

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

Date: 18 March 2021

Public Authority: Brent Civic Centre

Address: Engineers Way
Wembley Park
Wembley
HA9 0FJ

Decision (including any steps ordered)

1. The complainant has requested information relating to water charges from the Council. The Council initially refused disclosure under the FOIA, however later revised its position to refuse on the basis of regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that the Council has incorrectly applied regulation 12(4)(b) of the EIR to the complainant's request.
3. The Commissioner also finds that the Council has breached regulation 14(1) in that it issued an incorrect refusal notice to the complainant under the FOIA rather than the EIR.

Background to complaint

4. On 22 January 2019, the complainant wrote to the Council and requested information relating to water charges. Since that request and the Council's response, the complainant has made a further series of requests to the Council relating to billing and water charges. The request which is the subject of this decision notice was made on 27 November 2019.

Request and response

5. On 27 November 2019, the complainant made a request for the following information:

"Please give the dates, billing cycle and copy of bills relating to Brent council's payment of water from the tap described above at the location. Is the water supply coming from any residential supply? How can you be sure of your answer?"

Please answer the above taking into account either a or b) below

a) This request relates to the period of time from 01/08/1991 to 01/04/2019. Where does the water supply come from?

or

b) The period from 01/01/2016 - Please give the amount of money that Thames Water has billed Brent council and the dates Brent council paid for water from the period stated to 01/04/2019

Where does the water supply come from? Please describe the details of where the pipe from the tap leads to and where Brent council and its agents get the water from."

6. The Council, on 30 December 2019, responded to the complainant's request under the Freedom of Information Act 2000 (FOIA) providing her with copies of water bills from Thames Water. It attached the response and water bills for ease of reference as it had done in response to previous requests.

7. On 2 January 2020, the complainant requested an internal review of the Council's response dated 30 December 2019, stating the following:

"I ask for this Review of the FOI 14840421 because

1) My request (see email below and original sent to Brent council) is clearly marked and relating to "Tap nearest front door [specified address]" and clearly states "Please give the dates, billing cycle and copy of bills relating to Brent council's payment of water from the tap described above at the location" amongst other things

2) [name redacted] has initiated correspondence which relates to the communal supply of "flats". The individual flats are not my query. My FOI is about that tap in the ground floor area situation near [specified address]. Common/ communal area tap. But the tap does not supply flats. The tap and water from it supplies the commercial interests of Brent council and its contractors/agents.

3) [name redacted] has ignored the dates in question on my FOI and appears, from what she has sent to me, initiated correspondence from Thames water after the date of my request. Why is this?

4) Where is the previous billing information, over the years, for the tap addressed to the landlord?

5) Where is the money that tenants have paid for the water from this tap gone?

6) As Brent council installed the tap why are you unable to say where you are getting the water from?"

8. On 30 January 2020, the Council replied to the complainant's internal review request under the FOIA stating that it was satisfied that the information provided to her was a true account of the information held by the Council. The Council did state in that response however, that the previous response should have included the reason why the Council could not provide the complainant with all of the information requested. The Council informed the complainant that it did not directly hold copies of individual bills for each tap. However to support the complainant's request a copy of the latest bill provided by Thames Water had been attached to her initial request. Additionally, the Council advised the complainant that payments made via its internal systems are not coded to the specific location in which she was requesting information.
9. The Council explained that it would require an officer to analyse all payments made by the Housing Service to Thames Water individually to provide this information. This work would exceed the cost limit

under section 12 since it would take more than 18 hours to complete. Therefore, the Council issued a refusal notice under section 17 of the FOIA for this part of the complainant's request.

10. The internal review carried out on 30 January 2020 was handled under the FOIA instead of the EIR. However, it explained the reason the Council did not hold the information the complainant was requesting. The complainant was also advised that under Section 12 of the FOIA the Council was not obliged to provide information regarding the breakdown of water charges for specific communal taps because it would take more than 18 hours for an officer to analyse all payments made by the Housing Services to Thames Water. The Council acknowledged that this decision should have been made under the EIR. It stated that the complainant's request fell under the exception to disclose because it is considered to be 'manifestly unreasonable' under regulation 12(4)(b) of the EIR.
11. Following further correspondence from the complainant and the Commissioner, the Council carried out another review of its handling of all the complainant's requests to date, which it sent to the complainant on 16 July 2020. It acknowledged that the requests had not been handled completely correctly in accordance with information rights legislation, however it reiterated its application of regulation 12(4)(b) of the EIR to the complainant's request of 27 November 2019.
12. The complainant wrote to the Commissioner to inform her that she was still dissatisfied with the latest response from the Council.
13. The Commissioner wrote to the Council on 1 February 2021 to seek its submissions as to its application of regulation 12(4)(b) of the EIR.
14. The Council responded to the Commissioner on 17 February 2021, stating that it does not specifically hold the remaining requested information, which it would have to request from Thames Water. It informed the Commissioner that it does not hold individual invoices for specific communal taps for each block. The water bills for a number of its sites are paid in one bulk payment every six months. The Council would need to request the details for individual invoices from Thames Water and carry out an analysis of these before it could provide the specific information the complainant is requesting.

