

EIR Request submitted to LBB to obtain the Hendon Hub "Outline Business Case"

From: Tony Mason (t [REDACTED])

To: [REDACTED]

Date: Saturday, 23 January 2021, 12:30 GMT

Hi Brad

This email summarises the status of my use of an FOI/EIR request to obtain the "Outline Business Case" that LBB (Officers & councillors) claimed was exempt under Schedule 12A of the Local Government Act (LGA 1972).

To keep this email at a high level:

- As we discussed on the call, the "outline business case" for the Hendon Hub is separate from, but interlinked with, the SPD document that is undergoing the statutory "engagement" process with local residents.
- I think I explained that there appear to be different teams dealing with the SPD planning documents and the business case. I was surprised when I found this out but am not totally convinced that they are completely different teams and it may just be different people within the same planning function
- The Outline Business case was first referenced at the P&RC Meeting of 8th Dec 2020 where it was claimed as "Schedule 12A" exempt. I challenged this exemption as I feel that this document should be in the public domain
- The attached email [*UPDATE: EIR Request submitted to LBB to obtain the Hendon Hub "Outline Business Case"*] gives the full context and was sent to both LBB Officers and Councillors. It provides the status as of 1st Jan 2021
- The attached email [*Information request (ref: 6875124)*] was an acknowledgement by LBB that they had missed the due date of 12 Jan 2020 and effectively asks for an extension until Tues 26th Jan. I have agreed
- My gut tells me that on 26th Jan I will receive a heavily redacted Outline Business Case for the Hendon Hub. I will then review the response to establish whether to accept what is provided or whether to apply further pressure to obtain the additional information
- I had originally planned to provide an update to all councillors as to this delay (from 12th Jan to 26th Jan) but decided to wait until the deadline of COB Tues 26th Jan as I will then have more to say (good or bad).
- I will provide you with LBB response to the Outline Business Case and advanced copy of my response we can agree the most effective strategy related to the OBC as we move forward

Separate Info Request to ICO

- There is a complicated overlap between information rights under LGA 1972 (and its various updates) and FOI/EIR legislation.
- To get this overlap out into the open I submitted a separate information request to the ICO: https://www.whatdotheyknow.com/request/icos_internal_guidance_notes_rel#incoming-1710413
- The ICO should have provided a clear response by COB Fri 22nd but they have messed up 😞 (I am not really surprised as this is a hot topic and if it was delegated to a junior officer then they would not have had the skills to respond)

- From the URL above you will see that, as there was a failure by the ICO to respond by COB Fri 2nd I have escalated within the ICO.
- Fortunately I do not need a final response from the ICO to progress with pressurising Barnet if they fail to meet the Tues 26th Jan deadline

Regards

Tony

TO/CC: LBB Officers: Officers accountable/responsible for LBB Information Governance

LBB Councillors: Councillors associated with the: Policy & Resource Committee (P&RC), Hendon Area Committee (HAC) & Hendon Residents Forum

BCC: Other interested parties (FYI Only)

UPDATE

This is an update email to my original email of Wed 16/12/2020 21:20 "*URGENT: Policy and Resources Committee - Tuesday 8th December, 2020 6.00 pm (Challenge to exemption of Agenda item 17)*".

I strongly recommend that all recipients read this update email as this EIR request impacts both LBB Senior Officers and LBB Councilors. The attached PDF ("*EIR Request submitted to LBB to obtain the Hendon Hub Outline Business Case v1.0*") provides additional details not included in this cover email.

In summary:

1. Core Issue that triggered this EIR request.

- a. I am challenging the decision (by both LBB Officers and LBB Councilors) to make [item 17 of the P&RC Meeting of 8th Dec 2020](#) an exempt item (under Schedule 12A of LGA) to prevent approx. 400 pages of the Hendon Hub "Outline Business Case" from being placed in the public domain.
- b. Note: a video recording of the 8th Dec P&RC meeting is available. The recording can be accessed via this URL: "[Click here for the meeting](#)" then "Watch on Web Instead" > "Join Anonymously". The discussion of the Hendon Hub is from time-marks: 0:10:00 to 1:50:00

