands that the information the complainant has requested is of high interest to him. However disclosure of the information under the EIR is taken as a disclosure to the whole world and in this context, it is of little importance to the public. Indeed the public interest is better served by maintaining and upholding the ability of a public authority to conduct an inquiry of a criminal nature. It is for these reasons, the Commissioner is of the view that the public interest favours maintaining the exception and accordingly there should be no disclosure of the withheld information.

Right of appeal

16. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

17. 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.
18. 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
Gerrard Tracey
Principal Adviser FOI
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF