

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

Decision notice

Date: 23 May 2023

Public Authority: London Borough of Merton
Address: Merton Civic Centre
London Road
Merton
SM4 5DX

Decision (including any steps ordered)

1. The complainant has requested information about a particular site. The above public authority ("the public authority") provided some information but the complainant believes more is held.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority has provided all the information it holds in recorded form. However it breached regulation 5(2) of the EIR by failing to provide the information that it did hold within 20 working days.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 18 March 2022, the complainant wrote to the public authority and requested information in the following terms:

"I would like by making this FOI request all information you hold concerning the SGN gasometer site and adjacent land owned by SGN or other subsidiaries.

This is to include details about tree felling and road building for access from the site (originally accessed by west barnes lane motspur park kt3) to kingshill avenue kt4. It is also to include any details on redeveloping the site (including planning application references) and also any waiving of any designated green or protected areas in this

locale that were approved by the local council or greater london assembly.”

5. The public authority responded on 3 May 2022. It provided a small quantity of information and stated that this was all it held as the site in question was located in a different borough. It upheld this position following an internal review.

Scope of the case

6. The complainant contacted the Commissioner on 13 June 2022 to complain about the way his request for information had been handled.
7. The public authority failed to respond to the Commissioner's investigation in a timely manner and the Commissioner was required to serve an information notice in order to access the information he required.
8. The Commissioner considers that the scope of his investigation is to determine whether the public authority holds more information within the scope of the request.

Reasons for decision

Would the requested information be environmental?

9. 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;

- (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
10. The information that the public authority has disclosed is environmental because it is on measures (development of land) likely to affect the elements of the environment. The Commissioner considers that, if the public authority (hypothetically) held further information, it is likely that that too would also be environmental information as it would either be information on the land itself, or on measures likely to affect it. Therefore, although the request appears to have been dealt with under FOIA, it should have been dealt with under EIR – though, for reasons that will be set out in more detail below, nothing turns on this point.

Held/not held

11. Where there is dispute over the amount of information a public authority holds, the Commissioner is only required to determine whether it is more likely than not that the public authority has disclosed the information it holds in recorded form. He is not required to prove beyond doubt that particular information is, or is not, held.
12. The public authority noted that the site in question, whilst adjacent to its boundary, is in fact in the Royal Borough of Kingston-upon-Thames and has never been within its boundary. As a result, it would expect to hold minimal information about the site.
13. The public authority noted that it had searched its development management, highways, planning policy and regeneration records. The only relevant information it had located was a submission made to its local plan – which it disclosed when it originally responded to the request. It had also located some more recent correspondence relating to the site, but this information was created seven months after the request was responded to.
14. The complainant claimed that the public authority should hold further information because:

"the site in question was within Merton since the 1920's [sic] and only recently transferred to Kingston after some boundary changes - where is the information for the past 100 years?"

The Commissioner's view

15. The Commissioner considers that, on the balance of probabilities, the public authority has disclosed all the information it holds in recorded form.
16. It is not in question that the site lies outside the public authority's current boundaries. The complainant has provided no evidence to support his assertion that the boundary between the public authority and the Royal Borough of Kingston has changed – either recently or at all. The public authority's boundary with the London Borough of Sutton did change in the mid 1990s (though not the section close to the site), as did the boundary between the London Borough of Sutton and the Royal Borough of Kingston. However, the Commissioner has seen no evidence to support an assertion that the site has been within the public authority's boundaries for "100 years" – indeed the public authority did not exist prior to 1965.
17. The Commissioner notes that the public authority has carried out appropriate searches of its records and that, given that the site does not fall within its boundaries, there is no reason why it would need to hold information about the site.
18. The Commissioner therefore considers that, on the balance of probabilities, the public authority holds no further information within the scope of the request.
19. The complainant may wish to make requests to the Royal Borough of Kingston or the London Borough of Sutton – if he has not already done so – to see whether they hold any information which might be of interest.
20. For the avoidance of doubt, the public authority would have been no more likely to hold relevant information if the request had been dealt with under FOIA.

Procedural matters

21. The public authority failed to respond to the request within 20 working days and therefore breached regulation 5(2) of the EIR.

Right of appeal

22. 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

23. 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.
24. 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