

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

Date: 20 September 2017

Public Authority: Greater London Authority
Address: City Hall
The Queen's Walk
London
SE1 2AA

Decision (including any steps ordered)

1. The complainant has requested the GLA to disclose information associated with the 2012 London Olympics and the Compulsory Purchase Order of 2005 that was in place to assist its delivery. The GLA refused to respond to these requests, citing regulation 12(4)(b) of the EIR.
2. During the Commissioner's investigation it was established that one of the requests was a FOIA request. A fresh response was issued advising the complainant that the GLA does not hold the requested information. The Commissioner has reviewed the handling of this request and has decided that, on the balance of probabilities, the GLA does not hold the requested information.
3. For the remaining four requests, the GLA maintained its application of regulation 12(4)(b) of the EIR. However, during the Commissioner's investigation again, the complainant withdrew his complaint for two of these requests. The Commissioner has considered the application of regulation 12(4)(b) of the EIR to the two remaining requests and she has decided that it is not engaged.
4. The Commissioner therefore requires the public authority to take the following steps to ensure compliance with the legislation.

- The GLA should issue a fresh response under the EIR to the complainant for requests 3 and 5.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. Between 7 April and 2 June 2016, the complainant made five information requests to the GLA. The wording of each request can be found in the attached Annex.
7. As the complainant had received no response to his earlier requests, he contacted the Commissioner on 26 May 2016 to raise concerns.
8. The Commissioner wrote to the GLA on 9 June 2016 and requested the GLA to respond to all five requests by 23 June 2016.
9. The GLA issued a refusal notice on 23 June 2016 refusing to respond to four of these five requests, citing regulation 12(4)(b) of the EIR.
10. The complainant requested an internal review on 23 June 2016 and notified the GLA that it had not responded to one of his requests of 2 June 2016.
11. The GLA issued a further response on 29 June 2016 to address the second request of 2 June 2016. It stated that it was refusing to comply, citing regulation 12(4)(b) of the EIR.
12. The GLA contacted the complainant again on 1 July 2016 advising him that it would carry out an internal review for all five requests in due course.
13. The GLA carried out the internal review and notified the complainant of its findings on 23 September 2016. It confirmed that it upheld its previous application of regulation 12(4)(b) of the EIR to all five requests.

Scope of request

14. The complainant contacted the Commissioner again on 23 September 2016 to complain about the way his request for information had been handled. He stated that he remained dissatisfied with the way these requests have been handled and requires the Commissioner to investigate further.
15. During the Commissioner's investigation, the complainant withdrew his complaint about requests 1 and 2, hoping that this would then enable the GLA to comply with requests 3 and 5. The GLA confirmed that it still wished to rely on regulation 12(4)(b) of the EIR for these two requests.
16. Initially, the GLA applied regulation 12(4)(b) of the EIR on the basis that the requests were vexatious and manifestly unreasonable based on cost. However, during the Commissioner's investigation the GLA accepted that regulation 12(4)(b) did not apply based on the requests being vexatious and so the investigation focussed on the application of this exception based on cost. This notice will therefore only address the application of regulation 12(4)(b) of the EIR to requests 3 and 5 based on cost.
17. The GLA also decided to respond to request 4 during the Commissioner's investigation, wishing to take a different approach with this request. This was because it was decided that this request should have been considered under the FOIA not the EIR. The revised response informed the complainant that it does not hold the requested information.
18. In terms of request 4, this notice will decide whether on the balance of probabilities the GLA holds any recorded information falling within the scope of this request.

Reasons for decision

19. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information if the request is 'manifestly unreasonable'. There is no definition of manifestly unreasonable under the EIR, but the Commissioner's view is that 'manifestly' implies that a request should be obviously or clearly unreasonable.
20. This exception is also subject to the public interest test. So in addition to demonstrating that the request is manifestly unreasonable, the GLA must demonstrate that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exception.
21. A request can be manifestly unreasonable for two reasons; firstly, if it is vexatious and secondly where it would incur unreasonable costs for a

public authority or an unreasonable diversion of resources to provide the information. This is not a charge to the requestor, but a consideration of the cost to the authority in searching for and providing the information.

