

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 May 2016

Public Authority: London Borough of Richmond upon Thames

Address: Civic Centre
44 York Street
Twickenham
TW1 3BZ

Decision (including any steps ordered)

1. The complainant has requested from London Borough of Richmond upon Thames (the 'Council') information relating to a named visitor centre and its planning permission granted in 2006.
2. The Commissioner's decision is that the Council has correctly applied regulation 12(4)(b) to the request. Therefore, the Commissioner does not require any steps to be taken.

Request and response

3. On 3 February 2016, the complainant wrote to the Council and requested information in the following terms:

"What was the food & drink use and types of other activities taking place in 2005, at the [named visitor centre redacted], which allowed the LBRuT to grant full planning permission in 2006?"

Please list full details for each of the following uses:

- a. Number of chairs on the pontoon allowed for food and drink?*
- b. Number of chairs allowed for food and drink on [name redacted] barge deck?*
- c. Number of chairs allowed for food and drink within the hold?*
- d. Size of the exhibition space within the hold?*

e. The numbers of meeting, community, leisure, cultural and recreation activities exhibitions and level information?

e. Size of the Galley within the hold?

f. Type and size of extractor system allowed for the Galley?

g. Scale of noise and disruption allowed?

h. Was there any demonstrable harm?

i. If this information is not known, why not and which planning policies supported this planning permission?

j. Given that it is within MOL and 100 metres from [name redacted], is this considered by LBRuT the right amount of food and drink use considering the distance from the Bridge?

K. Comparatively how many tables and chairs were allowed at [name redacted] within MOL and 2 metres from [name redacted]? What is the level of community, leisure, cultural and recreational activity taking place at [name redacted] which relates to a MOL function?"

4. The Council responded on 18 February 2016. It refused the request under regulation 12(4)(b) of the EIR as it considered it to be manifestly unreasonable.
5. Following an internal review the Council wrote to the complainant on 16 March 2016. It upheld its application of regulation 12(4)(b) of the EIR to the request.

Scope of the case

6. The complainant contacted the Commissioner on 18 February 2016 to complain about the way his request for information had been handled.
7. The Commissioner will consider whether the Council had correctly applied regulation 12(4)(b) of the EIR to the request.

Background to request

8. The Council stated that the complainant's EIR request stems from a planning application and subsequent enforcement action.
9. The Council therefore provided the Commissioner with some context and history in respect of the complainant's various requests for information. The Commissioner notes that the Council granted planning permission

for an exhibition/information centre at a site operated by the complainant's organisation in 2006. He also notes that the Council had taken enforcement action against breaches of the consent between 2009 and 2013.

10. One of the enforcement notices involved the possible change of use from the original use of the site as an information centre to a mixed use as a café and restaurant. The Commissioner notes that the complainant appealed the notice and that the Planning Inspector had dismissed the appeal as it found he had exceeded the authorised use.
11. The Commissioner understands that the complainant disputed the planning officer's report on the 2006 planning application and that he questioned whether the ancillary use had been granted planning permission. The Commissioner notes that this caused further correspondence from the complainant about the 2006 planning consent and that he contacted his local MP regarding his concerns. The Council said that it responded to the MP and to the complainant's questions. It also said that the Council explained its view on the commercial use of the site and the possible impact of recent changes in planning regulation on activities at the complainant's site.
12. The Council supplied the Commissioner with the final decision from the Local Government Ombudsman (LGO) dated 30 November 2015, as evidence to support its argument. It said that the Ombudsman found: -

"I do not consider the Council failed to respond to queries from Mr X. This is a longstanding matter going back several years and so there may have been occasions where officers considered they had already responded to Mr X and did not respond to a particular contact from him. But this is not a simple matter of failing to respond to a query at a particular time. Rather it was a continuation of a planning matter that has already been the subject of an appeal to the Planning Inspector.

The Council may also not have responded in a manner that addresses Mr X's queries as he would like. However, it is for the Council to decide on the manner and content of its replies. I do not find fault because its replies did not satisfy Mr X.

The substantive issue is one that Mr X already appealed to the Planning Inspector. Given the appeal it is not a matter that the Ombudsman can now consider. Mr X wants certainty on the extent of any ancillary activity he can carry out at the site but this is a matter that requires professional advice whether from a solicitor or planning professional. The Planning Inspector decided Mr X's appeal and it is not for the Council to consider matters anew because Mr X remains dissatisfied.

