

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

Decision notice

Date: 2 July 2019

Public Authority: London Borough of Bromley
Address: Bromley Civic Centre
Stockwell Close
London
BR1 3UH

Decision (including any steps ordered)

1. The complainant submitted 11 requests over a period of five months, most of which related to council policies on land usage. The London Borough of Bromley ("the London Borough") relied on section 17(6) of the FOIA to refuse all 11 requests without issuing refusal notices.
2. The Commissioner's decision is that all 11 requests were vexatious. The London Borough was entitled to rely on section 17(6) to refuse two of the requests. The remaining nine requests should have been dealt with under the EIR but, as the requests were vexatious, the London Borough would have been entitled to rely on Regulation 12(4)(b) of the EIR (Manifestly Unreasonable) to refuse them. However, the London Borough should have issued refusal notices in each case. The Commissioner therefore finds that the London Borough breached Regulation 14 of the EIR.
3. The Commissioner does not require any further steps.

Request and response

4. Between 2 December 2018 and 29 April 2019, the complainant submitted 11 valid information requests to the London Borough. The Commissioner considers that it would serve no useful purpose to reproduce each request here, but has provided an annex to both parties listing the requests in question. The Commissioner notes that three of the requests were submitted under different names, but

considers it appropriate to deal with them under this notice for reasons explained below.

5. The London Borough did not respond to any of the requests. It subsequently confirmed to the Commissioner that it had relied upon section 17(6) of the FOIA to refuse all of the requests.

Scope of the case

6. The complainant contacted the Commissioner on 28 March 2019 to complain that the London Borough was no longer responding to his requests.
7. The Commissioner contacted the London Borough to enquire as to the reason for the lack of responses. The London Borough explained that it considered the requests to be vexatious, linked to an ongoing campaign by the complainant and that it was therefore entitled to rely on section 17(6) to continue to refuse the requests without issuing fresh refusal notices.
8. The Commissioner considers that the scope of her investigation is to determine:
 - a. which access regime the London Borough should have used to handle each request.
 - b. whether any or all of the requests were vexatious.
 - c. whether the London Borough handled the procedural requirements appropriately in relation to each request.

Reasons for decision

Were any of the requests for environmental information?

9. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*

- (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
 - (c) *measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;*
 - (d) *reports on the implementation of environmental legislation;*
 - (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
 - (f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
10. Nine of the complainant's requests relate to the London Borough's policies about usage and management of so-called "amenity land". As these policies would be "measures" likely to affect the elements of the environment, the Commissioner considers that they should have been dealt with under the EIR. These requests are marked in the annex to this notice.
11. The remaining two requests related to refugees and to the structure of a particular department of the London Borough. The Commissioner therefore considers that these were correctly considered under the FOIA.

Regulation 12(4)(b) – Manifestly Unreasonable/Section 14(1) - Vexatious

12. Regulation 5(1) states that:

"a public authority that holds environmental information shall make it available on request."

13. Regulation 12 of the EIR states that:

(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—

- (a) *an exception to disclosure applies under paragraphs (4) or (5); and*
 - (b) *in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.*
 - (2) *A public authority shall apply a presumption in favour of disclosure.*
 - (4) *For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—*
 - (b) *the request for information is manifestly unreasonable;*
- 14. Following the lead of the Upper Tribunal in *Craven v Information Commissioner & DECC* [2012] UKUT 442 (AAC), the Commissioner considers that there is, in practice, no difference between a request that is vexatious under the FOIA and one which is Manifestly Unreasonable under the EIR – save that the public authority must also consider the balance of public interest when refusing a request under the EIR. The analysis that follows looks at vexatiousness as, if the request is found to be vexatious, then it will also be Manifestly Unreasonable and hence Regulation 12(4)(b) will be engaged.
- 15. The term “vexatious” is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure*”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal.
- 16. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
- 17. *Dransfield* also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: “*...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.*” (paragraph 45).

18. The Commissioner has published guidance on dealing with vexatious requests, which includes a number of indicators that may apply in the case of a vexatious request¹. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
19. When considering the question of vexatiousness, a public authority can consider the context of the request and the history of its relationship with the requestor, as the guidance explains: "*The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request.*"

The complainant's position

20. The Commissioner understands the complainant's position to be that he wishes to understand the rationale behind the London Borough's actions so that he can hold it to account.

The London Borough's position

21. The London Borough drew the Commissioner's attention to a previous decision notice, issued in 2017, in respect of a complaint brought by the same complainant. That decision notice² set out the history of the London Borough's difficult relationship with the complainant in some detail and the Commissioner considers it would serve no useful purpose to repeat it here – except to say that it stems from a decision, by the London Borough, not to sell the complainant a piece of land. The Commissioner ultimately found that the request in question had been vexatious.
22. In concluding, the Commissioner accepted the London Borough's arguments that the complainant's behaviour had been unreasonable and commented that:

"22. The Commissioner considers that a burden is placed on a public authority where it responds to information request but each response/internal review response results in follow up requests or correspondence on the same/similar subject

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatiousrequests.pdf>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/1625849/fs50637676.pdf>

matter. In this case, the Commissioner considers that a response is unlikely to satisfy the complainant, and that a line needs to be drawn otherwise the matter could continue into the foreseeable future.

