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Environmental Information Regulation 2004 (EIR)

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 June 2024

Public Authority: London Borough of Islington
Address: Islington Town Hall
Upper Street
London
N1 2UD

Decision (including any steps ordered)

1. The complainant requested information about a survey report and all other information held by the London Borough of Islington ("the Council") in relation to previous roofing work carried out on a residential building. The Council provided the complainant with some information within scope of their request, however stated that no further information is held. Throughout the Commissioner's investigation, the Council located and disclosed further information within scope of their request.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, it is likely that the Council holds information within scope of the second part of the complainant's request further than that which has already been provided. The Commissioner also finds that the Council has breached regulation 11 of the EIR in failing to provide the complainant with an internal review outcome within 40 working days.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - The Council must issue a fresh response to the request following searches aimed at identifying all information held within scope of the second part of the request.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the

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Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 5 June 2023, the complainant wrote to the Council and requested information in the following terms:

"I have been referred to you by Islington Council repairs team who have asked me to contact you to get information on a survey report from Job No [redacted] as they are unable to do so themselves (although it is unclear why)

Also please could I have all information relating to the last re-roofing of [address redacted] and any information of any survey reports to check conditions, leaks etc since then."

6. The Council responded on 28 June 2023. It stated that it held information within scope of the request. The Council provided the complainant with a copy of the roof inspection job sheet relating to the job specified, and a spreadsheet containing a breakdown of associated works. The Council did not provide information within scope of the second part of the complainant's request for information relating to the previous re-roofing work.

7. The complainant sought an internal review on 3 August 2023 in the following terms:

"Thank you for your response dated 28/06/23 [sic] however I requested the full survey report to include any notes on all aspects of the job. Please can you provide including all internal emails, messages, any communications on this job.

In addition I requested all info relating to the last reroofing of [address redacted]. That would include all material in any format relating to the last reroofing, the contract, completion surveys, any notes that the Islington Council will have had on the work, including when and who by. Please could this be provided."

8. The Council wrote to the complainant on 16 October 2023. In its response, the Council provided the complainant with a second copy of the roof inspection job sheet, an Excel copy of the communications and findings logged on its repairs database for the specific job number, and a copy of the roof specification for the previous reroofing dated 2008.

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9. On 28 November 2023 the complainant wrote to the Council in the following terms:

"I still have not received what was requested.

Your email dated 28 June 2023 acknowledges my request; 'Also please could I have all information relating to the last re-roofing of [address redacted] and any information of any survey reports to check condition, leaks etc since then.'

There have been many reports of leaks since the roof has been renewed in November 2010, please can you send all reports to date.

In addition I requested and you acknowledged; 'include all material in any format relating to the last reroofing, the contract, completion surveys, any notes that the Islington Council will have had on the work,' Please can you provide all the information including any completion survey or any inspection report of the roof renewal contract."

10. The Council provided an internal review on 28 December 2023. In its review, the Council acknowledged that its original response was out of time and incomplete, however stated that further searches had not located any further information within scope of the request.
11. On 5 January 2024 the complainant made a further request for information in the following terms:

"Can you advise what the Council's policy is on how, when and what information/ documents/ correspondence should be kept and for how long?
And more specifically in relation to work carried out by contractors?"

12. On 11 January 2024 the Council provided the complainant with a copy of its retention policy.
13. On 22 January 2024 the complainant made a request for information in the following terms:

"Please can you therefore provide all Building Regulations records relating to the roof of [address redacted]"

14. On 31 January 2024 the Council wrote to the complainant stating that had already provided them with an internal review and all of the information it held within scope. The Council stated, "we cannot provide you with information that we do not hold and are not trying to be obstructive."

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Scope of the case

15. The complainant contacted the Commissioner on 28 November 2023 to complain about the way their request for information of 5 June 2023 had been handled.
16. The Commissioner considers that the scope of his investigation is to determine whether, on the civil standard of the balance of probabilities, the Council holds information within scope of the request further than that which has already been provided.

Reasons for decision

Is the requested information environmental?

17. 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

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to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

18. As the information requested relates to external work on a residential building, the Commissioner believes that the requested information is likely to be information on activities affecting the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

The complainant's position

19. In an email to the Commissioner the complainant outlined their grounds of complaint in the following terms:

"Please see attached my email to the Council to clarify the documents requested and then the Council's response, claiming that there are no more records held, and yet they advise that documents relating to Building Regulations must be kept indefinitely, as is the Council's policy. They have not provided any documents relating to Building Regulations being complied with during the works completed during re-roofing in 2011 or any subsequent work carried out.

Also, to clarify, the box gutter is part of the roof, and no documents relating to when this was last renewed have been provided. I suspect that they are treating my request for information relating to roofing does not include the box gutter, but it is part of the roof and therefore is part of the scope of the request for information. Records for Building Regs will have been retained as policy.

On the specific job reports that have been received, they are incomplete bits of information, such as 'I will talk to ----' but there is no info of the outcome which must have been noted later.

On the Redland Spec Master Guarrantee with Guarrantee Date: Aug 2008, there will be later documents surveying the work completed along with emails, letters etc noting when work would start, how it was to proceed etc. Furthermore, the document states, "- Please see reverse for Important Notes" - this has not been included.

There are no references in this document to the box guttering, where are the documents relating to this when the tiles were being replaced? Are we expected to believe there is no information on the box guttering, (which is within the scope of request for info on the roof) when it was refurbished/replaced/re-done? Records are kept on building regs indefinitely so should be made available."