Final decision

I have closed this complaint because I do not find fault by the Council."

Reasons for decision

Regulation 12(4)(b) – where the request is manifestly unreasonable

13. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable.
14. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should 'obviously' or 'clearly' be unreasonable.
15. A request can be manifestly unreasonable for two reasons: Firstly if it is vexatious and secondly where the public authority would incur unreasonable costs or where there would be an unreasonable diversion of resources.
16. There is no definition of the term "vexatious" in the Freedom of Information Act, however the issue of vexatious requests has been considered by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield (GIA/3037/2011)*. In the Dransfield case the Tribunal concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of formal procedure." The Tribunal identified four factors likely to be relevant in vexatious requests:
 - The burden imposed by the request on the public authority and its staff
 - The motive of the requestor
 - Harassment or distress caused to staff
 - The value or serious purpose of the request.
17. The Upper Tribunal's decision established the concepts of "proportionality" and "justification" as being central to any consideration of whether a request for information is vexatious.
18. The key to determining whether a request is vexatious is a consideration of whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear it is necessary to weigh the impact of the request on the public authority

against the purpose and value of the request. To do this a public authority must be permitted to take into account wider factors associated with the request, such as its background and history.

The Council's position

19. The Council reported that the complainant made numerous requests asking for information in connection with restrictions to planning and planning conditions. It submitted a full list of the complainant's requests to the Commissioner.
20. The Council argued that it provided all the information held in relation to the complainant's initial request of 28 November 2015 and that the complainant was dissatisfied with its response. It added that following an internal review, the Council said that the complainant remained unhappy with its findings and asked the Council to carry out research into the published planning documents in order to respond to his specific questions. The Council said that it refused to do this as it considered it would be creating information to respond to the complainant's request and the information was available to him via the online planning documents.
21. The Council stated that the complainant also requested information relating to planning details to café's on another site which the Council argued it provided some information to. The Council considered the remaining parts of his request were asking for the Council's opinion on specific planning concerns. It therefore directed the complainant to the planning history of the site where any planning decisions and opinions are recorded. The complainant asked for an internal review as he disagreed with the Council's interpretation of his request and to check if the review considered whether the remaining questions were not asking for an opinion but for recorded information. The Council said the internal review found that there was no recorded opinion on the complainant's specific questions.
22. The Council argued that this current request continues to ask for opinions and explanations of planning decisions and concerns. It said that it had already spent a considerable amount of time providing advice and assistance on where the complainant can obtain recorded planning information. The Council also argued that any response given previously had resulted in an internal review or an additional request.
23. The Council is of the view that these numerous requests imposed a significant burden in terms of the resources and staff time required to comply with the complainant's requests.

24. The Council said that it had considered whether responding to the complainant's latest requests would lead to further correspondence, requests and complaints. The Council explained that from its experience it considers that this would be likely, given the history and context of the complainant's correspondence. Therefore, the Council is of the view that this request can be seen as fairly obsessive.
25. The Council stated that the complainant had previously submitted four information requests and two internal review requests concerning broadly the same issue. It argued that his latest request is considered to be a continuation of a pattern of behaviour.
26. The Council said that it is aware of the background to the complainant's requests, specifically, the complaint which was investigated by the LGO concerning questions not responded to by the Council's planning department. The Council added that during the investigation the LGO deemed the complainant's purpose of the requests was for certainty on the extent of any ancillary activity he can carry out at the site.
27. The Council reported that the LGO found that it had not failed to respond to the request as the Council had addressed the concerns raised as part of an on-going planning case which had already been subject to an appeal to the Planning Inspector. The Council added that it is aware the complainant submitted two planning applications for the named visitor centre that remain invalid. Therefore, the Council considers the request is the complainant's way of using the EIR to continue a dispute that has already been addressed by the LGO and Planning Inspectorate. The Council argued that this is an inappropriate use of the EIR.
28. The Council stated that the numerous requests and what it considers to be "*unreasonable persistence*" had caused the individuals working within the respective areas to feel harassed. It added that the language used in the complainant's correspondence had at times been "*confrontational*" and had questioned the integrity or intellect of the officers. It provided an example of an email sent by the complainant to one of the Council officers on 24 January 2016;

"I'm afraid that you are falling short and not following the spirit or letter of the law concerning FOI. Your answers are evasive and guarded and not worthy of responsible Statutory Body."

