

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

Decision notice

Date: 16 July 2013

Public Authority: London Borough of Merton
Address: Merton Civic Centre
London Road
Morden
Surrey
SM4 5DX

Decision (including any steps ordered)

1. The complainant made a series of requests to the London Borough of Merton ("the Council") for information relating to visits by an Environmental Health Officer to a property which was under the complainant's control and management and which had been the subject of a series of prosecutions under the Housing Act 2004, the Prevention of Damage by Pests Act 1949 and the Public Health Act 1936. The Council responded to the first 3 requests and then advised the complainant that it would not answer further FOIA requests on the same issue as the request was vexatious under section 14(1) of the FOIA. This was revised at the internal review stage to include reference to regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that the Council has correctly applied regulation 12(4)(b) to the request. There are no further steps to be taken.

Background

3. The complainant has the control and management of several properties in the London Borough of Merton, one of which has been the subject of several environmental health officer investigations over a number of years between 2008 and 2011. These investigations related to breaches of the Housing Act 1994, Prevention of Damage by Pests Act 1949 and the Public Health Act 1936. The concerns related to hazards of crowding and space, food safety, fire hazard, domestic hygiene (pests and refuse), fuel combustion products and other matters related to size, layout and suitability of living accommodation.
4. As part of the investigations the environmental health officers of the Council visited the premises on many occasions to carry out inspections and to try and secure the complainant's compliance with his obligations under the legislation. The Council has explained that several improvement notices were served but following difficulties securing sufficient compliance with these notices it brought prosecutions under the relevant legislation.
5. On 16 December 2011 the complainant was found guilty of 30 separate offences relating to non-compliance with prohibition orders and failing to comply with improvement notices.
6. The complainant did not appeal this matter. However, since this date he has pursued several avenues in an attempt to reopen issues in relation to the state of his property and the Council's subsequent prosecution which he states was not justified.
7. The complainant used the Council's formal complaints procedure to raise issues about the prosecution in May 2011, January 2012 and March 2012. He has also made a complaint to the Local Government Ombudsman ("LGO") in March 2012 which has been dealt with and no further action taken. A complaint was also submitted to the Criminal Cases Review Commission ("CCRC") with no further action.
8. Whilst pursuing these avenues of review of his situation the complainant continued to write to the Council in an attempt to explore the issues which had led to his prosecution. These culminated in a series of requests to the Council under the FOIA.
9. The complainant has continued to argue that the Council is prejudiced against him and that the investigations and prosecution are not justified. He states that he believes he is being targeted by the Council.

Request and response

Request 1

10. On 27 June 2012 the complainant wrote to the Council and requested information in the following terms:

"I am applying for the first time to get the information about the council staff's visit to the above address [address redacted] from - 12-6-2008 to 8-8-2011 for [Redacted] - Senior Environmental Health Officer - Also any other staff accompanied her with date + time registered or noted in the council's record."

11. On 5 July 2012 the Council responded, enclosing a table of information which provided the details of all council staff visits to the property between 12 June 2008 and 8 August 2011 including dates, times where recorded and persons present.

Request 2

12. On 20 July 2012 the complainant submitted a further request for information as follows:

"...under which section did [Redacted] visited our premises on various occasions..."

13. The Council responded on 30 July 2012 by providing the complainant with the details of the statutory authority under which it had entered his premises.

Request 3

14. On 12 August 2012 the complainant submitted a further request for information as follows:

"We also request you under the F.O.I act to write us under which act she visited my place." and

"[Redacted] visited on - 28.09.09 but we have not recd any letter about her visit - nor any outcome after her visit. Please under FOI I have a right to know what is stated in the council record about her visit."

15. On 3 September 2012 the Council provided a response to the request for information of 12 August 2012. Information was given to the complainant about the relevant legislation and the visit of the council officer on 28 September 2009.

