

London Borough of Barnet
2 Bristol Avenue,
Colindale,
London, NW9 4EW
13 March 2023
Our ref: 9262996

Thank you for your request received on 20 February 2023, for the following information:

I am writing to request information under the Freedom of Information Act 2000. Specifically:

I would like to request the details of, and all, correspondence and data relating to a complaint received against a domestic planning application/permission reference 22/5380/HSE to Barnet Council.

Please provide any information that you hold, including emails, letters, pictures, notes, findings from investigations and other records that relate to this complaint. Please also include any records of meetings, phone calls, or other communications that took place between the complainant and Barnet Council. In particular the Barnet principle planner Ms Feldman.

Also any correspondence internally between the planning team and enforcement team regarding the complaint and investigations that were claimed to have been undertaken. I would hope and expect that the personal details of the complainant would be redacted.

This request is in the public interest due to concerns that the councils' vexatious pursuit of an enforcement in lieu of any evidence or investigation is unjust and harassment.

We have processed this request under the Environmental Information Regulations 2004.

Response

I can confirm that London Borough of Barnet holds the information you requested. However, we consider that the following exceptions apply to some of the information requested.

Planning enforcement case reference ENF/0119/23 is still under investigation and has not been closed, please Refusal Notice below.

Refusal Notice

R12 (5) (b) - The course of justice

We consider that regulation 12 (5) (b) (The course of justice) applies to the information requested because we consider that disclosure of the information requested would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature. Until the outcome of the enforcement investigation has been formally determined the Council is not in a position to make available further details of the case available.

The public interest means what is in the best interests of the public not what is of interest to the public.

Factors in favour of disclosure

- Furthering the understanding and participation in the public debate of issues of the day.
- Promoting accountability and transparency by public authorities for decisions taken by them.
- Promoting accountability and transparency in the spending of public money.
- Allowing individuals, companies and other bodies to understand decisions made by public authorities affecting their lives.
- Bringing to light information affecting public health and safety.

Factors in favour of withholding

- There is a very strong public interest in protecting the law enforcement capabilities of public authorities.
- The enforcement investigation is ongoing and progress is reported through established mechanisms. If a formal Notice is served or any prosecution action taken only when these processes have been fully completed and appeal routes exhausted will this information will be made available into the public domain.
- Any information provided by third parties during the course of such investigations should be treated in confidence and only used for the purposes for which it was provided. We believe that people would be discouraged from providing information if they thought their information might be released publicly without a compelling reason to do so. It is therefore important that this information remains confidential.

In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

R12 (4)(e) - internal communications

Records of meetings, phone calls, or other communications that took place between the the principle planner and the enforcement team are all considered internal

communications and are intended for internal circulation only, their release may affect our ability to effectively share information of this kind internally in future.

This is a qualified exception under the EIR which means that consideration must also be given to whether in all the circumstances of the case the public interest favouring disclosure is greater than the public interest in maintaining the exemption. These factors are that the decision making processes of public functions should be transparent and open to scrutiny in order to inform the public debate. There is a clear need to be able to share potentially sensitive information with colleagues engaged. If officials feel restricted in their ability to communicate due to concerns that it may be disclosed under a future EIR request, it may affect our ability to conduct official business and on the planning enforcement team's ability to carry out future investigations, with no clear benefit to the public good. The public interest in withholding the requested information outweighs the public interest in disclosure of the requested information

R13 – Personal data

We consider that regulation 13 (Personal information) applies to the information requested. Therefore, we have decided to withhold the information.

[Part 1 of Schedule 19](#) of the Data Protection Act 2018 amends the personal data exception Regulation 13 of the Environmental Information Regulations 2004. These are consequential amendments designed to ensure that the correct provisions of the GDPR and the new Act are referenced instead of the now repealed DPA 1998. They will not fundamentally impact when personal data can, and cannot, be disclosed in response to an EIR request.

We consider the information is subject to Regulation 13 because to release it would be a breach of the Data Protection Act 2018.

Personal Information is governed by the Data Protection legislation and is defined as any information relating to an identified or identifiable natural person ('data subject')'. It adds that: an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location number, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

The withheld information is exempt because disclosure would contravene the first data protection principle which requires that personal data is processed fairly and lawfully. Disclosure of the requested information would breach this principle and in particular the requirement of fairness.

Further information

If you are interested in the data that the council holds you may wish to visit Open Barnet, the council's data portal. This brings together all our published datasets and other information of interest on one searchable database for anyone, anywhere to access. <http://open.barnet.gov.uk/>

Advice and Assistance : Direct Marketing

If you are a company that intends to use the names and contact details of council officers (or other officers) provided in this response for direct marketing, you need to be registered with the Information Commissioner to process personal data for this purpose. You must also check that the individual (whom you wish to contact for direct marketing purposes) is not registered with one of the Preference Services to prevent Direct Marketing. If they are you must adhere to this preference.

You must also ensure you comply with the Privacy Electronic and Communications Regulations (PECR). For more information follow this Link www.ico.org.uk

For the avoidance of doubt the provision of council (and other) officer names and contact details under FOI does not give consent to receive direct marketing via any media and expressly does not constitute a 'soft opt-in' under PECR.

Your rights

If you are unhappy with the way your request for information has been handled, you can request a review within the next 40 working days by writing to the Information Management Team at: foi@barnet.gov.uk. Or by post to Records & Information Management Service, Assurance Group, London Borough of Barnet, 2 Bristol Avenue, Colindale, NW9 4EW

If, having exhausted our review procedure, you remain dissatisfied with the handling of your request or complaint, you will have a right to appeal to the Information Commissioner at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF (telephone: 0303 123 1113; website www.ico.org.uk). There is no charge for making an appeal.