The complainant's view

29. The complainant argued the Council's refusal to his information request and its application of the exception. He expressed his dissatisfaction and said that he was simply asking for some environmental information under the FOIA. The complainant also argued that the Council had not

followed the correct procedure by being obstructive and exceeding the statutory time limits.

30. The complainant is of the view that the Council has *"broken the Act"* and that its refusal to supply the information is against the interest of over 330 petitioners and 450 members (total 780 people) of the named site. Therefore, the complainant considers that it is in the public interest to disclose the information.

The Commissioner's view

31. The Commissioner has reviewed the evidence provided by the Council to support its position that the requests are manifestly unreasonable. He has noted the number of requests, frequency and focus of the complainant's requests. The Commissioner also notes the history of the requests and the complainant's subsequent follow up questions which the Council argued it received as soon as a response was issued and which sometimes overlapped. He considers this to be a clear attempt to reopen an issue that has been closed by the Council and investigated and closed by the LGO.
32. The Commissioner acknowledges that the Council has been engaged in significant correspondence with the complainant, relating to the named site and that it is a longstanding matter going back several years. The Commissioner accepts that this matter is a continuation of a planning issue that has already been the subject of an appeal.
33. The Commissioner agrees with the Council that the complainant's requests have become burdensome and he finds that these represent a disproportionate use of the Council's resources.
34. The Commissioner therefore considers that the complainant's requests have now passed the point where it has become unreasonable for the Council to continue to respond to them. Consequently, the Commissioner considers that regulation 12(4)(b) is engaged in respect of this latest request of 3 February 2016. He has gone on to consider the public interest test.

Public interest test

35. The Commissioner will consider whether the balance of the public interest in maintaining the exception outweighs the public interest in responding to the complainant's latest request for information.
36. The Commissioner will always give weight to factors which favour the disclosure of information which would increase the public's understanding of the actions taken by the Council and of the processes

by which it makes its decisions. Such disclosure of information increases transparency and provides accountability of public authorities.

Public interest test in favour of disclosure

37. The Council explained that as well as the general principles of transparency and accountability, it appreciates that providing the requested information would give the public a better understanding into the planning issues associated with these particular sites. The Council added that it will also allow the public to establish whether the Council has been fair and followed due process.

Public interest in favour of maintaining the exception

38. The Council is of the view that although the information may be of great interest to the complainant, it is not aware or had been provided with any recent evidence of a wider public interest in this information or in the questions raised by the complainant. It added that in the complainant's correspondence (18 February 2016) he mentions a petition. However, the Council state that it has not received any recent petition and is therefore not able to comment on its validity or merit.
39. The Council explained that with the increasing pressure on its reduced resources a balance must be struck in delivering key regulatory services and responding to requests for information where, (the Council adopted the ICO wording in a previous case) *"there is little or no public value to be had by asking the Council to spend further time or expense in responding to the complainant's requests. He agrees with the Council that responding to further requests concerning [address] is unlikely to satisfy their on-going scrutiny of the Council's actions."*
40. The Council adopted further ICO wording which said that the Commissioner went on to say he; *"must be mindful of the disproportionate effects of the complainant's requests on the Council's resources, particularly at a time when resources are particularly stretched"*.
41. The Council considers that the complainant is seeking to elicit an opinion from the Council which it said is contrary to the decision of the Planning Inspectorate. The Council explained that to comply with the request would distract staff from their core functions and add to the pressure on its services.
42. The Council argued that it has spent a significant amount of time dealing with the complainant's information requests and it believes that it is not in the public interest to invest further resources into this issue. Therefore, the Council considers it disproportionate to comply with this request or any further request on the subject.

Balance of the public interest

43. In this case the Commissioner is satisfied that the planning and enforcement issues associated with the named visitor centre had been considered by both the Council and the LGO. The Commissioner notes that the Council had responded to the complainant's previous request. To other parts of his requests, the Council endeavoured to assist the complainant by directing him to the appropriate site for planning decisions/opinions and found no recorded opinion on the complainant's specific questions.
44. The Commissioner is of the view that there is little or no public value to be had by asking the Council to spend further time or expense in responding to the complainant's requests. The Commissioner agrees with the Council that responding to further requests relating to the named visitor centre is unlikely to satisfy the complainant's on-going questions and concerns.
45. On balance, the Commissioner considers that in this case, the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exception.

Right of appeal

46. 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

47. 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.
48. 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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