Request 4

16. On 9 September 2012 the complainant made a further request for information as follows:

"Please give me the name of person whom she spoke on 28-9-09? In absence of me"

17. On 19 September 2012 the Council advised the complainant that it was not obliged to comply with requests under the FOIA which it considered to be vexatious under section 14. It stated that it regarded the complainant's recent requests as being obsessive and that current unanswered and future requests for information on the property which was the subject of the requests would not be dealt with.
18. On 4 October 2012 the complainant wrote to the Council to express his concerns about the Council and reiterated his request for information about the name of the person who the environmental health officer had spoken to on 28 September 2009.
19. On the same date the complainant lodged a complaint with the Information Commissioner's Office stating that he was not satisfied with the response he had received to his requests.
20. On 30 November 2012 the complainant wrote to the Council and requested an internal review of the response to his requests.
21. On 20 December 2012 the Council provided the complainant with a response to the request for an internal review. It advised that it had reviewed the requests under both the provisions of the FOIA and the EIR as it felt that it could be argued that the requests for information could also be considered requests for environmental information.
22. It upheld the decision of the 3 September 2012 which concluded that the request of 9 September 2012 was vexatious under section 14 of the FOIA or, alternatively, manifestly unreasonable under regulation 12(4)(b) of the EIR.

Scope of the case

23. The complainant contacted the Commissioner on 29 December 2012 to advise that he was not satisfied with the response to his request for an internal review.
24. As part of this investigation the Commissioner has sought to clarify the scope of this complaint and has sought submissions from the

complainant as to what information he believes is still outstanding. A response has been received which includes the complainants arguments in this matter including his views about the previous environmental health prosecutions and his strongly held views as to the validity of the Council's actions. The complainant maintains that he has received no information from the Council at all. The Commissioner will therefore address each of the 4 requests in the reasons for decision.

25. The Commissioner has also considered whether the Council's application of section 14(1) of the FOIA or regulation 12(4)(b) of the EIR to the requests is correct.

Reasons for decision

26. The Commissioner has had to consider whether the required information is "environmental information" for the purposes of the EIR.
27. Regulation 2(1)(a)–(f) of the EIR defines "environmental information" as any information on:-
- (a) the state of the elements of the environment.
 - (b) factors affecting /likely to affect elements.
 - (c) measures/activities affecting elements or factors or designed to protect elements.
 - (d) reports on the implementation of environmental legislation
 - (e) cost benefit analyses used for measures
 - (f) human health and safety and living conditions inasmuch as affected by elements or through elements by factors or measures.
28. As part of his investigation as to whether these requests fall under the FOIA or the EIR the Commissioner has considered documentation provided by the Council which details the matters that it was considering as part of its original investigation for its prosecutions. The Council recognised that this was a finely balanced matter as it addressed both pieces of legislation in its internal review.
29. The documentation provided gave details of investigations and prosecutions relating to breaches of the Housing Act 1994, Prevention of Damage by Pests Act 1949 and the Public Health Act 1936. The concerns highlighted hazards of crowding and space, food safety, fire hazard, domestic hygiene (involving pests and refuse both indoors and outside),

fuel combustion products and other matters related to size, layout and suitability of living accommodation.

30. Having considered the documentation provided including the environmental health officer's report for court dated 20 June 2011, the Commissioner recognises that the issue of whether the requested information is "environmental" is a very finely balanced matter.
31. The information requested relates to matters concerning human health and safety and living conditions as defined by regulation 2(1)(f). These are affected by factors arising under regulation 2(1)(b) in so far as waste, pest infestation and overcrowding have an environmental impact. The requested information also details measures taken by the Council through the exercise of its statutory responsibilities under environmental health legislation which are designed to protect the environment. Although finely balanced the Commissioner considers that the requested information is environmental information.
32. Therefore, taking into account the nature of the request and the evidence provided, the Commissioner is satisfied that the requests fall to be considered under the EIR.

Request 1

33. The Council has provided evidence that it wrote to the complainant enclosing a table of information which provided the details of all council staff visits to the property between 12 June 2008 and 8 August 2011 including dates, times where recorded and persons present. However during the investigation it became apparent that it could not be certain that the complainant had received this letter as he did not refer to the same in any later correspondence despite being precise about all other letters received by him. An additional copy was provided to the complainant during the investigation.
34. Therefore, taking into account the nature of this request and the Council's letter to the complainant, the Commissioner is satisfied that the Council has met its obligations under the EIR in respect of request 1.

Request 2

35. The Council has provided evidence that it sent a letter dated 30 July 2012 providing the complainant with the details of the statutory authority under which it had entered his premises. The complainant has also referred to this letter and the information within it in subsequent correspondence which the Commissioner has considered as part of his enquiries.

36. Therefore, taking into account the nature of this request and the Council's letter to the complainant, the Commissioner is satisfied that the Council has met its obligations under the EIR in respect of request 2.

