

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 October 2015

Public Authority: London Borough of Ealing
Address: Percival House
14/16 Uxbridge Road
Ealing
London
W5 2HL

Decision (including any steps ordered)

1. The complainant requested information relating to the destruction of six trees in Southfields Recreation Park in October 2014.
2. The Commissioner's decision is that the London Borough of Ealing has complied with regulation 5(1) of the EIR in making available all of the environmental information it holds that falls within the scope of the complainant's request.
3. The Commissioner is also satisfied that the Council has correctly applied Regulation 13(1) of the EIR in withholding correspondence received from residents and neighbours in relation to the works carried out in Southfield Recreation Park.
4. The Commissioner does not require the public authority to take any steps.

Request and response

5. On 23 October 2014, the complainant wrote to the Council and requested information in the following terms:

'All minutes, emails, plans, responses to members of the public, and other documents, electronic or otherwise relating to the destruction of trees in Southfields Recreation Park, October 2014, including but not limited to:

- *the issues considered whether they are thought to have impacted the final decisions or not – eg, health and safety, local habitat, light to nearby properties, budget*
- *the final rationale for destruction*
- *the selection of trees for destruction, specifically why this changed over time*

All minutes, emails, plans, responses to members of the public, and other documents, electronic or otherwise relating to the replacement of trees in Southfield recreation Park, including but not limited to:

- *replacement of the six destroyed October 2014*
 - *replacement of trees destroyed in previous years along the northern border of the Park*
 - *any deviation to the policies expressed in the Ealing Tree Strategy*
 - *any deviation to the policies expressed in the Ealing Green Spaces Strategy*
 - *any deviation to the policies expressed in the London Plan'*
6. On 20 November 2014, the Council responded and provided two emails relating to the subject matter of the request and advised the complainant that the majority of correspondence regarding the issue had already been directly or indirectly addressed to him. The Council also advised the complainant that there was no documentation relating to the decision to replant trees on the site as precise details of location and species had yet to be confirmed.
 7. On 24 November 2014, the complainant submitted an internal review request. He queried the small amount of documentation that he received in relation to the subject matter of the request. In particular, the complainant argued that correspondence with neighbours was missing and contractors were working to drawings that were not included in the Council's initial response. The complainant noted that the trees selected for destruction differed from an earlier drawing and questioned whether there were any written deliberations on the matter such as minutes of meetings. The complainant also mentioned previous correspondence he had received referring to an analysis and asked whether there were any budgetary considerations.
 8. On 11 February 2015, the Council issued its internal review decision. It advised the complainant that correspondence between neighbours and

tree officers had been withheld on the basis that it had been provided in confidence and contained personal information. The Council explained that the contractor instructions contained contract information and prices which are commercially sensitive and therefore the information had been withheld from its initial response. However it provided the complainant with a 'not priced' version of the contractor instructions. The Council advised the complainant that it maintains some 60,000 trees and the Tree Service did not have meetings to discuss individual trees. It advised that decisions made on a daily basis are not always minuted and the original works order had been deleted and its database edited to reflect the change in selection of trees for removal. Finally the Council advised the complainant that that the tree service manager could not recall reference to analysis in any previous correspondence.

Scope of the case

9. The complainant contacted the Commissioner on 11 February 2015, to complain about the way his request for information had been handled. In particular:
 - The adequacy of searches undertaken by the Council, arguing that the response was limited to communications with the tree service officer.
 - That no information was provided in relation to any consultation he was led to believe had taken place.
 - Concerns that the Tree Service maintains its inventory of trees without any log of daily decisions and that the original works orders had been deleted.
 - Challenging the Council's assertion that it did not hold information In relation to any future planting plans for replacement trees in Southfield Recreation Park.
 - That the Council had not provided information explaining how they had selected the trees for destruction and why this had changed over time.
10. The Commissioner notes that the Council advised the complainant that it had withheld information which had previously been provided to him. As the complainant did not refer to this information in his internal review request or his complaint to the Information Commissioner, the Commissioner considers that he is satisfied with the information already in his possession prior to submitting the request and has not considered the provision of this information in this case.

11. The Commissioner therefore considers that the scope of this case is to determine whether the Council has complied with regulation 5(1) of the EIR in making available all of the environmental information it held at the time of receiving the request and whether it was correct in applying regulation 13(1) of the EIR in withholding correspondence received from residents and neighbours in relation to the works carried out in Southfield Recreation Park.

Reasons for decision

12. Information is 'environmental information' if it meets the definition set out in regulation 2 of the EIR. Subsections (a) to (c) state –

'(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 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) and (b) as well as measures or activities designed to protect those elements.'

