

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

Date: 2 May 2018

Public Authority: London Borough of Sutton
Address: Civic Offices
St. Nicholas Way
Sutton
Surrey
SM1 1EA

Decision (including any steps ordered)

1. The complainant requested information surrounding the revocation of specific Tree Preservation Orders ("TPOs").
2. The Commissioner's decision is that the London Borough of Sutton ("the London Borough") has failed to respond to the request within 20 working days and has therefore breached Regulation 5(2) of the Environmental Information Regulations ("the EIR").
3. The Commissioner requires the London Borough to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the EIR, to the request.
4. The London Borough 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 the Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. On 15 February 2018, the complainant wrote to the London Borough and requested information in the following terms:

"May I please be provided with copies of all council internal memos and reports that lead to the revocation of TPO order Ref 2006/11 and the making of TPO order ref 2017/18."

6. The London Borough acknowledged the request on 16 February 2018, but had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 26 March 2018 to complain about the way his request for information had been handled.
8. In line with her usual practice, the Commissioner contacted the London Borough on 12 April 2018 to highlight the outstanding response. She requested that the London Borough respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
9. The Complainant contacted the Commissioner on 27 April 2018 to request a decision notice considering the London Borough's compliance with the EIR.
10. The Commissioner considers that the scope of her investigation is to determine whether the London Borough has complied with Regulation 5(2) of the EIR.

Reasons for decision

11. 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;

(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;

12. The Commissioner has not seen the requested information but, as it is information relating to Tree Preservation Orders, she believes that it is likely to be information about "measures" affecting or likely to affect the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.
13. Regulation 5(1) of the EIR states that: *"a public authority that holds environmental information shall make it available on request."*
14. Regulation 5(2) states that such information shall be made available *"as soon as possible and no later than 20 working days after the date of receipt of the request."*
15. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the London Borough has breached Regulation 5(2) of the EIR

Right of appeal

16. 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

17. 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.
18. 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

Ben Tomes
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Wilmslow
Cheshire
SK9 5AF