

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 7 June 2023

Public Authority: London Borough of Southwark
Address: PO BOX 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Southwark (the Council), relating to correspondences regarding the Quality Homes Investment Programme (QHIP).
2. The Commissioner is satisfied that the Council was entitled to rely on regulation 12(4)(b) when refusing this request.
3. The Commissioner has also decided that the Council breached regulation 5(2) by not responding to the request within 20 working days.

Request and response

4. On 11 November 2022, the complainant wrote to the Council and requested information in the following terms:

"In April 2020 the QHIP Major Works work program commenced on the Canada Estate SE16. Work commenced on Regina and Columbia Point, the estates two tower blocks. Window replacements and exterior concrete repairs. No internal work commenced. Work was halted on the estates low rise blocks and only resumed two years later in April 2022.

*Under Freedom of Information please present us all communications between Southwark Council and its nominated contractor Durkan. Please encompass all communications authorising or instructing changes to the work schedule, notably directive from Southwark Council to it's nominated contractor Durkan to halt work on identified

areas of the program. Please provide coms between the dates Sep 2019 and Nov 6th 2022

* Please encompass all officer exchanges regarding the QHIP Canada Estate program sent or received by the Director of Modernisation [name redacted]. Please include all emails exchanged between [name redacted] and any Elected Member of Southwark Council between the dates Sep 2019 and Nov 6th 2022

*Please include all officer exchanges between the Council and the estates TRA regarding the QHIP program between Sep 2019 and Nov 6th 2022”

5. The Council responded on 23 January 2023. It stated that the request was vexatious and was therefore being refused under section 14(1) of FOIA.
6. Following an internal review, the Council wrote to the complainant on 10 February 2023, upholding its position.

Scope of the case

7. The complainant contacted the Commissioner on 9 January 2023 to complain about the way their request for information had been handled.
8. During the Commissioner’s investigation, the Council revised its position from section 14(1) and instead relied on regulation 12(4)(b).
9. The Commissioner will now consider whether the Council was entitled to rely on regulation 12(4)(b) when refusing this request.

Reasons for decision

Is the requested information environmental?

10. 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);
11. Although he has not seen the requested information, as it relates to correspondence regarding property development and repairs, the Commissioner believes that the requested information is a measure that is likely to affect the elements referred to in regulation 2(1)(a). As such, the Commissioner is satisfied that the requested information is environmental information. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 12(4)(B) – Manifestly unreasonable requests

12. Regulation 12(4)(b) states that:

“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;”

13. The Commissioner has issued public guidance¹ on the application of regulation 12(4)(b). This guidance contains the Commissioner’s definition of the regulation, which is taken to apply in circumstances

¹ [When can we refuse a request for environmental information? | ICO](#)

where either the request is 1) vexatious, or 2) where the cost of compliance with the request would be too great. If engaged, the exception is subject to a public interest test.

14. In the circumstances of this case, the Council considers the request to be vexatious. In determining whether a request is vexatious, the key question is whether complying with the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.²
15. The Council advised the Commissioner, it considered this request was an attempt to attack the Council and councillors rather than being a genuine attempt to obtain information. It further explained that it had concerns that the request appeared to be a part of a campaign against the Council and one councillor.
16. It stated that the wording of the request specifically targets one councillor, even though several councillors and cabinet members have been involved in this programme. This councillor has expressed concern and therefore the Council concluded the request has caused an unjustified level of disruption and targeted distress.
17. The Commissioner's guidance provides clear examples of evidence which can be relied on, when refusing to deal with requests which form part of a campaign against a public authority. Some examples are;
 - The requests are identical or very similar;
 - Email correspondence have been received in which other requesters have been copied in or mentioned;
 - There is an unusual pattern of requests, for example a large number have been submitted within a relatively short space of time; or
 - a group's website makes an explicit reference to a campaign against your authority.
18. The Council provided the Commissioner with evidence to support its claim that this request was a part of a campaign against the Council. The evidence was made up of three requests for information (including this request), made by different requesters over a 5-month period. Each request related to the QHIP Major works in a specific area.

² [What does vexatious mean? | ICO](#)

19. The Council explained that it believed the complainant was working with one requestor in particular. This requestor was believed to be a member of a group and used a generic email address associated with this group. The complainant in this case used the same email address as the other requestor when making this request for information. The Council also explained the complainant will often repeat emails sent by the other requestor and contact the Council on behalf of the other requestor.
20. It concluded that this demonstrated that the complainant was working as part of a campaign to put a burden on the Council, when submitting requests for information

Public Interest Test

21. Regulation 12(4)(b) is subject to the public interest test. This test is used to determine whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
22. There will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation, all of which ultimately contribute to a better environment.
23. The complainant's request relates to land development. There is a public interest in such matters as it will impact on those who live in those areas.
24. The Council acknowledges that disclosing the requested information would give the public the ability to challenge the Council's decisions and actions. It would also allow the public to have a more effective participation when the Council makes environmental decisions.
25. The Council advised that disclosing the requested information would show that the Council is acting in an open and transparent way, this would allow the public to gain greater confidence in the Council's operations.
26. The Council explained that the requested information relates to a major works programme, and any information of public interest has already been released and is available to all interested parties. The Council has also advised that it is regularly putting out newsletters and meetings regarding the decision-making processes. It stated that this demonstrates the Council's commitment to openness and transparency.

27. The Council explained that the request is for a large volume of information, which is administrative in nature and the Council does not believe it would inform public debate in any meaningful way.
28. The Council explained that it considered the impact of complying with this request would be disproportionate and burdensome. It stated that as the complainant is not a leaseholder of the building in question, it has additional concerns of the complainant's motives. The Council also informed the Commissioner that the large volume of ongoing correspondence sent by the complainant via multiple communication routes intended to cause disruption to the Council.
29. Finally, the Council concluded that if it was to comply with the request, Council officers would be diverted away from their core duties and would have to spend many hours dealing with the requests. This would lead to an unreasonable diversion of public resources, which is then an improper use of EIR.

The Commissioner's decision

30. The Commissioner is satisfied from the above reasoning that the request is vexatious and to deal with the request would lead to a large diversion of resources.
31. The Commissioner is also satisfied that this request is part of a series of campaigning requests, which would ultimately cause disruption to the Council. However, he does not agree that this request is worded in a way which would target one Councillor.
32. The Commissioner does not require the Council to take any further steps.

Procedural matters

33. The Council did not respond to this request within 20 working days and therefore breached regulation 5(2).

Right of appeal

34. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

35. 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.
36. 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

Catherine Fletcher
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