22. The Act allows a public authority to consider the above amount by charging for the following activities at a flat rate of £25.00 per hour of staff time:
 - Determining whether the information is held;
 - Locating the information, or a document which may contain the information;
 - Retrieving the information, or a document which may contain the information; and
 - Extracting the information from a document containing it.
23. Although the Act is not directly analogous to the EIR, in the Commissioner's view it can provide a useful starting point for public authorities wishing to argue that complying with a particular request(s) would cause a disproportionate diversion of its resources and is therefore subject to regulation 12(4)(b) of the EIR.
24. Initially, the GLA advised the Commissioner that it estimated that it would take around 65 hours to comply with requests 1, 2, 3 and 5. This was broken down as follows:
 - Request 1 – 26 hours
 - Request 2 – 18 hours
 - Requests 3 and 5 – 21 hours
25. The GLA provided detailed arguments to support this time estimation and the Commissioner initially agreed that it would take around 65 hours to comply and therefore the requests as a whole were manifestly unreasonable based on cost. However, the complainant then decided to withdraw requests 1 and 2 hoping that this would then enable the GLA to comply with requests 3 and 5.
26. The question now for the Commissioner is whether requests 3 and 5 alone are manifestly unreasonable based on cost. The GLA has explained that it would take around 21 hours to comply with requests 3 and 5 and provided the necessary evidence to the Commissioner to support this estimate.
27. Although under the FOIA the threshold is 18 hours, the Commissioner does not consider this is the case for the EIR. As stated above, it is

considered a usual *starting* point for the consideration of cost under the EIR. A public authority must demonstrate that the cost or burden of dealing with a request is too great; that the burden and cost involved is disproportionate and therefore clearly or obviously unreasonable. Often this will mean taking into account all the circumstances of the case including, for example:

- the nature of the request and any wider value in the requested information being made publicly available;
- the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue;
- the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services; and
- the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.

28. The Commissioner is of the opinion that public authorities are required to accept a greater burden in providing environmental information than other information. This was confirmed in a preliminary decision of the Information Tribunal in the case of *Department for Business Enterprise and Regulator reform (DBERR) vs the Information Commissioner and Platform (EA/2008/0097)*. At paragraph 39 the tribunal commented on the relevance of regulation 7(1) and said:

"We surmise from this that Parliament intended to treat environmental information differently and to require its disclosure in circumstances where information may not have to be disclosed under the FOIA. This is evident also in the fact that the EIR contains an express presumption in favour of disclosure, which FOIA does not. It may be that the public policy imperative underpinning the EIR is regarded as justifying a greater deployment of resources. We note that recital 9 of the Directive calls for disclosure of environmental information to the "widest extent possible". Whatever the reasons may be, the effect is that public authorities may be required to accept a greater burden in providing environmental information than other information."

29. As stated above, although the GLA provided detailed arguments to support the application of regulation 12(4)(b) of the EIR when considering all requests together (and the Commissioner agreed with this approach initially), it did not provide any further arguments to the Commissioner to support the application of this exception to requests 3

and 5 only once the complainant withdrew his complaint about requests 1 and 2.

30. Considering the size of the GLA and the resources it has the Commissioner does not consider compliance in this case would be burdensome or unreasonable. The GLA's estimate is just over the 18 hour threshold prescribed by the FOIA. The Commissioner considers a further three hours work would not be placing an inordinate burden on the GLA or divert resources away from other functions or requests to an extent that it would be manifestly unreasonable. As stated above, there is also the presumption in favour of disclosure under the EIR and the greater burden public authorities should accept when considering requests for environmental information, as outlined by the Information Tribunal in the above hearing.
31. For the above reasons the Commissioner has concluded that regulation 12(4)(b) of the EIR is not engaged for requests 3 and 5 and therefore she now requires the GLA to issue a fresh response under the EIR to these requests.

Request 4

Does the GLA hold the requested information?

32. Initially this request was aggregated together with the other requests described above under the EIR and the application of regulation 12(4)(b). However, during the Commissioner's investigation it was established that this request should be considered under the FOIA, as it is not a request for environmental information like the others. The GLA issued a fresh response to this request on 21 July 2017, advising the complainant that it does not hold the requested information.
33. On receipt of this revised response the complainant raised new concerns about the handling of elements 2, 3 and 4 of this request. The complainant believes the GLA should hold the requested information and, for the KPMG report referred to in the request, contact KPMG direct to obtain a copy from them.
34. With regards to elements 2 and 3, the GLA advised that the officers concerned would have been employed by the London Development Authority (LDA) not the GLA and staff did not automatically join the GLA after the LDA closed. It confirmed that it only knows the alleged identity of one of the officers, as this is mentioned in the complainant's request but it has no way of identifying the identity of the other LDA officer.
35. It went on to say that the officer referred to in the request is not a GLA employee and never has been. He did not join the GLA when the LDA closed. It referred to media articles from the time (2009) and the

suggestion in these that the officer was suspended. It argued that if this was indeed the case (and it is not confirming that it was, as it simply does not know as it holds no records), he would not have been a LDA employee when the LDA closed in 2012. The GLA holds no personnel records for the officer named or anything similar because they were never a GLA employee.