23. *The Commissioner does not consider that the inherent purpose and value of the request outweighs the burden and disruption that would be caused by complying with the request. She therefore considers that the request is vexatious."*
23. The London Borough further informed the Commissioner that the patterns of the complainant's behaviour that had been described in the previous decision notice had continued to the present day and had escalated in recent months.
24. As evidence, the London Borough supplied copies of emails received from the complainant in the previous six months. It provided a summary table showing that this amounted to 79 separate items of correspondence over the period – including the 11 requests outlined above. It noted that several of the items were copied to multiple recipients – increasing the overall burden required to respond.
25. The London Borough also provided examples of correspondence in which the complainant's tone went beyond what might be considered to be "frustration" or "robust scrutiny". This included an email, sent to a councillor in January 2019, in which the complainant wished the London Borough's outgoing chief executive a "*short and painful retirement.*" There was also another email from the same councillor which noted that the complainant had attended his advice surgery and become angry and threatening.
26. Within the 79 items of correspondence are emails purporting to be from two separate individuals – who share a surname. The London Borough brought these to the Commissioner's attention as it considered that these emails were in fact the complainant attempting to further his grievance via pseudonym. Even if the correspondence was from real people, the London Borough argued, they were collaborating with the complainant.
27. Finally, the London Borough drew attention to an email, sent by the complainant in January 2019 in which he said that:

"Please request whoever on the council is able to readdress my initial request to purchase, that if successful would result in the cessation of my 'email information requests'"

This comment, the London Borough argued, exposed the complainant's true motivation in making the information requests.

The Commissioner's view

28. In the view of the Commissioner, the requests were vexatious and thus also manifestly unreasonable.
29. In her previous decision notice, the Commissioner made clear that she may regard those who attempted to use their information access rights unreasonably to re-open or re-litigate matters which had already been closed as misusing those rights. It is evident to the Commissioner that the complainant is still attempting to use information requests as a tool to pressure the London Borough into taking a particular course of action in respect of the disputed land. This is an inappropriate use of the right of information access.
30. The complainant makes constant accusations in his various correspondence with the London Borough that he has "proved" "maladministration", "discrimination" and "malgovernance." The Commissioner's view is that these allegations should be raised with the relevant authorities, rather than attempting to pursue these matters via disproportionate use of the FOIA and EIR.
31. It appears to be the case to the Commissioner that the complainant has significantly greater interest in pursuing what he believes to have been an injustice that was done to him than in the content of the information he has requested.
32. The Commissioner is inclined to agree with the London Borough that the complainant has also attempted to pursue matters, including information requests, by way of pseudonyms. Whilst the Commissioner cannot prove beyond doubt that the two other individuals are in fact the complainant, she notes similarities between emails sent from the complainant and those purporting to be from the other individuals. She also notes that the two other named individuals show a considerable degree of knowledge of and concern for, the complainant's situation.
33. Although the Commissioner has no conclusive proof that these individuals are one and the same, she has seen sufficient evidence to demonstrate that they are, at the least, collaborating with each other to further the complainant's grievance. She therefore considers it reasonable to consider all the various items of correspondence together when assessing the overall burden upon the Council.
34. The Commissioner concludes that all eleven requests were vexatious and therefore the London Borough would be entitled to rely on section 14 to refuse the two requests which fell under the FOIA.

35. In respect of the requests for environmental information, the Commissioner considers, that, as the requests were vexatious, it would be manifestly unreasonable to expect the London Borough to respond and thus Regulation 12(4)(b) is engaged.

Public interest considerations

36. In order to rely on Regulation 12(4)(b) to refuse a request, as well as demonstrating that the exception is engaged, the public authority must also show that the public interest in maintaining the exception outweighs the public interest in disclosure.
37. The Commissioner considers that there is always an inherent value in public authorities being transparent about the ways in which they spend taxpayers' money. The Aarhus Convention (from which the EIR derives), aimed to increase public participation in decision-making about environmental matters and the Commissioner considers that the Council did make an environmental decision which should be subject to scrutiny.
38. The Commissioner considers that the core issue in dispute here may be of paramount importance to the complainant but she is not aware of any significant public interest beyond that.
39. The Commissioner also notes that there is a more powerful argument for allowing public authorities some form of protection from those who abuse their information access rights.
40. The Commissioner therefore considers that the balance of the public interest favours maintaining the exception in respect of each of the nine requests covered by the EIR and therefore the London Borough was not obliged to comply with those requests.

Refusal Notices

41. Section 17(5) of the FOIA states that:

A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

42. Section 17(6) of the FOIA states that:

(a) the public authority is relying on a claim that section 14 applies,

- (b) *the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and*
- (c) *it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.*
43. In respect of the two requests that the London Borough dealt with under the FOIA, the Commissioner notes the long history of communication between the complainant and the London Borough. This pattern of behaviour shows no sign of abating and issuing fresh refusal notices would have only been likely to have generated further correspondence from the complainant – exacerbating an already extensive burden.
44. The Commissioner is therefore satisfied that the London Borough was entitled to rely on section 17(6) of the FOIA to refuse those two requests without issuing refusal notices.
45. Regulation 14 of the EIR states that:
- (1) *If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.*
- (2) *The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.*
- (3) *The refusal shall specify the reasons not to disclose the information requested, including—*
- (a) *any exception relied on under regulations 12(4), 12(5) or 13; and*
- (b) *the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).*
46. No equivalent provision to section 17(6) exists under the EIR. A public authority must issue a refusal notice if it wishes to rely on Regulation 12(4)(b).
47. The London Borough did not issue refusal notices in respect of any of the nine requests for environmental information and therefore the

Commissioner finds that the London Borough breached Regulation 14 in the way it responded to those requests.

Other matters

48. Given the history of this case and the fact the Commissioner has now issued a second decision notice finding requests submitted by this complainant to the same public authority to have been vexatious or manifestly unreasonable, the Commissioner considers it reasonable to draw attention to the fact that section 50(2)(c) of the FOIA allows her to refuse complaints which she considers to be either vexatious or frivolous. She may consider applying that provision if further complaints about related matters are received from the complainant.

Right of appeal

49. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

50. 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.
51. 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

Ben Tomes
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