2. EIR Information Request.

For reasons explained more fully in the attached PDF ("*EIR Request submitted to LBB to obtain the Hendon Hub Outline Business Case v1.0*") I have agreed with LBB Information Governance Officers that the best way forward is via a formal "Environmental Information Regulation" (EIR) request to obtain two items:

- a. **The original (signed-off) Public Interest Test (PIT)** document that supports the Schedule 12A exemption decision related to Item 17 of the 8th Dec P&RC Meeting (Note: I have attached an "*Example_Schedule 12A PIT template*" used by other local authorities as part of normal information governance process and I would expect that LBB would have an equivalent document specific to Item 17)
- b. **The full "Outline Business Case"** i.e. information that LBB claim is as exempt under Item 17 of the 8th Dec P&RC Meeting.

This EIR request now rests with the LBB Information Governance team (*LBB Information request ref: 6875124*), and I expect a response by 12 Jan 2021 at the latest.

3. Is unlikely that LBB is lawfully entitled to withhold all of item 17 in response to an EIR information request.

I have not seen a copy of the Schedule 12A “Public Interest Test” for item 17, nor have I seen the Table of Contents for the “Outline Business Case”. However, based on public domain information and my knowledge of FOI/EIR/GDPR legislation and associated case law, I believe it is unlikely that LBB is lawfully entitled to withhold ALL of item 17 in response to an EIR information request. Key considerations are:

- a. IF the withheld “Outline Business Case” is fundamentally similar to a “[Financial Viability Assessment](#)” (FVA), then ICO/FTT precedent is that it is in the public interest for FVAs to be made public. Note: one such FVA is the attached “Sweets Way” ICO Decision Notice (“*FER_0610052 LB Barnet (2016) - FVA (Successful)*”) issued by the ICO to LBB in 2016. Note: LBB Officers delayed responding to the Sweets Way FVA request for a full 12 months and were only willing to provide the requested information after being instructed to do so by the ICO. I suggest this deliberate attempt by LBB to delay publishing the FVA is not consistent with either LBB’s own “Statement of Community Involvement” document or national legislation related to “open and accountable local government”.
- b. Any LBB argument for withholding the requested information because it is “draft” or “outline” (and is therefore incomplete) rather than the “Full Business Case” is also likely to fail given that this outline document was issued to LBB councillors for the express purpose of decision making at the P&RC meeting. Also, if the decision to make the outline business case exempt is not challenged at this time then there is no reason to believe that LBB will not attempt to claim that the “Full Business Case” is also exempt (as per Sweets Way FVA referenced above).
- c. It may be helpful to pick-up on a comment by “The Leader” (meeting recording time stamp 1:31:20) which might indicate that there is a misunderstanding as to how “commercially sensitive” information is dealt with under Information Rights legislation. I have attached the ICO’s guidance document related to “confidentiality of commercial information”. In short, “commercially sensitive” information is a qualified exemption (and not an absolute exemption) under both EIR and Schedule 12A. This means that any such information is subject to the Public Interest Test and therefore factors that support non-disclosure must be balanced against those factors that support full or partial disclosure.
- d. There are multiple other reasons why the PIT favours placing the “Outline Business Case” in the public domain. I will provide these reasons later and only if it becomes necessary to escalate this EIR information request to the ICO.

4. Process for challenging an EIR refusal decision. It is worth clarifying that:

- a. If an EIR request is either completely, or partially, refused by the receiving Public Authority (PA) then the requestor has a right to ask for the 1st refusal decision to be “reconsidered” by the PA. It is normally only after a 2nd refusal by the PA that the requestor will escalate to the ICO.
- b. However, in the case of this EIR request, I have already escalated this matter to LBB Executive management and as a result there is no justification for requesting that a 1st refusal be “reconsidered” (because all accountable/responsible individuals are already involved and a 2nd iteration unreasonably delays escalation to the ICO)
- c. Therefore, IF I find reasonable grounds to make a formal complaint to the ICO then the local residents will escalate to the ICO immediately after the 1st refusal by LBB. Note: the ICO will accept escalation after a 1st refusal where the specific context clearly justifies this.