36. It then reminded the ICO that this type of information, if it were held, relating to *any* employee would be private and confidential and therefore exempt from disclosure under section 40 of the FOIA.
37. The Commissioner is satisfied that the GLA has undertaken detailed searches to establish whether it holds any recorded information falling within the scope of these elements of the request. It has confirmed that it does not and explained that such incidents (if they did indeed occur) took place years prior to the LDA's responsibilities and potentially some staff transferring over to the GLA. For the above reasons, she is satisfied that on the balance of probabilities the GLA does not hold the requested information.
38. Turning now to element 4, the GLA explained that it inherited information from the LDA in 2012 when the LDA closed and the majority of responsibilities were transferred over to it. It advised that a lot of the information was "dumped" on the GLA and the electronic records it received on the "LDA archive" drive are completely unstructured. As a result it has no way on confirming whether or not this information is everything that was held by the LDA immediately before this transfer took place; no means of identifying what may have been held before the transfer or what was deleted or why. It only has what the LDA left it and this is completely unstructured.
39. It confirmed that its first search was of the "LDA archive" drive. It conducted searches of this drive using the broadest of terms – "KPMG" being one of them in order to try and identify anything relevant. None of the returns included any reference to the specific report referred to in this request, or anything that, once reviewed, could identify the specific incident covered by the request.
40. The GLA said that it then made enquiries to senior staff who worked at the GLA back in 2009 to see if they had any recollection of the KPMG report or this LDA investigation. While some recalled the incident, none of them held a copy of the report.
41. The GLA conducted a series of google searches to try and learn about the incident, the dates and the report. This led it to the minutes of the *London Assembly Budget and Performance Committee*, which the GLA referred the complainant to in its revised response of 21 July 2017. It

advised that the GLA London Assembly Secretariat, who are responsible for the Assembly Committee meetings conducted their searches, but they did not identify anything other than the meeting minutes it has provided the complainant. They have searched their shared drives for copies of any related information but this was the only reference they found. They did not locate a copy of the report. The London Assembly Secretariat also commented that most of its records from this period have been destroyed in accordance with its records retention policy.

42. The GLA stated that it approached KPMG to see whether it was able to locate and therefore provide a copy of the report requested. KPMG reported back that its searches have been understandably hampered by the fact that the full title of the report is not known, which KPMG individuals or teams were involved in the preparing of the report or which KPMG office was involved. It has however searched to the best of its ability but has been unable to locate a copy of the report.
43. The Commissioner is satisfied that the GLA has carried out adequate searches to try and locate the requested information and it has also exhausted all possible lines of enquiry, having now contacted KPMG direct to see whether they hold a copy. All searches have been unsuccessful in locating the report in question or any other information which may shed some light on its whereabouts now, whether it has been deleted and whether it was ever transferred over to the GLA when the LDA closed. For these reasons, the Commissioner is satisfied that on the balance of probabilities the GLA does not hold the requested information.

Procedural matters

44. The GLA breached regulation 5(2) by failing to respond to some of the requests within 20 working days of receipt. As it refused to respond to the requests, it also breached regulation 14(2) by failing to issue a refusal notice for some of the requests within 20 working days of receipt.
45. The GLA also breached regulation 11 of the EIR in this case by failing to respond to the complainant's request for an internal review within 40 working days.

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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Request 1

"1) Please provide records of all discussions, negotiations, professional opinions, emails, letters and telephone calls regarding the failed relocation of Bluefoot Foods Limited from the period they became known to the GLA, ODA, LDA or any other bodies associated with the London Olympics 2012 and ancillary/related delivery of infrastructure that they were situated within the Olympic Delivery Area until 6 months after confirmation that they had been evicted from their premises at Celsius First on 2 July 2017.