13. In the Commissioner's view, the requested information (which is in relation to the felling of trees) falls within the definition of regulation 2(1)(c) as 'measures or activities' likely to affect the elements of the land and landscape.

Regulation 5(1)

14. Regulation 5(1) of the EIR states that 'a public authority that holds environmental information shall make it available on request.'
15. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

16. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
17. The complainant has argued that the Council's response appeared to be limited to communications with the Tree Service Officer and clarified that his information request did not place any such limit.
18. The Commissioner asked the Council to confirm what searches were carried out for information falling within the scope of the request and why it considered that these searches would have been likely to retrieve any relevant information.
19. The Council advised the Commissioner that the Tree Service Manager is copied into all important outgoing correspondence and confirmed that both the Tree Service Manager and the Tree Officer for the area searched their entire email archive for anything relating to tree removal or planting in Southfields Recreation Park. The Council also confirmed that the Tree Service database was searched.
20. The Council explained that it had identified two emails which were relevant to the request, consisting of the reasons for the removal of the trees and an incident report concerning abuse of contractors on site. It also provided a copy of the tree works order which had been extracted from the Tree Service database.
21. The Council explained that the Tree Service Manager could not recall exactly which search terms were used but considered likely that he would have searched for 'Southfield' or 'Rec' or 'Recreation'. The Council advised that information extracted from the Tree Service database would have used the specific site name as such information would not be found anywhere else.
22. The Council advised that it had identified some 20 plus emails which were not included in its response as the complainant was either the sender or a direct or indirect recipient. The complainant did not refer to the Council's failure to provide this information in his internal review request or his complaint to the Commissioner and therefore the provision of this information has not been considered as part of this complaint.
23. In the Commissioner's view, although the Council's search for information was limited to the email accounts of the Tree Service Manager and the Tree Officer for the area, as well as the Tree Service Database, this would be the most appropriate place to search as the information requested would be unlikely to be held in any other area

given that the Tree Service maintains responsibility for the works carried out. The Commissioner is therefore satisfied that the searches carried out by the Council were appropriate in determining whether information that fell within the scope of the complainants request was held.

24. The complainant argued that the Council's response suggests that the Tree Service does not have any systematic approach to managing its inventory of trees and challenged the Council's position that the original works order had been deleted.
25. The Council advised the Commissioner that the Tree Service maintains around 60,000 trees and removes some 400 trees per year and consequently they do not have extensive discussions or deliberations or minute decisions made on a daily basis. It advised that all tree inspections and works prescribed to trees are recorded and monitored through to completion on the tree service database. Tree Service officers have full access to the database allowing them to edit incorrect details or changes they wish to make.
26. In terms of the original works order the Council advised the Commissioner that it was not deleted as such but the data within the original order was edited and a new order produced. The Council confirmed that there were no records relating to the original order as the tree data had already been changed. The Council also confirmed that the Tree Service does not keep records of old orders which had been amended as they are irrelevant to its work.
27. The Council advised the Commissioner that the Tree Officer responsible for the original works order has since left the Council. The Tree Service Manager advised the Commissioner that he believed the Tree Officer changed his decision on the selection of trees for removal based on the condition of the trees following some reflection of the situation. However, as the original works order was edited the Council does not hold any recorded information to this effect.
28. The Commissioner appreciates the complainant's concerns regarding the manner in which the Council manages its inventory of trees. However the issue to be determined by the Commissioner is not the adequacy of the Council's approach to managing its inventory of trees but whether it holds any additional environmental information which had not already been provided in response to the request.
29. Given that the Council does not maintain records of old works orders and edited the original order to produce the new order, and in the absence of any evidence to contradict the Council's assertion that it does not have extensive discussions or deliberations or minute decisions made on a daily basis in relation to its management of its inventory of

trees, the Commissioner is satisfied that the Council does not hold any recorded information regarding the original works order.

30. The complainant referred to an email he had received from the Tree Officer describing future plans for Field Maples planted near the northern boundary of the site. The complainant argued that this statement contradicts the Council's position that there was no documentation relating to the decision for future planting of trees on the site.
31. The Council advised the Commissioner that the individual who had corresponded with the complainant was the Tree Officer for the Acton area including Southfield Recreation Park and as such the locating of new or replacement trees was his decision. The Council explained that the Tree Officer had advised the complainant about possible replacement with field maple trees on the northern boundary as this was his thought at the time. However, the Council explained that precise details of the species and location had not been confirmed and therefore there was no documentation relating to any such decision as the thoughts or plans of the tree officer were not recorded other than in the email he had sent to the complainant.
32. The Commissioner is satisfied with the Council's argument that the Tree Officers comments were his thoughts at the time of responding to the complainants enquiry and as no formal decision about the location and species of trees to be planted on Southfield Recreation Park had been made at that stage it did not hold this information at the time of receiving the complainants request.
33. The complainant also referred to an additional email he received from the Tree Officer which referred to a 'consultation with the nearest residents' and further correspondence with the tree service manager which referred to 'representations' arguing that this was the first time he was aware of a consultation having taken place.
34. The Council advised the Commissioner that the Tree Service notified all residents of the properties backing onto the trees in question about the works being carried out by letter in August 2014. It explained that a copy of the letter was not included in their response to the request as it was evident from previous correspondence that the complainant had already viewed the letter. In particular the Council referred to an email from the complaint dated 22 August 2014, in which he confirmed that he had learned of the Council's intention to fell trees and enquired about any consultation process.
35. The Council advised the Commissioner that the notification letter was sent to residents of properties backing onto the trees in question and notices were placed on the trees to be removed. However this was not

