

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

Decision notice

Date: 10 May 2019

Public Authority: Croydon Borough Council
Address: Town Hall
Judd Street
London
WC1H 9JE

Decision (including any steps ordered)

1. The complainant requested information relating to completion certificates for 9 converted flats in Croydon. The public authority refused to comply with the request relying on the exception at regulation 12(4)(b) EIR (manifestly unreasonable request).
2. The Commissioner's decision is that:
 - The public authority was entitled to rely on the exception at regulation 12(4)(b) EIR.
 - The public authority breached regulation 14(2) EIR for failing to respond to the request within 20 working days.
 - The public authority reviewed its original response to the request within 40 working days and therefore did not breach regulation 11(4) EIR.
3. No steps required.

Request and response

4. On 9 February 2018 the complainant submitted a request for information to the public authority in the following terms:

"There are a total of 9 converted flats at 34-36 and 38 Coombe Road in Croydon CR0 1BP as result of a number of major alterations to convert two adjoined homes into flats commencing from 1993.

The recorded information consulted so far are very unclear. No information has clarified what information is passed to perspective buyers and resident leaseholders. Please clarify in a clear and straightforward manner, free from excessively legal or confusing language what recorded data you have in your records, namely:

1 - Has flat 2 at 36 Coombe Road a recorded completion certificate?

2 - Which converted flats located on the converted house at 36 Coombe Road has a recorded completion certificate?

3 - Which converted flats located on the converted house at 34 Coombe Road has a recorded completion certificate?

4 - Has the converted flat at 38 Coombe Road a completion certificate?

5 - The recorded date in which each of the 9 converted flat listed above was provided with a completion certificate."

5. The public authority responded on 13 April 2018 as follows:

"Your request has been considered as a 'repeated request' and is therefore manifestly unreasonable under Regulation 12(4)(b) of the Environmental Information Regulations. We have already provided you with the requested information as per your previous requests, reference numbers FOI/CRT/10002913 (August 2014), FOI/CRT/10003350 (November 2014), FOI/CRT/10003626 (February 2015), FOI/CRT/10005578 (April 2016), F/CRT/10005579 (April 2016), F/CRT/10006496 (October 2016) and a review carried out by legal services in May 2016."

6. The public authority added:

".....we cannot continue to allocate the resources required into researching the numerous repeated requests you have submitted at regular occurrences and we have explained to you on previous occasions you are welcome to visit our offices and view all of the

information we have stored on the conversion of flats at 34-38 Coombe Road, CR0 1BP to satisfy yourself that we are not withholding any information.

It appears from your requests that you are dissatisfied with some previous decision made by the Council in relation to properties 34 – 38 Coombe Road. If this is the case you may wish to consider making a complaint to the Council so that the relevant departments can look into your dissatisfaction further.”

7. The complainant wrote back to the public authority on 17 April 2018. Although he did not expressly request an internal review of the public authority’s response it was clear that he was dissatisfied with the response. He expressed his dissatisfaction in the following terms:

“The repeated refusal to answer and clarify the truth about the council own's recorded data say nothing of the the [sic] truth but speaks volumes. Transparency, accountability, public interest and safety are denied and obstructed by the council's repeated refusal to answer frankly to straightforward questions.

OBJECTIVES OF THIS FOI REQUEST.

The previous responses have simply highlighted and increased the concerns that the local authority own’s records about 34-36 and 38 Coombe Rd in Croydon, CR0 1BP are entirely inaccurate.

The aim of this FOI request is verify the accuracy of the recorded data namely,

- 1 - Establishing if the correct data is recorded in the local authority’s records and,
- 2 - If the correct recorded data is passed to the buyers and consumers by the local authority when conveyancing searches procedure take place in compliance with the law.
- 3 – What data are passed to the buyers and residents if the council’s recorded data available are inaccurate.

It is reasonable to believe that any resident in these premises has surely a right to access this recorded data which should be publicly available and accessible since it affects the people personal safety, well-being and financially.

The matter will be taken to the investigative authorities until the truth will be made accessible and available to the general public....”

