

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 22 February 2023

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about Whole Life Cycle Carbon Emission Assessments (WLCCEA) from London Borough of Lambeth (the Council). The Council cited regulation 12(4)(d) (material in the course of completion) of the EIR to withhold most of the information.
2. The Commissioner's decision is that regulation 12(4)(d) is engaged, but the balance of the public interest favours disclosure. However, the Commissioner finds that regulation 13 would apply to the information within the scope of part 3 and has applied this exception himself proactively. The Commissioner also finds that the Council breached regulation 5(2) and regulation 14(2) as it failed to provide its initial response within the statutory 20 working days.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Disclose the information at part 2 of the request.
4. The Council 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 FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 1 December 2021, the complainant wrote to the Council and requested information in the following terms:

"A motion entitled 'A homes policy that complies with the new Lambeth Local Plan 2020-2035' that was passed at the full council meeting on 24<sup>th</sup> November 2021 included a Labour Party amendment that included the following sentence:

'To recognise that thanks to Life Cycle Carbon Assessments new build homes can be demonstrated to deliver better long-terms carbon impacts than retrofitted homes...'

- 1) Please provide a copy of the above mentioned Assessments.
  - 2) Please provide details of the energy standards of both the new build homes and the retrofitted homes referred to in these Assessments.
  - 3) If not already included in these Assessments, please indicate their author/s.
  - 4) What number of years does the phrase 'long-term' represent in the above quoted sentence?
  - 5) Please include any calculations or formulae that were used to obtain the conclusion reached in the above quoted sentence.
  - 6) If the Assessments were never actually in the possession of the council by only referred to in a link or URL, please provide a copy of the document containing that link or URL, whether than document was held, sent or received by an officer or member of the council."
6. The Council responded on 4 January 2022. It stated that it held the requested information, however it went on to provide a link to the November 2021 motion titled 'A homes policy that complies with the new Lambeth Local Plan 2020-2035', rather than providing the complainant with the WLCCEAs which were mentioned in that motion.
7. Following an internal review the Council wrote to the complainant on 10 March 2022. It explained that the statement in the motion referred to future relevant projects, rather than those already being delivered, therefore it did not hold any information within the scope of the request.

## Scope of the case

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8. The complainant contacted the Commissioner on 17 March 2022 to complain about the way their request for information had been handled.
9. During the course of the Commissioner's investigation, the complainant clarified that their request was for any WLCCEAs held by the Council, rather than just those relating to projects which are already being delivered. Based on this, the Council clarified that it does have three projects for which WLCCEAs are being produced, but it considers that they are exempt from disclosure by virtue of regulation 12(4)(d) as they are unfinished documents. The Council provided copies of the three draft WLCCEAs to the Commissioner, along with its submissions to support its reliance on regulation 12(4)(d) to withhold them.
10. The complainant accepted the Council's application of regulation 12(4)(d) to the WLCCEAs as a whole, but questioned why the information at parts 2, 3 and 4 of their request could not be disclosed.
11. With regard to part 4 of the request, the Council clarified that the phrase 'long-term' means 60 years, based on GLA guidance which suggests that the WLCCEAs are based on a 60 year building life expectancy. However, it maintained its reliance on regulation 12(4)(d) to refuse to disclose the information at parts 2 and 3 of the request.
12. The Commissioner considers the scope of his investigation is to determine if the Council was correct to rely on regulation 12(4)(d) to refuse to comply with parts 2 and 3 of the request.

## Reasons for decision

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13. Regulation 12(4)(d) of the EIR provides that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
14. The Commissioner considers that the exception provided at regulation 12(4)(d) goes beyond applying only to information that is itself incomplete or unfinished. It may also be engaged if the requested information simply relates to such material.
15. It is clear that the information sought by parts 2 and 3 of the request forms part of the WLCCEAs – which are still in the course of completion.

Therefore, the Commissioner is satisfied that regulation 12(4)(d) of the EIR is engaged.

### **Public interest test**

16. The Council acknowledged the presumption in favour of disclosure at regulation 12(2) of the EIR. It also noted that disclosure would increase public understanding, and that there is a general benefit in transparency.
17. In favour of maintaining the exception, the Council argued that it is in the public interest that the Council is able to make effective decisions and complete reports, assessments and other documents fully, rather than provide incomplete or draft documents which may be subject to change. It stated that disclosure at this time would undermine its ability to do that.
18. The remainder of the Council's arguments related to disclosure of the WLCCEAs as a whole, and how disclosure of those documents would be confusing or misleading to the public.
19. The Commissioner provided the Council a further opportunity to put forward any public interest arguments relevant to the specific information at parts 2 and 3 of the request, rather than generic considerations about transparency. The Council did not take the opportunity to put forward any further arguments.
20. The Commissioner has considered both the Council's and the complainant's arguments, along with the withheld information, and in this case he is not persuaded that the public interest arguments in favour of maintaining the exception are sufficiently compelling so as to outweigh the EIR's presumption in favour of disclosure. The subject of the large scale ongoing redevelopment of housing in the Lambeth area is of great interest to the community, and the Commissioner considers that it is in the public interest to be able to understand the information which the Council is basing its decisions on in relation to this matter.
21. It is not necessary to demonstrate that disclosure of particular information will be harmful in order to engage this exception. However the Commissioner considers that the balance of the public interest is only likely to favour maintaining the exception where disclosure would have a negative effect on the interests that the exception is designed to protect. It was up to the Council to explain the relationship between the particular information being withheld and the incomplete material as a whole - and why information, which was in its own terms complete, would, if disclosed, reveal details of material still in the course of completion.

22. The Council has not demonstrated why disclosing only the information in parts 2 and 3 of the request (as opposed to the WLCCEAs as a whole) would reveal a partial or misleading picture.
23. The Commissioner, therefore, finds that the balance of the public interest favours disclosure in this case, and the Council should now disclose the information at part 2 of the request.
24. The Commissioner would also have ordered disclosure of the information that the Council holds within the scope of part 3, however he notes that the information falling within scope will be personal data. The Council has, despite numerous opportunities to do so, failed to rely on regulation 13 (third party personal data) of the EIR to withhold this information.
25. Personal data can only be disclosed under FOIA if there would be a lawful basis under data protection legislation for the information to be published.
26. The Commissioner does not consider that he has sufficient evidence to say definitively that a lawful basis exists for publication of this information (although he also notes that he has been provided with precious little information on which to determine the matter either way). Given his role as the regulator of data protection legislation, the Commissioner considers it would be unfair to the individuals concerned to order disclosure of their personal data in the absence of a clear lawful basis for such action. He has therefore erred on the side of caution and applied regulation 13 of the EIR himself, proactively, to prevent this information from being disclosed.

### **Procedural matters**

27. Regulation 5(2) of the EIR states that information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.
28. Regulation 14(2) of the EIR states that a refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.
29. As the Council failed to provide its initial refusal of the request within 20 working days, the Commissioner finds that it breached both regulation 5(2) and regulation 14(2).

## Right of appeal

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30. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. 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.
32. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**