part of a consultation exercise but simply to inform the public about the works to be carried out and to allow residents to provide any comments on the proposed removal of the trees.

36. The Commissioner appreciates that the Tree Officer referring to a consultation would lead the complainant to assume that a consultation exercise took place. However the Commissioner is satisfied with the Council's explanation that the provision of letters and notices placed on trees was not part of a consultation exercise but rather to inform the public about the works being carried out in Southfield Recreation Park.
37. The Council also advised that the tree service had received correspondence advocating support for the works from residents. However this correspondence was withheld under regulation 13(1) of the EIR.

Regulation 13(1)

38. Regulation 13(1) of the EIR states that a public authority is not obliged to disclose information if to do so would:

- constitute a disclosure of personal data, and
- this disclosure would breach any of the data protection principles or section 10 of the DPA.

39. 'Personal data' is defined under section 1(1) of the Data Protection Act (DPA) as:

'data which relates to a living individual who can be identified (a) from that data, or (b) from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.'

40. The Commissioner is satisfied that comments from individuals offering support for or objections to the proposed works in Southfield Recreation Park would constitute their personal data.

41. In order to determine whether a public authority may disclose personal data under the regulation 13(1) of EIR, the public authority must determine whether such disclosure would contravene any of the data protection principles. In this case the Council argued that disclosure would breach the first data protection principle.

42. The first data protection principle states:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

43. The Council advised the Commissioner that comments were provided by a small number of individuals and were directed personally to the Tree Officer. The Council argued that individuals were not advised that their comments would be made public and had therefore provided information voluntarily and with no expectation of disclosure to third parties.
44. The Council argued that disclosure of individual's comments had the potential to cause damage and distress by way of encouraging conflict between supporters and opponents of the works. The Council reiterated that the letter sent to residents was for notification purposes only and the invitation for comments was provided to allow residents the opportunity to raise any concerns. The Council argued that there was no compelling public interest in disclosure of the information as the comments received did not sway it's decision to commence with the proposed works.
45. The Commissioner is satisfied that individuals who provided comments to the Council regarding the removal of the trees would not hold any reasonable expectation that their correspondence would be disclosed to third parties. Therefore disclosure of the information would have the potential to cause distress to those individuals, particularly those who supported the works given the emotive subject matter and the actions of a number of opponents to the works which resulted in the Council employing the services of a dog security unit in order to protect the contractors carrying out the works.
46. Given that the responses received did not alter the Council's position in regard to the works carried out the Commissioner is satisfied that there is no overriding public interest in the disclosure of the information which would outweigh the rights and freedoms of the data subjects.
47. The Commissioner has also considered whether the information could be disclosed in an anonymised form. However, as the information relates to a small number of people from a small geographical area he considers that the risk of re-identification is reasonably likely.
48. In considering this complaint the Commissioner appreciates that the Council's approach to managing its inventory of trees, in particular the fact that the Tree Service does not discuss or record all its decisions and does not retain copies of old orders, has caused the complainant to question whether it holds any additional information which was not provided to him in response to his request. However after considering

the information provided by the Council the Commissioner is satisfied that the searches carried out for information falling within the scope of the request were adequate and is satisfied with its explanation that it did not retain a copy of the original works order and had not determined the details of the location and species of the replacement trees at the time of receiving the complainants request.

49. It is therefore the Commissioner's decision that the Council has complied with regulation 5(1) of the EIR. He finds that on the balance of probabilities, the Council does not hold any further information within the scope of the request which has not already been provided to the complainant.
50. It is also the Commissioner's decision that the Council has correctly withheld comments received from individuals in relation to the proposed works under regulation 13(1) of the EIR. He finds that the information constitutes personal data and its disclosure would breach the first data protection principle.

Right of Appeal

51. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

52. 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.
53. 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

Rachael Cragg
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