

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

Date: 2 July 2024

Public Authority: London Borough of Lambeth
Address: Lambeth Town Hall
Brixton Hill
London
SW2 1RW

Decision (including any steps ordered)

1. The complainant submitted a number of requests about estate service charges for a housing estate and about the landscaping service provided by Lambeth Parks. The London Borough of Lambeth ("the Council") provided the complainant with some information by response, however stated that further recorded information within scope of the complainant's requests was not held. During the course of the Commissioner's investigation the Council sought to rely on regulation 12(4)(b) to refuse the complainant's requests for information about Lambeth Parks/Landscapes.
2. The Commissioner's decision is that the Council is not entitled to rely on regulation 12(4)(b) to refuse the complainant's requests for information about Lambeth Parks/Landscapes dated 17 July 2023, 15 August 2023, 17 September 2023 and 29 September 2023.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to each of the requests listed in paragraph 2 that does not rely on regulation 12(4)(b).
4. The public authority must take these steps within 30 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

5. The complainant wrote to Councillors on 11 July 2023 raising a three part request for information about irregularities in costs for separate residential buildings on an estate, repairs to drains, and electricity charges for a rent office that is no longer used. In the interests of brevity of this notice, all of the requests referred to below have been included in an appended annex.
6. On 17 July 2023, the complainant raised a further information request with Councillors regarding Lambeth Parks' relationship to Lambeth Council, making explicit reference to FOIA.
7. On 9 August 2023 the complainant contacted the Councillors to chase a response.
8. On 14 August 2023 a Councillor replied to the complainant under BAU procedures providing some narrative information in response to their request.
9. On 15 August 2023 the complainant wrote to the Councillor requesting clarification of their response and reiterating their request under FOIA for information about Lambeth Parks.
10. On 10 September 2023 the complainant contacted the Commissioner in respect of the delayed responses to their information requests.
11. On 17 September 2023 the complainant wrote to the Councillor requesting further information about Lambeth Parks and how leaseholders are charged for landscaping services.
12. On 28 September 2023, a Councillor responded to the complainant under BAU procedures and advised them to submit an FOI request in respect of their requests for information about Lambeth Parks. The Councillor also provided some narrative information in response to their requests for information about block and estate costs.
13. On 29 September 2023 the complainant wrote to Councillors to express their dissatisfaction with how their requests had been handled and raise a further request for information about Lambeth Parks. The Council issued the complainant an email with a request reference number.
14. The Council collated two of the complainant's requests and provided an internal review response on 14 November 2023. It provided recorded information within scope of part (c) of the complainant's request of 11 July 2023. It also provided a narrative response to part (b) of the complainant's request of 11 July 2023 and in response to a specific part of their request of 17 September 2023 regarding a "recharge formula".

The Council failed to acknowledge or respond to the complainant's requests for information about Lambeth Parks dated 17 July 2023, 15 August 2023, or 29 September 2023.

15. On 19 November 2023 the complainant repeated their request for information about Lambeth Parks of 17 September 2023.
16. On 16 January 2024 the Council responded, stating that it did not "hold a record of the decision to bring the service in house".

Scope of the case

17. The complainant contacted the Commissioner on 11 December 2023 to complain about the way their requests for information had been handled. In support of their complaint, the complainant provided the Commissioner with extensive documentation including correspondence with local Councillors on the issues raised in their request.
18. The Commissioner asked the complainant to confirm the nature of their complaint. The complainant advised that they believed that the Council held recorded information within scope of their requests for information about Lambeth Parks dated 17 July 2023, 15 August 2023 and 17 September 2023, further than that which had been provided in its response of 14 November 2023.
19. The Commissioner wrote to the Council requesting details of searches it had undertaken to determine whether it held information within scope of the complainant's requests. During the course of the Commissioner's investigation the Council sought to apply section 12 (cost limit) of FOIA in respect of the complainant's requests for information about Lambeth Parks. The Council confirmed that it had provided the complainant with an updated response to their information request. The Commissioner has reviewed a copy of the response provided to the complainant and notes that it is exactly the same as the response provided to him, however the Council omitted to include the paragraphs claiming reliance on section 12 to refuse the requests. The Council's response the Commissioner is provided at paragraph 33 below.
20. The Commissioner wrote to the Council to remind it of its responsibility to notify the complainant of its change in position and asked whether it had provided them with a revised response relying on section 12, however the Council did not respond. The Commissioner contacted the Council on a further two occasions but did not receive a response to any of his emails.
21. For the avoidance of doubt, the Commissioner expects public authorities to consider the content of all of the information to which any such

exemptions are being applied. It appears that the Council did not do this at either on receipt of any of the complainant's requests or the internal review stage, because if it had done so, it would have established that locating all of the information in the scope of the requests would (in its view) have exceeded the cost limit.

22. As explained at paragraphs 21 and 22 below, the Commissioner considers the correct access regime for information of the type sought by this request is the Environmental Information Regulations 2004 (EIR), and the Commissioner notified the Council of this in his investigation letter of 25 March 2024. Therefore for procedural reasons the Commissioner's decision will address whether the Council is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) to refuse the request.

Reasons for decision

Would the requested information be environmental?

23. 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);

24. Although he has not seen the requested information but, as it is information relating to changes to landscaping contracts, the Commissioner believes that the requested information is likely to be information on measures likely to affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 12(4)(b) – manifestly unreasonable

25. 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”

26. In contrast with section 12 of FOIA, the EIR do not offer a definition of what is considered manifestly unreasonable. Guidance¹ published by the Commissioner explains that:

“In assessing whether the cost or burden of dealing with a request is “too great”, public authorities will need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable.”

and;

“In assessing whether the cost, or the amount of staff time involved in responding to a request, is sufficient to render a request manifestly unreasonable the FOIA fees regulations may be a useful starting point.”

27. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”)

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

28. The appropriate limit is set in the Regulations at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the public authority is £450.
29. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the public authority.
30. Where a public authority claims that regulation 12(4)(b) is engaged it should, where possible, provide advice and assistance to help the requester refine their request so that it may be dealt with under the appropriate limit.

The complainant's position

31. The complainant outlined their grounds of complaint in the following terms:

"The FOI department of Lambeth Council has told me there are **no documents at all** (complainant's emphasis) that relate to the cancellation/termination or other form of ending a contract with a private sector company (they will not disclose the name, but confirm there was one) who maintained the gardens and green spaces on this Estate for no more than £19K per year and replace them with a team of Lambeth Council employees who they say carry the name 'Lambeth Parks' and for which they are now charging leaseholders substantially more per year. Initially it was £89K for the same work in the same location (ie an increase of £70K per year). After a series of complaints, they reduced this figure slightly and said the cost was due to the length of the hedges. There appears, therefore, to be no audit trail, no sign of any competitive process to bid for a massive cross-Borough contract; no records of any authorities given by appropriate persons for this change of contract, no record of how recharging cost levels should be set, and a complete absence of any records pertaining to the information listed in the extracts of my emails quoted above.

I would have expected that officers would have put up at least one document to a senior officer or Member for Housing to recommend the ending of the private sector contract and proposals to establish a system within which existing employees could be given additional duties from their original tasks of maintaining parks in Lambeth to now also maintain green spaces in the many Estates across the Borough. There should have been some sort of cost comparison process, possibly also a bidding process to get the best deal for this massive, cross-Borough contract and some recommendations with calculations of costs and benefits by officers to a Cabinet Member (probably for Housing) to

authorise all of this. It might take the form of a Cabinet Paper, a paper to full Council. There would probably also be some internal minuting among officers in different departments to obtain relevant information about staff levels, pay, work levels, costs and to do the calculations for the use of the existing staff and to get the figures needed for the submissions to senior officers for authorisation."

The Council's position

32. In an email to the Commissioner the Council explained its position in the following terms:

"Previously (2019) Pinnacle delivered external cleaning services and grounds maintenance for Housing. The contract came to an end, it was not terminated however we still have a contract with Pinnacle for internal cleaning.

We note that our original FOI response refers to 'Lambeth Parks' but we should have used the terminology 'Lambeth Landscapes'. We are sorry for any confusion this may have caused. Lambeth Parks/Lambeth Landscapes are in-house services, not external contractors. Lambeth Landscapes took over the grounds maintenance and Serco took over external cleaning – as noted above Pinnacle are currently in-contract for internal cleaning.

With regards to Thames Water, they are only responsible for the sewers. The gullies that collect the rain water and feed it to the sewer is the Councils/land owners responsibility to clean and maintain. The Council does this by cleaning the gullies on an annual basis and recharging the landowners. On Lambeth Housing this is contracted to Serco and recharged to the Housing Revenue Account. Any gullies that have collapsed are also the landowners responsibility to repair.

We have found no additional information relating to any decision to bring the services in-house when the Pinnacle contract came to its natural end. The Director of Housing at the time has left the council, however we asked our Technology Department to carry out server searches of his email account archives to ascertain if we could capture any relevant information.

Keywords "[building name redacted]" and "Contract" were used as the search terms, for dates between 01/01/2018 and 31/12/2019. This returned in excess of 7382 emails. We would therefore engage s12 FOIA to this request. We estimate that to review all of the emails in this search to establish which may be in scope at 5 minutes per email would take over 615 hours, exceeding the limits set out in s12. We would be happy to issue a revised response to the applicant providing the information noted above.

We also note that the Applicant raised a request for information under our reference IRN20921701, and received a detailed response from one of Lambeth's councillors, Cllr [name redacted]. The ICO intervened – [Case reference redacted], however the matter was considered closed following receipt of a copy of Cllr [name redacted]'s reply to the Applicant. If the Applicant feels there are any issues that remain unanswered, we would be happy to review upon receipt of a request that specifically sets out the information required.”

33. The Council confirmed that it had provided the complainant with an updated response, in which it provided the same contextual information given at paragraph 32 above but did not state whether it held recorded information within scope of the request or claimed reliance on any exemption or exception. The complainant has provided the Commissioner with a copy.
34. The Commissioner asked the Council a series of questions in relation to its application of regulation 12(4)(b).
35. The Commissioner asked the Council why it hadn't included the terms "Lambeth Parks" or "Lambeth Landscapes" in its searches. The Council explained that it had limited the search terms to "[building name redacted]" and "contract" as the words "Lambeth Parks/Lambeth Landscapes" are commonly used in staff email signatures, and it wanted to be "more specific in the search terms used".
36. The Commissioner asked the Council why the searches were restricted to the email account of the previous Director of Housing. The Council stated that it focused its searches to this specific area as, after discussing where information within scope was likely to be held, it was suggested that any decisions or direction in regards to the changing of landscaping provider were likely to have been made by the former Director of Housing. The Council also stated that it couldn't establish whether any other written records were held.
37. The Commissioner asked the Council why searches spanned a two-year period between the beginning of 2018 and end of 2019. The Council stated that this was to ensure full capture of information that may relate to bringing the service in-house or not seeking to renew the contract on that particular estate. The Council explained that it was likely that the decision to change landscaping provider was made well before the contract with Pinnacle ended.
38. The Commissioner asked the Council why each email recovered by the searches it had already undertaken would require five minutes to review. The Council stated that it often found that on reviewing emails that may be within scope of the request that they have attachments and

trails. The Council recognised that some emails would be quicker to review, and therefore took an estimated average of five minutes.

The Commissioner's position

39. The Commissioner finds that the Council has not correctly applied regulation 12(4)(b) to the complainant's requests for information about Lambeth Parks/Landscapes dated 17 July 2023, 15 August 2023, 17 September 2023, 29 September 2023 and 19 November 2023.
40. In the first instance, the Council has not indicated which of the complainant's requests it is relying on 12(4)(b) to refuse. As the Council has declined to engage properly with his investigation the Commissioner is therefore left to assume that the Council is relying on regulation 12(4)(b) to refuse wholesale all of the complainant's requests for information about Lambeth Parks/Landscapes without considering their contents. However, the Commissioner notes that the Council has provided some narrative information within scope of the complainant's request for information about the "recharge formula" for calculating costs of landscaping as charged to leaseholders on the estate.
41. Secondly, it is unclear whether the Council is claiming that the requests for information about Lambeth Parks/Landscapes are manifestly unreasonable on the basis that establishing whether it holds information within scope of the request would, on its own, be burdensome, or whether it is claiming reliance on this exception because it does hold information within scope, but the activities involved in retrieving that information would be significantly burdensome and therefore manifestly unreasonable. As the Council has already disclosed some information to the complainant with regards to the "recharge formula", the Commissioner assumes the latter.
42. The Commissioner is not satisfied that the searches undertaken by the Council were entirely appropriate for the purposes of determining whether it held information within scope of the requests or locating that information. He notes that in their request of 17 September 2023, the complainant has asked for information about a tendering process, whether a contract exists between Lambeth Parks/Landscapes and the Council to provide the landscaping services, and which officer or department within the Council oversaw the transition to Lambeth Parks/Landscapes. The Council initially claimed that it held no recorded information within scope of these requests, before running a perfunctory search of the inactive inbox of the person most likely to have authorised the change in landscaping provider. While he recognises that this is a useful starting point, the Commissioner finds it unrealistic that any recorded information within scope of the complainant's requests, were any held by the Council, would only be held in the inbox of the ex-

Director of Housing, considering it involves the establishment of a cross-borough programme of work.

43. If the Commissioner were to take the position that the Council does hold information within scope of the request, he considers that the search parameters applied to inspect the Director of Housing's inbox, as described at paragraph 33 above, were broad and unfocused. The reason provided by the Council for searching over a two year period is that information relating to the decision to bring services in house or not renew the contract it already had with Pinnacle would have been made "well before the Pinnacle contract ended", but the Commissioner notes that the Council has not at any point sought to explain to the complainant when that contract for grounds maintenance was terminated. Indeed, the Commissioner has seen an email from a Councillor to the complainant stating that "Records suggest that Mears were the provider for both grounds maintenance and estate cleaning in 2020/21 before Pinnacle took over." Therefore, the date range used to search the Director of Housing's inbox (January 2018 – December 2019) appears arbitrary. Furthermore, the Commissioner would expect that searches would be focused on emails between the Director of Housing and Pinnacle, or between them and Lambeth Parks/Landscapes as per the scope of the request, however this has not been the case. As a result, searches have returned over 7382 emails that feature either the term "[building name redacted]" or "contract", or a combination of the two.
44. Ultimately, and before considering any provisions, the Council needs to establish whether it holds any information within scope of the requests at all, or whether determining whether any information is held would present a burden on resources sufficient to engage regulation 12(4)(b). The opaque and contradictory nature of the Council's responses to date means that the Commissioner cannot uphold the exception because the Council has failed to demonstrate that regulation 12(4)(b) applies.
45. The Commissioner therefore requires the Council to issue a fresh response to the requester under the EIR that does not rely on regulation 12(4)(b).

Public interest test

46. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.
47. As the Council has relied on section 12 to refuse the request it has not provided the Commissioner with any public interests in favour of maintaining the exception at regulation 12(4)(b).

48. In the circumstances of this case, the Commissioner considers that the exception relied upon by the Council doesn't apply, therefore he has not considered the public interest test.

Other matters

49. The Commissioner wishes to record that the Council's level of engagement, both with the complainant and his offices, falls far below the standard he expects of public authorities.
50. He would also remind the Council that it should make its officers aware of how to escalate information requests via the correct internal channels.

