

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

Date: 14 October 2022

Public Authority: London Borough of Hillingdon
Address: Civic Centre
High Street
Uxbridge
Middlesex
UB8 1UW

Decision (including any steps ordered)

1. The complainant has requested information relating to a development of a former police station, primarily relating to heating and energy assessments. The request was initially refused by London Borough of Hillingdon ("the Council") as manifestly unreasonable due to the volume of information included. The Council later provided links to all the publicly available information and upon further searches provided documents relating to building control.
2. The Commissioner's decision is that on balance, the Council has complied with its obligations under Regulation 5(1) by providing the information it holds in scope of the request. However, the Council failed to comply with its obligations to provide this in the required timeframe and so has breached Regulation 5(2) of the EIR. No steps are required.

Request and response

3. On 30 November 2020 the complainant made a request to the Council for information relating to the development of a former police station. The request was in the following terms:

- "Information on how the London Plan policy 5.9 (2011 and 2016) on overheating and cooling was implemented in considering planning applications related to the development. If it was not considered, I would like information on why it was not implemented and how this decision was taken.
 - Any planning or building control information and correspondence on the Energy Assessment carried by the developer, including any advice or instructions the council gave to the developer.
 - The GLA provides extensive guidance on how they recommend Energy Assessments are carried out by local authorities, how developers should address policy 5.9, and how developers should design and install efficient heat network systems. Was this guidance used in considering the planning applications for this development and, if not, was an alternative implementation framework used?
 - Any planning or building control information and correspondence regarding heating systems in the development, including any advice or instructions the council gave to the developer.
 - Any planning or building control information and correspondence on overheating concerns with the development, including any advice or instructions the council gave to the developer.
 - Any planning or building control information and correspondence on the efficiency of the communal heating system at this development, including any advice or instructions the council gave to the developer.
 - Information on how and when council officers first became aware of overheating problems at this development.
 - Information on how and when council officers first became aware of the various planning breaches at this development.
 - Design stage and as built SAP worksheets submitted by the developer.
 - Any building plan documents the council holds.
 - Any other relevant information the council holds that is related to the communal heating system, overheating and ventilation systems at this development."
4. The Council responded on 19 January 2021 stating it had been informed the complainant was engaging with their landlord in this as a private matter. The Council therefore considered the information needed could be obtained directly from the landlord and additional information on the Council's implementation of planning policies was available in its yearly planning reports published on its website. The Council concluded the request was manifestly unreasonable under Regulation 12(4)(b) of the EIR.

5. The complainant queried this response on 19 January 2021; asking the Council to explain the grounds for refusing the request under Regulation 12(4)(b). Following a telephone conversation between the Council and the complainant, the complainant sent a further email to the Council on 21 January 2021. In this email the complainant stated they would be happy to narrow, revise or clarify their information request if meaningful discussions could take place. The complainant also reiterated they were unclear why the request was refused as manifestly unreasonable and whether this was on cost grounds or some other reason.
6. Following another telephone call the complainant again wrote to the Council on 29 January 2021. In this email they asked for an internal review clarifying they had already provided public interest arguments and reasons for requesting the information.
7. The Council conducted an internal review and responded on 31 March 2021. The internal review appeared to reference another information request also refused as manifestly unreasonable and combined the two requests into one response.

Scope of the case

8. The complainant contacted the Commissioner on 29 March 2021 to complain about the way their request for information had been handled.
9. During the course of the Commissioner's investigation the Council ceased to rely on Regulation 12(4)(b) and instead stated it had provided all the information it held or provided links to access this where it was publicly available.
10. The Commissioner therefore considers the scope of his investigation to be to determine if the Council has, on balance, provided all the information it holds in relation to the request.

Reasons for decision

Regulation 5 – duty to make available environmental information on request

11. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request.
12. For clarity, the Commissioner is not expected to prove categorically whether the information is held. He is required only to make a

judgement on whether the information is held on the civil standard of proof i.e. on the balance of probabilities.

13. In the Council's internal review response it stated the complainant had rights under the Defective Premises Act 1972 and/or a claim for negligence in relation to any fault with the heating system. The Council stated that any dispute would be subject to a Pre-Action Protocol under the Civil Procedure Rules 1999 which require the developer to disclose all relevant information in its possession. The Council argued any information held by the developer would be far more extensive than anything the Council could disclose that it had been provided with in order to determine planning permission or approve building controls.
14. The Council reiterated its view that the request was manifestly unreasonable as the complainant could request the disclosure of all relevant information, including pre-application advice, from the developer so it would not be a reasonable use of the Council's resources and times to search for and respond to the information request.
15. The Commissioner asked the Council to provide further detail to support its position. The Council again stated it did not think it appropriate to get drawn into any dispute but was open to compromise and would provide link to all documentation provided by the applicant in respect of the development at the former West Drayton Police Station. The Council indicated this would include location plans, block plans, site layouts, proposed floor plans, proposed elevations, proposed sections and formal notices. At this stage the Council stated it had no additional documentation in connection with this planning application.
16. On receipt of the link from the Council the complainant contacted the Commissioner to state that all the information accessible via the link was already publicly available – the Council confirmed to the Commissioner this was true because all information it held relating to the planning application was publicly available as all planning documentation has to be publicised in accordance with statutory procedures.
17. The Commissioner discussed this matter with the complainant and one of the key areas of concern was that in the provided links there did not appear to be any building control documents (as referred to in bullet points 1-4 of the request). The complainant had asked to see any advice given to the developer on heating systems and overheating concerns, including any correspondence. The Commissioner asked the Council to explore this issue further and conduct additional searches to identify if any further information was held.

18. The Council consulted with its Building Control Department on this issue. This resulted in the disclosure of an additional ten documents. These included installation requirement documents, test reports, predicted energy assessments, compliance reports and Standard Assessment Procedure (SAP) worksheets.
19. The Council again stated no further information was held that was not already publicly available via the links already provided. In regard to pre-application advice, an area the complainant had insisted information would exist, the Council stated the developer did not take pre-application advice from the Council so no information existed.
20. The Commissioner considers that the Council's explanations regarding the specific points raised by the complainant are reasonable. It is clear that the majority of the information relating to a planning development is required to be publicly available and the Council has provided the complainant with clear links to the information in the public file. In addition to this the Council has conducted additional searches with the relevant department likely to hold any additional documents on building control and this resulted in the disclosure of a number of documents containing relevant information.
21. The Commissioner has no reason or basis to question this position any further, he considers that the information provided meets the bullet points in the request and that, on the balance of probabilities, the Council has complied with regulation 5(1) of the EIR.

Regulation 5(2) – Duty to make environmental information available on request

22. Regulation 5(2) of the EIR says that the public authority must make the information available as soon as possible and no later than 20 working days after the date of receipt of the request.
23. In this case, the Council failed to respond in full to the request within 20 working days. The complainant submitted their request for information on 30 November 2020 and the Council provided its substantive response on 19 January 2021.
24. Therefore, the Council has breached regulation 5(2) of the EIR.

Other matters

25. Whilst the Commissioner has found, on balance, that the Council has complied with its obligations under Regulation 5 of the EIR he considers it important to point out to the Council that although attempting to

resolve matters informally is welcomed it did, on several occasions, fail to engage with the questions asked by the Commissioner in favour of disclosing information in a piecemeal fashion to the complainant. In future the Council is encouraged to engage with, and respond to, the Commissioner's specific questions in order to reach a timely conclusion.

Right of appeal

26. 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

27. 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.
28. 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

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF