

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 7 March 2024

Public Authority: Luton Borough Council
Address: Town Hall
Luton
LU1 2BQ

Decision (including any steps ordered)

1. The complainant has requested information about a complaint they had made in respect of a communications mast near their home. Luton Borough Council ("the Council") refused to comply with the request on the basis that it was vexatious under regulation 12(4)(b) (manifestly unreasonable requests) of the EIR.
2. The Commissioner's decision is that the Council is entitled to refuse to comply with the request under regulation 12(4)(b).
3. The Commissioner does not require further steps.

Request and response

4. On 13 September 2023, the complainant wrote to the Council and requested information in the following terms:

"Under the freedom of information act I am requesting the following information. This is regarding a reply which was sent to the LGO in a letter on 3rd July 2023 by [name redacted by ICO].

The information in this letter misled the LGO who was investigating my complaint, as the letter does not give details on the evidence that was sent I require clarification. You implied that there is only 1 air

conditioning unit producing the non compliant noise, please advise where this information was obtained, you also stated that this site is operating a blue light service please advise where this information came from. You have stated that you used an expert to gain advice before passing it to capital and assets to proceed, who was this expert and I would like to see their report.

Again I know Mr [name redacted by ICO] is not going to change his opinion, but I would like to know if he has taken any other advice on this nuisance as in my opinion a tonal noise which is above ambient noise levels, is continuous and has changed the way I use my property has to be a statutory nuisance.

I would also like the information on how I can get this investigated by the scrutiny committee, I have already requested this information and to date I have had no response even though I was told if you have any further questions please ask and that I would be kept informed."

5. The Council responded on 6 October 2023. It refused to comply with the request under regulation 12(4)(b).

Reasons for decision

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

6. Regulation 12(4)(b) of the EIR 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;"

7. 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 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.

¹ <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/refusing-a-request/#when-can-we-refuse-a-request-for-environmental-information-3>

8. In this case, the Council considers that circumstance 1) is applicable.
9. The Commissioner recognises that, on occasion, there can be no material difference between a request that is vexatious under section 14(1) of the Freedom of Information Act 2000 ("the FOIA") and a request that is manifestly unreasonable on vexatious grounds under the EIR. The Commissioner has therefore considered the extent to which the request could be considered as vexatious.
10. The Commissioner has published guidance on vexatious requests². As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.
11. While section 14(1) of the FOIA effectively removes the duty to comply with a request, regulation 12(4)(b) of the EIR only provides an exception. As such the EIR explicitly requires a public authority to apply a public interest test (in accordance with regulation 12(1)(b)) before deciding whether to maintain the exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to 'carry through' the relevant considerations into the public interest test. However, regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect, this means that the exception can only be maintained if the public interest in refusing the request outweighs the public interest in responding.

The Council's position

12. The Council has explained to the Commissioner that the request has been made in the context of long-standing dissatisfaction held by the complainant in respect of a communications mast near their home. This

² <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

mast was erected in approximately 1971, and prior to the complainant taking up residence in their home. The mast has been the subject of ongoing correspondence from the complainant since at least 2003.

13. The Council has elaborated that, where appropriate, it has investigated and addressed a number of concerns raised by the complainant throughout this time about the site. This has included concerns about land contamination, which also resulted in a complaint to the LGSCO that has not upheld. In relation to the current concern of noise, the Council has found there to be no statutory noise nuisance, but is currently considering whether there has been a breach of planning permission by the site operator.
14. The Council considers that the request specifically relates to a complaint that has been considered - and concluded - by the Local Government & Social Care Ombudsman ("the LGSCO") in respect of the Council's finding that there was no statutory noise nuisance. The Council understands that the LGSCO has since refused to re-open the case. The Council also notes that the complainant has the right to apply for a judicial review; however the Council is not aware of the complainant taking this action.
15. The Council considers that the complainant is seeking to use their information rights to force continued engagement on a matter that the Council considers to be closed.

The Commissioner's conclusion

16. It is clear to the Commissioner that the complainant is dissatisfied with the outcome of the LGSCO case, and the Commissioner appreciates that the complainant holds concerns about the site that they reside near to.
17. However, the Commissioner must balance this against the value of the request, and the use of public resources that the request would, of necessity, require the Council to apply.
18. Having considered the public value of the request, the Commissioner considers this to be limited. The substantive matter has been considered by the LGSCO, and a determination provided by the LGSCO which the Commissioner understands found no fault by the Council. The LGSCO has declined to consider the matter further, and the complainant will have had the option to seek a judicial review on the issue should they wish to do so.
19. The Commissioner accepts that the request is being utilised to force continued engagement by the Council on a matter that has been investigated and concluded, and for which there is a proper route of challenge (i.e., judicial review). The Commissioner also accepts that

compliance with the request would be highly unlikely to resolve matters to the complainant's satisfaction, and would result in further requests and correspondence, placing disproportionate burden upon the Council's resources.

20. In respect of the public interest test, there is no compelling evidence, such as a failure by the Council or LGSCO to consider the complainant's concern, which would indicate to the Commissioner that there is an equal or greater public interest in the request being complied with.
21. The Commissioner has therefore concluded that the Council's application of regulation 12(4)(b) of the EIR was correct.

Right of appeal

22. 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

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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