Scope of the case

15. The complainant wrote to the Commissioner to inform her that she was still dissatisfied with the latest response from the Council.
16. The Commissioner wrote to the Council on 1 February 2021 to seek its submissions as to its application of regulation 12(4)(b) of the EIR.
17. The Council responded to the Commissioner on 17 February 2021, stating that it does not specifically hold the remaining requested information, which it would have to request from Thames Water. It informed the Commissioner that it does not hold individual invoices for specific communal taps for each block. The water bills for a number of its sites are paid in one bulk payment every six months. The Council would need to request the details for individual invoices from Thames Water and carry out an analysis of these before it could provide the specific information the complainant is requesting.
18. The Commissioner has considered the Council's handling of the complainant's request.

Reasons for decision

Regulation 12(4)(b)

19. Regulation of the EIR 12(4)(b) provides that

"(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(b) the request for information is manifestly unreasonable;"
20. The Council's original position was that the request is manifestly unreasonable in terms of potential cost and because of the disproportionate burden it would impose on its limited staffing resources.
21. Regulation 12(4)(b) of the EIR is designed to protect public authorities from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation in handling information requests. In effect, it works in similar regards to two exemptions within the Freedom of Information Act 2000 ('FOIA'): section 12, where the cost of complying with a request exceeds the appropriate limit and section 14, where a request is vexatious.

22. The EIR differ from the FOIA in that there is no specific limit set for the amount of work required by an authority to respond to a request, as that is provided by section 12 of the FOIA.
23. Specifically, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') which apply in relation to section 12 of the FOIA are not directly relevant to the EIR because the cost limit and hourly rate set by the Fees Regulations do not apply in relation to environmental information. However, the Commissioner accepts that the Fees Regulations provide a useful starting point where the reason for citing regulation 12(4)(b) is the time and cost of a request, but they are not a determining factor in assessing whether the exception applies.
24. The Fees Regulations confirm that the costs associated with these activities should be worked out at a standard rate of £25 per hour per person. For local authorities, the appropriate limit is set at £450, which is the equivalent of 18 hours work.
25. The Council, in its previous correspondence, had applied the above regulation to the requested information as it had been under the assumption that it needed to estimate time, cost and resources involved in retrieving and extracting the information from Thames Water. However, in its most recent correspondence to the Commissioner it confirmed that the information was not directly held by the Council itself, but by Thames Water which is a separate body. As the Commissioner accepts that the Council does not actually hold the requested information, she considers that regulation 12(4)(b) of the EIR was incorrectly applied by the Council.

Procedural Matters

26. Regulation 5(1) of the EIR states that, subject to any exceptions, if held, environmental information must be made available on request.
27. Regulation 5(2) requires that the information be made available promptly, and in any event no later than 20 working days after the date of receipt of the request. Regulation 14(2) requires that refusal notices are also issued within that time frame.

Regulation 14(1) – refusal to disclose information

28. In the circumstances of this case the Commissioner has found that although the Council originally considered this request under FOIA it is the EIR that actually apply to the requested information. Therefore

where the procedural requirements of the two pieces of legislation differ it is inevitable that the Council will have failed to comply with the provisions of the EIR.

29. In these circumstances the Commissioner believes that it is appropriate to find that the Council breached regulation 14(1) of EIR which requires that a public authority that refuses a request for information to specify, within 20 working days, the exceptions upon which it is relying. This is because the refusal notice which the council issued (and indeed its internal review) failed to cite any exception contained within the EIR as the Council actually dealt with the request under FOIA.
30. Since the Council has subsequently addressed this failing the Commissioner does not require it to take any steps in this regard.

Right of appeal

31. 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@justice.gov.uk

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

32. 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.
33. 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

Deirdre Collins
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Wycliffe House
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