Right of appeal

51. 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

52. 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.
53. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jonathan Slee
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Annex

54. Request submitted 11/7/23

a) look into why there are such enormous differences between the costs of Basil House and Frank House on the Wyvil Estate for costs that should be the same, or very similar, for both Blocks. For example, some of the claimed costs (not the proportion per block, but the total Estate wide cost from which the proportion per block is calculated) are different for each Block. Within each (of the archetypal blocks) the Block electricity (although for the same number of lights and nothing else) are markedly different for some years in each Block. Something is seriously wrong with the way in which these charges are being apportioned as well as calculated within the apportionment. I sent full details of these anomalies in an email dated 20 April 23

b) explain why the Council is still doing work on drains that belong to Thames Water at massive cost to the Council when Thames Water has told the Council many times that the Council should not touch these drains because they belong to Thames Water which is responsible for maintenance and repair.

c) a new point which has come back to my attention is that on the Wyvil Estate, there is a building that used to be the Rent Office. It has been used by the contract cleaners for many years as their rest room and place to store their equipment and chemicals. It is decked out with sofas and chairs and several electric heaters. Some years ago (circa 2018) it was pointed out to the Council that this room consumed a large proportion of the electricity consumed on the Estate because of the heaters and lighting and that it would not be reasonable to pass on this charge to residents within the Estate Communal electricity costs. I have not seen the cost of electricity for this building being deducted from the cost of communal Estate wide electricity. Could I please be shown the meter readings for the Estate Communal Electricity charges dating back to 2018 and how the costs for the Estate Communal Electricity for the period from 2018 to the present has been calculated, and how the cost of running electrical appliances in the former Rent Office has been calculated and deducted from this figure?

55. Request submitted 17/7/23

Cllr Windle referred to 'When Lambeth Parks team took over' in his reply. Could you please tell me who or what 'Lambeth Parks' are? Is it a separate organisation to Lambeth Council? What is the relationship between Lambeth Council and Lambeth Parks? Who employs the people who work for Lambeth Parks? What did they take over and when please? How and why was it decided that they should 'take over'?

56. Request submitted 15/8/23

Could you also please tell me more about Lambeth Parks. Is it an entity of some sort such as a Division, Branch or some sort of Unit of the Council or a private entity or a name given to part of the Council workforce who look after Parks? Is it a separate organisation to Lambeth Council? What is the relationship between Lambeth Council and Lambeth Parks? Who employs the people who work for Lambeth Parks? What did they take over and when please? How and why was it decided that they should 'take over'

57. Request submitted 17/9/23

If Lambeth Parks is not a separate organisation then how did it bid for the contract to take over the contract? Who was it that 'agreed a recharge formula based on hedges, grass and shrub beds at each location', on what basis was this formula derived, who approved it (knowing that it was 4 times the cost of the previous contract), and on what basis are Council employees being used as a contracting body back to the Council? Please disclose also who set up the contract, what are the terms of the contract, who is it between (is it one part of the Council and another, for example), on what basis was the 'recharge formula' was calculated and why are leaseholders being charged a separate, much higher, contracted rate for the employment of staff who are already being paid for through Council Tax etc? Please unpack this as a matter of Freedom of Information and, indeed, transparent governance.

58. Request submitted 29/9/23

Clearly, if Lambeth Parks is just a name given to a certain group of Council employees who are paid to do grounds maintenance, how can the Council be incurring a cost over and above their salaries and other employment costs if they also now maintain the grounds in Estates etc? My questions above arise because the costs recharged to us by the Council have increased from £19K a year (maximum) to £89K a year for Lambeth Parks. I think some refund may have been given, but not significant and the principle of charging leaseholders for costs that the Council is not actually incurring needs an explanation. If you feel that this is something that Cllr Kay should answer, that is fine, as long as she does. But I remind that this question is lodged within the provisions of the Freedom of Information Act and in accordance with the provisions of the Landlord and Tenant Act 1985. I should, therefore, like a response from one of you please.