

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

Decision notice

Date: 15 June 2015

Public Authority: Royal Borough of Kensington and Chelsea
Address: Town Hall
Hornton Street
W8 7NX

Decision (including any steps ordered)

1. The complainant has requested information from the Royal Borough of Kensington and Chelsea ("the Council") relating to the number of reported leaking roofs at Estella House in Henry Dickens Court and the remainder of the estate.
2. The Commissioner's decision is that the Council has provided the complainant with all the information it holds that falls within the scope of his request. He has also determined that the Council is under no duty to provide substitute reference numbers to the information that has been redacted and disclosed. However the Council incorrectly handled the request under the FOIA. The Commissioner has determined that the request is for environmental information and should therefore have been considered under the EIR. In wrongly handling the request under the FOIA, the Council has breached regulation 14(1) of the EIR.
3. As the Commissioner upholds the Council's position that no further information is held, he requires the Council to take no steps.

Request and response

4. On 30 September 2014, the complainant wrote to the Council and requested information in the following terms:

"I am writing to make a request for information regarding roof leaks at Estella House in Henry Dickens Court and the remainder of the Estate.

I would like to know the number of reports made to RBKC regarding leaking roofs on Henry Dickens Court (HDC) generally and for Estella House in particular over the past 20 years. I would also like to know whether there are particular blocks in the estate which have had significantly more reports of leaks than others. Also, the response times in dealing with the reports of leaks and the effectiveness of the responses. Did the responses of RBKC provide permanent remedies to the leaks or is there evidence that the repairs were of a temporary nature allowing leaks to recur?"

5. The Council responded on 14 October 2014. It stated that it did hold some of the requested information. It explained

"We do not hold information for 20 years but have provided the information for as many years as we do. I have redacted the flat number where repairs were conducted due to data protection issues".

6. The complainant contacted the Council later the same day and asked it to confirm that the response he received was complete and would not be changed at a later date in the future.
7. The Council responded on 15 October 2014 and confirmed that the response was complete and no further information was held.

Scope of the case

8. The complainant contacted the Commissioner on 17 October 2014 to complain about the way his request for information had been handled.
9. Specifically, he complained that the response he received from the Council was inaccurate and the Council held further information that fell within the scope of his request.
10. During the Commissioner's investigation, the Council located further information and disclosed this to the complainant in a redacted form. The Council explained that it had anonymised data by taking out flat number and telephone numbers/names where they appeared in the repair description.
11. Upon receipt of this information, the complainant maintained his position that further information was held by the Council. He also considered that where information had been redacted on the grounds that it was personal data, this could be replaced by a substitute reference number so a pattern of behaviour could be determined.

12. The Commissioner contacted the complainant and explained that he was in the process of preparing a decision notice which would set out the Commissioner's view of his complaint. He explained that the decision notice would focus on whether the Council holds any further information within the scope of his request and whether the Council is under a duty to provide a substitute reference numbers to the information that has been disclosed and redacted. The complainant did not dispute this.
13. After considering the information that has been requested, the Commissioner's view is that the information requested may be environmental.
14. The decision notice will therefore firstly consider whether the request seeks environmental information. The decision notice will then consider whether the Council holds any further information within the scope of the request.
15. The decision notice will also consider whether there is a duty on the Council to provide substitute reference numbers to the information that has been redacted and disclosed.

Reasons for decision

Is any of the requested information "environmental"?

16. Regulation 2(1) of the EIR defines what 'environmental information' consists of. It states that environmental information is any information in written, visual, aural, electronic or any other material form on:
 - (a) *the state of the elements of the environment, such as air and atmosphere, 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) and (b) as well as measures or activities designed to protect those elements;*

[...]