Request 3

37. The Council has provided evidence to the Commissioner that it sent a letter to the complainant on 3 September 2012 which gave details as to the relevant legislation which enabled access to his premises and information about the visit of the council officer on 28 September 2009. This letter and the information contained within it were referred to by the complainant in his subsequent request for information to the Council dated 9 September 2012.
38. Therefore, taking into account the nature of this request and the Council's letter to the complainant, the Commissioner is satisfied that the Council has met its obligations under the EIR in respect of request 3.

Request 4

Regulation 12(4)(b)

39. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request is manifestly unreasonable
40. When considering whether a request is "manifestly unreasonable" under regulation 12(4)(b) the Commissioner is mindful of the guidance in respect of section 14 of the FOIA as the factors to be considered are very similar.
41. The Commissioner's published guidance¹ on section 14(1) (which was the current guidance at the time of the request) provides that the following five factors should be taken into account when considering whether a request can accurately be characterised as vexatious:
- whether compliance would create a significant burden in terms of expense and distraction;
 - whether the request is designed to cause disruption or annoyance;
 - whether the request has the effect of harassing the public authority or its staff;

¹http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

- whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
 - whether the request has any serious purpose or value.
42. The guidance stated that it is not necessary for all five factors to be engaged, but explained that the Commissioner will reach a decision based on a balance of those factors which are applicable, and any other relevant considerations brought to his attention.
43. The position in relation to regulation 12(4)(b) of the EIR is very similar. Previous published guidance of the Commissioner in respect of this section follows similar lines to that for section 14 of the FOIA save that this exception is also subject to a public interest test.
44. The Commissioner has recently issued new guidance² on the application of section 14(1) and regulation 12(4)(b) and this adopts a less prescriptive approach. It refers to a recent Upper Tribunal decision³ which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
45. The new guidance therefore suggests that the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.
46. The Council advised the complainant of its decision to treat his request as vexatious on 19 September 2012. In this letter the Council made reference to the five headings as outlined in the Commissioner's previous guidance. At a later stage and as part of its submissions to the Commissioner the Council provided additional arguments encompassing aspects of the more recent guidance.
47. The Commissioner has therefore considered the arguments put forward by the Council and by the complainant in light of the Upper Tribunal's view of the importance of 'proportionality' and 'justification' and has

²http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

³ *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013)

balanced this against the purpose and value of the request. Where relevant, he has taken into account wider factors such as the background and history of the request.

Background and history to this request

48. The Council has argued that the requests of the complainant should be considered in the light of the previous proceedings brought by the Council under the Housing Act 2004, the Prevention of Damage by Pests Act 1949 and the Public Health Act 1936, together with the complainant's responses to the same. It argues that the content of the complainant's correspondence demonstrates his requests are simply a way to reopen issues that have already been reviewed by way of complaint to the Council, the LGO and the CCRC. It advised that the issues raised had already been subject to independent scrutiny by the courts as this matter was dealt with by way of trial of the issues in December 2011.
49. The Council also stated that because of its past experience with the complainant on this issue it is of the opinion that the complainant will never be satisfied with the outcome of any information provided and that he will continually seek to ask questions for the sole purpose of reopening the debate on the issue of what he sees as an unjustified prosecution. It has argued that any responses lead to further correspondence, requests and complaints, which demonstrates obsessive and unreasonable behaviour on the part of the complainant. It contends that the requests show a clear intention to reopen issues that have already been considered.
50. It is apparent from the correspondence received that the complainant is not happy about the outcome of the Magistrates Court proceedings and, although he has not appealed this decision through the courts, he has sought to appeal the decision by every other means possible including use of the Council's own complaints procedure on several occasions, and by making complaints to the LGO and the CCRC.
51. In attempting to define the scope of this matter the Commissioner has sought to clarify what information is still outstanding from the complainant's perspective. The correspondence received from the complainant highlighted his concerns about the way he believed the Magistrates court proceedings had been dealt with and evidenced the Council's observation that the complainant did not feel able to move on from this particular issue. In addition several critical comments were made about the Council, individual officers, the LGO, the CCRC and the courts.

52. The Commissioner does not consider that the volume of correspondence received by the Council indicates a particularly obsessive pattern of behaviour in itself. However, having considered the details of this case, he is satisfied that the requests of 27 June 2012, 20 July 2012, 12 August 2012 and 9 September 2012 represent an attempt on behalf of the complainant to reopen issues that have already been reviewed on several occasions by various regulatory bodies including the courts and that this is an improper use of the EIR.