5. Additional: Comments / Questions / Actions.

- a. **P&RC Minutes.** Please confirm that my challenge against LBB making item 17 exempt (by way of an EIR request) is recorded in the P&RC meeting minutes. Note: I did raise my concerns in

writing before the start of the P&RC Committee meeting and therefore there should be no procedural reason for not including this matter on the minutes. Please advise if I am wrong.

- b. **Missing "Hendon Hub Proposal" Presentations.** I note that the presentations made by Suzi Carter et al. during meeting do not appear to be available for download. @Please make these presentations available. Q: Is this in breach of statutory obligations related to publishing information presented at the meeting?
- c. **Separate FOI Request direct to ICO.** In the interest of transparency, it is appropriate that I advise LBB Information Governance that I have raised a completely separate FOI request to the ICO via the "WhatDoTheyKnow" website (See [here](#)): FOI request: *"I am seeking access ALL information held by the ICO that guides the ICO's interpretation of ANY aspect of "Schedule 12A of the Local Government Act (LGA) 1972".* I made this request to the ICO because I wish to surface the ICO's own internal guidance related to the overlap between Schedule 12A of LGA and EIR legislation. This separate ICO request will likely be of marginal interest to LBB. This is because I agree with LBB Information Governance that this LBB information request only needs to consider EIR legislation/case law (and therefore Schedule 12A considerations are irrelevant). This is because Schedule 12A PIT considerations fall away once EIR is engaged. Note: some Local Authorities have attempted to justify a refusal of an information request by mistakenly conflating Schedule 12A of LGA with EIR. In such cases the Schedule 12A issue is addressed as part of the overall ICO Decision Notice.
- d. **Illegally withholding information is a criminal offence.** Finally, I remind all LBB Officers and Councillors that it is a criminal offence to deliberately withhold information that must legally be disclosed under either FOI/EIR legislation (see example [here](#)) and also legislation related to "open and accountable local government" (see [here](#) – Pgs 16, 22, 26: *"It is a criminal offence if, without a reasonable excuse, a person who has in his or her custody a document, which the national rules require to be made available to the public, refuses to supply the whole or part of the document or intentionally obstructs any other person/s from disclosing such a document"*)

If anyone has any questions then please do not hesitate to contact me by email or phone.

Regards

Tony Mason ([tr\[REDACTED\]@hendon.gov.uk](mailto:tr[REDACTED]@hendon.gov.uk), Mobile: [REDACTED])

DISTRIBUTION

LBB Officers (Governance)	P&RC: Councillors [LBB_P&RC]	Hendon Area Committee Councillors & Hendon Residents Forum [LBB_HAC]
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Cath Shaw [REDACTED]	David Longstaff [REDACTED]	Saira Don (Vice-Chair) [REDACTED]
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	Shimon Ryde (sub) [REDACTED]	



Information request
Our reference: 6875124

Dear Mr Mason

Environmental Information Regulations 2004

I am writing to update you on the progress of your EIR ref 6875142. Having reviewed the paper we are going to consult with the third parties who provided information with a view to releasing a redacted version which we will supply to you within the next 14 days. I realise that this will exceed the 20 day statutory deadline for EIR responses and we are not seeking to extend this deadline but I believe that this is the quickest way of getting to you all information that can be released. I will send a full response to your EIR no later than 26th January.

The decisions have now been made and the committee were able to discuss the development and the exempt paper, explore the options and ask questions in private session and a safe space. Since the decisions were made, we have progressed a number of key negotiations and hence do not feel that some aspects of the papers are, on balance, quite so sensitive as they were when they went to Public and Resources Committee so the council is able to release some of the document.

Yours sincerely

Chris Lloyd
Business Support Manager

Growth and Corporate Services

2 Bristol Avenue, Colindale, NW9 4EW

Barnet Online: www.barnet.gov.uk



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703.8kB



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717kB



EIR Request submitted to LBB to obtain the Hendon Hub Outline Business Case v1.0.pdf

38.9kB



ICO_EIR_Confidentiality of commercial or industrial information - Reg 12(5)(e) [IMP].pdf

279kB



FER_0610052 LB Barnet (2016) - FVA (Successful).pdf

41.1kB



Example_Schedule 12A PIT template.pdf

90.8kB