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

17. The Commissioner's approach is to interpret "any information...on" fairly widely. He does not consider it necessary for the requested information itself to have a direct effect on the environment in order for it to be environmental information. It will usually include information concerning, about, or relating to measures, activities and factors likely to affect the state of the elements of the environment.
18. Having considered the nature and context of the requests, the Commissioner is satisfied that the information the complainant is seeking would fall under (c) and (f).
19. In view of this, the Commissioner considers that the Council wrongly handled the request under the FOIA. The request should have been dealt with under the EIR.
20. The Commissioner notes that he did not return to the Council on this point as the effect of the issues discussed in this notice are the same under the FOIA and the EIR.

Regulation 12(4)(a) – is any further information held?

21. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
22. In cases such as this, 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 Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
23. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
24. To reach a decision in this case, the Commissioner has considered the context of the case, the nature of the requested information, the Council's responses, the arguments provided by the complainant, and any evidence to suggest that further information is held by the Council.

25. The Council explained that the Kensington and Chelsea Tenant Management Organisation (TMO) manage the Council's housing stock on behalf of the Council. The Council confirmed that the requested information would be held on their systems.
26. The TMO files housing management records by tenancy on a system called Capital Housing system. The system is also used for the management and maintenance of tenancies and leaseholds of the Council's estates, blocks and individual dwellings including the repairs and capita works.
27. The TMO confirmed that repair history had been retrieved from the Capita system using the Microsoft SQL Server database management and query tool.
28. The Council explained that the TMO provided it with a spreadsheet containing the full repairs history for Henry Dickens since 2003. The spreadsheet contains information such as a description of the leak, the workforce that carried out the repair and when the repair was completed. The spreadsheet contains over 15000 entries.
29. Prior to 2003, TMO used a system called Oracle Housing. It also carried out a search of this system for reports of leaking roofs. The search returned a number of results dating back to 1995.
30. The Council confirmed that it carried out a search of the spreadsheets using the term 'leak'. The Council considered that this was a reasonable search term to use and it would include entries made using the term 'leaks' and 'leaking'. The Council did state that there could be more entries for leaks that were not returned when searching 'leak' due to spelling errors or different ways of describing a leak. The Commissioner notes that the term 'leak' is a reasonable search term to use when searching for any information that may fall within the scope of the request.
31. The additional searches carried on the Captia Housing and Oracle Housing systems did return further information that fell within the scope of the request. The Council subsequently disclosed this information to the complainant.
32. After reviewing the submissions provided by the Council, the Commissioner returned to the complainant and explained that in light of the further information that had been disclosed, it would appear that he has been provided with all recorded information that the Council holds relevant to his request.
33. If the complainant disputed this preliminary conclusion, the Commissioner asked him to provide any evidence and/or example of

information he considered to be missing. The Commissioner explained that without this, it would be likely that he would uphold the position of the Council.

34. The complainant returned to the Commissioner and explained that he did not think it was his job to provide the Commissioner with details of additional reports of leaks as it was the Commissioner's job to ensure the Council provided the full information that has been requested.
35. As the Commissioner has not been provided with any evidence that suggests further information is held, he is satisfied on the balance of probabilities that the Council has provided the complainant with all the information it holds that falls within the scope of the request. The Commissioner is therefore satisfied that it has met its obligations under regulation 12(4)(a).

Is there an obligation on the Council to provide substitute reference numbers to information that has been redacted and disclosed?

36. Part of the information that the Council disclosed to the complainant had been redacted as it contained personal data such as names and flat numbers. This information was withheld under section 40(2) of the FOIA as the Council considered it would be a breach of the Data Protection Act 1998 if it were to be disclosed.
37. The complainant did not dispute the redaction of this information on the grounds that it was personal data. However he argued that substitute reference numbers could be used to the information that had been redacted. The complainant explained that this would allow him to determine whether there was a pattern of behaviour when reporting leaking roofs.
38. The Commissioner considers that the Council is not obliged to reference the information it has disclosed. This is because the reference number would constitute the creation of new information and there is no requirement under the EIR to create new information.
39. If the Council chooses to add reference numbers to the disclosed information, this would be a matter of good customer service rather than a requirement under the legislation.

Right of appeal

40. 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

41. 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.
42. 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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