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20. The Commissioner notes that the complainant made a separate request to the Council on 5 April 2024 concerning information about the box guttering. In the interests of maintaining a clear distinction between the request central to this decision and the request of 5 April 2024, should the complainant wish to apply for a decision in respect of the handling of that request, he will not be considering whether information on the box guttering is within scope of this investigation.

The Council's position

21. The Commissioner wrote to the Council to query the searches it had undertaken when responding to the request.
22. In its response the Council acknowledged that the searches it had initially undertaken had been limited, as they were focused on information held by the Homes and Neighbourhood directorate and therefore did not include searches for information held by Building Control. The Council also acknowledged that it hadn't provided the complainant with an explanation with regard to how repairs information is held in its system.
23. The Council had conducted further searches of the Building Control department and confirmed that it held information contained in a file in its archives, which it had requested and would review once in receipt.
24. The Council provided the complainant with a fresh response on 17 April 2024, including copies of the technical brief for major works for the estate where the residential building is located. The Council explained that the brief included an extract containing the term brief (scope of works) relevant to the building specified in the request, which details proposed repairs to the roof and box guttering.
25. In its response, the Council explained the following in relation to how the details of the survey report and associated notes on the job specified are held internally:

"I have reviewed the information that has been provided to you and discussed how information relating to repairs is held. All repairs are held in our repairs system OneServe, the system sends repairs jobs directly to repairs staff on their PDAs or to one of our contractors and all updates are captured as notes or 'events' in the system. There is generally no email trail beyond this, however, there are exceptions where a resident also sends emails regarding repairs to specific members of staff regarding the repair. I can confirm that all information in relation to this job that is held within OneServe has been provided to you.

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Following your complaint to the ICO, I asked that searches be carried out to ensure that no other emails existed in relation to this report. I can confirm that three emails from you have been identified regarding your complaints, but no other information is held."

26. Additionally, the Council informed the complainant that it had requested a file relevant to the request from the Building Control department and would provide them with any information located within scope once it had undertaken a review of the contents.
27. On 24 April 2024 the Council provided the complainant with an updated response disclosing information contained within the building control file, redacted with reliance on regulation 12(3) (personal data). The Commissioner notes that the complainant has not challenged the application of regulation 12(3) therefore he will not be making a finding on this in his decision.
28. Following disclosure of the information outlined at paragraphs 19 to 25 above, the Commissioner asked the complainant to confirm whether they were satisfied with the information provided.
29. The complainant stated that they believed documents were missing "from survey reports to emails (they have not provided a single email or internal messages). There are no minutes of any meeting where discussions relating to the roof are included."
30. The complainant expressed general dissatisfaction with the way the Council had handled their request.

The Commissioner's position

31. The Commissioner considers that the request can be divided into two parts. The first part of the request is for the information on a survey report relating to a specific roofing job, and the second part is for historical information relating to previous reroofing work.
32. With regard to the first part of the request, the Commissioner considers that the Council has complied with its duties at regulation 12(4)(a) and provided the complainant with all of the information held within scope. The Council has taken a plain and objective reading of the request and responded accordingly, disclosing copies of the survey report dated 15 May 2023 and providing all related documentation exported from its OneServe database. The Commissioner is also satisfied that the narrative of how it stores information of this type, given by the Council in its response of 17 April 2024 and outlined at paragraph 23, above sufficiently explains why no further information is held relevant to this part of the request.

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33. With regard to the second part of the request, which has a much broader scope, the Commissioner considers that, on the civil standard of the balance of probabilities, it is likely that the Council holds further information within scope of this part of the request further than that which has already been provided during the course of his investigation. However, the Commissioner notes that the Council has provided the complainant with Building Regulations records as sought by their request of 22 January 2024.
34. He has arrived at this conclusion as it appears to him that the searches undertaken by the Council for information captured by this part of the request have not been sufficient. The Commissioner recognises that the second part of the request is particularly broad in scope ("all information relating to the last reroofing of [address redacted] and any information of any survey reports to check condition, leaks etc since then.") and refers to information from within a 14 year period (perhaps greater), meaning that searches for information may engage a wide range of service areas, potentially with differing filing protocols, and necessitate consultation with a large number of staff. Therefore, due to the potential breadth of the searches required, he understands that it is possible that some parts of the business may have been overlooked when the Council initially responded to the request. That being said, it is the Council's responsibility to clarify with the requester what it is they are seeking and from what time period on receipt of the request. As the Council did not seek clarification from the outset, the result has been the complainant making a succession of further requests and the staggered disclosure of information.
35. As outlined at paragraph 3 above, the Commissioner therefore requires the Council to undertake searches relevant to the second part of the request again and present the complainant with a fresh response. The Commissioner recommends that the Council clarify with the complainant precisely what information they are seeking and from which time period, in compliance with its duties to provide advice and assistance as outlined at regulation 9(1) of the EIR.

Procedural matters

36. Regulation 11 of the EIR requires a public authority, on request, to reconsider its response to a request for environmental information. It must inform the requester of the outcome of that reconsideration as soon as possible and no later than 40 working days after the date the reconsideration (or internal review) was requested.

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37. From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days, the public authority has breached regulation 11 of the EIR.

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Right of appeal

38. 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

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jonathan Slee
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