Serious purpose or value

53. The Council has argued that the complainant's concerns about the environmental health prosecutions against him have been considered by the courts, the Council through its formal complaints procedure, by the LGO and the CCRC. None of these bodies found there was a matter for further investigation and therefore the Council is of the view that these requests for information represent unreasonable persistence on the part of the complainant which lacks serious value or purpose to the public at large.

54. The Commissioner notes that in the letter containing request 3 the complainant argued that the above bodies who had previously reviewed this issue were mistaken, and that the Council did not have any authority or reason to take the proceedings it did.

55. The Commissioner appreciates that this is a serious issue for the complainant and one upon which he holds very strong views. This is evident from the letters provided to the Commissioner by the complainant and the tone and language adopted within them. However, the Commissioner is satisfied, having considered the documentation provided to him, that this issue has been already considered at length by various statutory bodies who have all individually concluded that no further action is required. It is noted that the complainant has not sought to take the original proceedings to appeal when that opportunity was open to him but has sought to reopen issues by means of complaints to various bodies rather than through a review through the judicial process.

56. Taking these factors into account, the Commissioner is satisfied that request 4 serves no serious purpose or value to a wider audience other than to the complainant himself.

Detrimental impact: workload, irritation and distress

57. The Council has put forward the argument that although the correspondence received from the complainant has not been unduly excessive in respect of FOIA/EIR requests the effect of such

correspondence has been very disruptive. It stated that the environmental health officers spent a considerable amount of time dealing with the original issues, the court proceedings, follow up complaints to the Council using its complaints procedures, the complaints to the LGO and the CCRC, and the EIR requests. The correspondence also included accusations against individual members of staff and accusations of a more general nature criticising the Council and the court process.

58. The Commissioner does not consider that compliance with the requests which form part of this decision notice would have a detrimental impact upon the Council in terms of workload itself. However, he has gone on to consider whether compliance would cause an unjustified level of irritation or distress to the Council.
59. The Council has argued that the complainant is already in possession of the majority of the requested information as he was involved in court proceedings which dealt with the same issues, during which he was served with evidence substantiating the Council's prosecutions. It maintains that his true purpose in making the requests is to reopen the issues in relation to the prosecutions under the Housing Act 2004 and related legislation.
60. The Commissioner has considered the correspondence received by the Council including the EIR requests. It includes comments about the professional competency of an individual member of staff made within letters dated 9 July 2012 and 12 August 2012 and expressions of dissatisfaction with the way the Council has dealt with the issue of problems at his property which he believes did not justify court action. It is clear from the tone of the language used that the complainant is aggrieved by the outcome of the process and is seeking to reopen the issue by questioning the competency of staff members, the Council and the court process.
61. Whilst the Commissioner understands the complainant is frustrated by what he considers to be an unfair outcome in respect of the court proceedings, he is satisfied that the request will have the effect of harassing the Council and will be a burden on the resources of the Council moving forward as the complainant seems unable to accept the findings of the court, the LGO and the CCRC, despite the length of time since the proceedings were concluded. The Council has also provided evidence of the disproportionate time that is being spent on this concluded matter which it states is detracting resources from other work it is required to carry out under its statutory obligations.
62. For this reason the Commissioner is satisfied that responding to the request is likely to cause an unjustified level of irritation to the Council

as it is very unlikely that the complainant will be satisfied by any response he receives from the Council on this particular issue.

63. Therefore the Commissioner is satisfied that responding to this request is likely to cause a disproportionate burden upon the Council.

Public Interest Test

64. Regulation 12(1)(b) of the EIR provides that:

"a public authority may refuse to disclose environmental information requested if-

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information."

65. The Council has argued that there is a strong public interest in avoiding the cost on time and resources that would be incurred by answering a manifestly unreasonable request. This, it has argued, outweighs the public interest in disclosure.
66. Having considered the evidence provided in this matter the Commissioner concurs with this view and finds that the public interest test in openness, transparency and the disclosure of environmental information, is outweighed by the public interest in avoiding the resource costs in answering a manifestly unreasonable request.

Conclusion

67. The Commissioner therefore considers that the Council was correct in its approach. However having considered the evidence provided the Commissioner is of the view that regulation 12(4)(b) of the EIR is the appropriate exception to be applied in this case. No further action is required on the part of the Council.

Right of Appeal

68. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

69. 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.

70. 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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