2) A breakdown of all costs incurred by the GLA in dealing with the extinguishment of Bluefoot Foods Limited from 1 May 2007 (or earlier if any costs were incurred prior) through today's date:

- a. The costs of each external legal, professional or any other consultant along with ancillary expenses should be detailed and evidenced with copies of fee notices, bills and applications for payment for the following periods: a) 1 May 2007 through 2 July 2007; b) 3 July 2007 through 2 July 2013; c) 3 July 2013 through 3 October 2014; d) 4 October 2014 through 7 April 2016.
- b. The internal costs of all directors, executives, in-house legal or other staff according to their time engaged with dealing with all aspects of the extinguishment of Bluefoot Foods Limited for the periods: a) 1 May 2007 through 2 July 2007; b) 3 July 2007 through 2 July 2013; c) 3 July 2013 through 3 October 2014; d) 4 October 2014 through 7 April 2016."

Request 2

"For each of the following companies:

- 1) H Smith Food Group Plc
- 2) Wing's Seafood Limited
- 3) Todd Meat Trading Company Limited
- 4) Kim Son Limited
- 5) Apetito Limited
- 6) Arla Foods Limited
- 7) [named redacted]
- 8) Direct Wholesale Foods (London) Limited

9) Aromatic Foods Limited

That previously occupied premises as tenants, lessees or licensees of Celsius First Limited or Frigoscandia Limited at High Meads, Temple Mills Land, Stratford, London E15 2EW. Please provide:

- A. Copies of all leases, licenses or tenancy agreements in relation to their occupation.
- B. Details of all reimbursements of expenses or compensation paid to each above listed company, business or their successors or assignees pursuant to the London Development Agency (Lower Lea Valley, Olympic and Legacy) Compulsory Purchase Order 2005 for the delivery of the 2012 London Olympics including the basis of calculation for all amounts paid."

Request 3

"On or just prior to 26 May 2006 the following transactions took place regarding the relocation of Formans/H.Forman & Son/Forman & Field

- 1) The LDA/GLA purchased Formans freehold interest in Unit 1, 30 Marshgate Lane, London, E15.
- 2) The LDA/GLA purchased the freehold interest in Stour Wharf, Stour Road, London E3 2NT from Community Housing Group.
- 3) The LDA/GLA sold the freehold interest in Stour Wharf, Stour Road, London E3 2NT to Formans/H.Forman & Son/Forman & Field minus a small part of the parcel of land to enable a bridge to be constructed over the River Lee.
- 4) The LDA/GLA granted a 200 year lease from 25 May 2006 to Community Housing Group for land at Royal Albert Docks

Prior to entering into these transactions, valuations were prepared by the consultant surveyors to the LDA for the three sites listed above. Please provide copies of the valuations.

With reference to items 2 or 4, Community Housing Group many also have been known as Community Housing Association Limited of 100 Chalk Farm Road, London NW1 8EH."

Request 4

"In March 2009 an audit of the London Development Agency was ordered by the then Mayor Boris Johnson. As a result of the audit, two officers of the LDA were suspended, one was [named redacted].

KPMG produced and published their report on their investigations on 11 September 2009. Please confirm:

1. The identity of the two officers who were suspended by the LDA.
2. What was the result of enquiries into their conduct, what action was taken against the individuals and whether they were dismissed following the completion of any related investigation?
3. Whether they were dismissed or resigned, please provide full details of their individual severance package.
4. Please provide a copy of the report published by KPMG on 11 September 2009."

Request 5

"On or just prior to 26 May 2006 the following transactions took place regarding the GLA, Formans/H.Forman & Son/Forman & Field and Community Housing Group.

- 1) The LDA/GLA purchased Formans freehold interest in Unit 1, 30 Marshgate Lane, London, E15.
- 2) The LDA/GLA purchased the freehold interest in Stour Wharf, Stour Road, London, E3 2NT from Community Housing Group.
- 3) The LDA/GLA granted a 200 year lease from 25 May 2006 to Community Housing Group for land at Royal Albert Docks Community Housing Group may also have contracted as Community Housing Association Limited of 100 Chalk Farm Road, London NW1 8EH.

For each of the above transactions please confirm and provide proof of:

- a) The amount paid or given in consideration for the purchase, disposal or grant.
- b) The amount of any VAT paid by the purchaser.
- c) The amount of Stamp Duty Land Tax paid by the purchaser."