8. He also made allegations regarding “serious potential hazards” to residents of 34-36 and 38 Coombe Road Croydon.
9. The public authority concluded that the complainant’s correspondence of 17 April constituted an appeal of the public authority’s response to his request for information and consequently conducted an internal review of the response.
10. On 10 May 2018 the public authority wrote to the complainant with details of the outcome of the internal review. The public authority provided the complainant with a table it had compiled setting out his previous requests in relation to completion certificates for 34-36 and 38 Coombe Road and a summary of the public authority’s responses. It also explained:
11. “.....this review focuses on whether or not your request for information was dealt with in accordance with the law. It is not an avenue to challenge or complain about what information should be held or should be provided to others. Your additional comments/concerns and/or complaints should be raised via the complaints procedure. I note that you wish to verify the accuracy of recorded data. I am sorry it is not possible to verify accuracy and that you are unhappy with the information, and the quality of the information, that the Council holds.”

Scope of the case

12. The complainant initially contacted the Commissioner on 1 May 2018 to complain about the handling of his request on the grounds that “No information has clarified what data is passed to the public” in respect of whether each of the 9 converted flats on 34-36 and 38 Coombe Road has a completion certificate and the date the certificate was issued.
13. On 4 May 2018 the Commissioner explained to the complainant that his complaint could not be accepted for investigation before the public authority had completed its internal review further to his request for same on 17 April 2018.
14. On 9 May 2018 the complainant wrote to the Commissioner arguing that the public authority had exceeded the statutory 40 working days to complete its internal review and consequently that the complaint ought to have been accepted by the Commissioner for investigation.
15. Coincidentally the public authority issued the outcome of its internal review the following day on 10 May 2018. The complainant contacted the Commissioner again on 15 May 2018 setting out in a 24 page letter

why he disagreed with the public authority's decision that his request was a repeated request pursuant to the application of Regulation 12(4)(b) EIR. The Commissioner has referred to the pertinent parts of his submissions in her analysis further below.

16. The scope of the Commissioner's investigation therefore was to determine whether the public authority was entitled to rely on the exception at regulation 12(4)(b) EIR. The Commissioner also considered whether the internal review was completed within the statutory time limit.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable request

17. Regulation 12(4)(b) provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.¹
18. The exception will typically apply in one of two sets of circumstances; either where a request is vexatious or where compliance with a request means a public authority would incur an unreasonable level of costs, or an unreasonable diversion of resources. The public authority's starting point is that the request is a 'repeated request' and, ultimately vexatious on the grounds that it would place an unreasonable burden on the public authority's resources.

Public authority's submissions

19. The public authority's submissions are summarised below.
20. Any information held within the scope of the complainant's request has been previously provided to him.
21. The public authority referred to various requests dating back to 2014 where the complainant had requested information relating to the converted flats at 34-36 and 38 Coombe Road. It pointed out that the requests relate to information on completion certificates for the flats

¹ For the full text of the exception, visit:
<http://www.legislation.gov.uk/ukxi/2004/3391/regulation/12/made>

and submitted that it had disclosed relevant information within its records.

22. The public authority explained that it had set out its response to each of items 1 – 5 of the complainant's request in the letter of 10 May 2018 containing the outcome of its internal review.
23. In that letter, the public authority explained that in respect of items 1 and 2 of the request it had previously advised the complainant on 15 January 2015 as follows: "Records do not indicate which flats these certificates relate to. Therefore this information is not held..." It noted that the same request was repeated by the complainant in question 10 of the request he submitted to the public authority on 21 April 2016.
24. With respect to item 3 of the request the public authority explained that this was a repeat of question 1 in his request of 27 April 2016 which was submitted in the following terms: "Please clarify (year and month) the conversion of the basement flat at 34 Coombe Rd obtained its completion certificate and indicate the relevant application number." The public authority explained that it had previously provided the following response to the complainant on 15 January 2015 further to a very similar request: "Answer (2) 94/00290 Conversion to form 2 No flats in the basement of 34-36a. This work was considered complete in respect to Building Regulations compliance on 28 October 1994. B. A Completion Certificates [sic] was issued in respect of this work on 28 October 1994."
25. The public authority explained further to item 4 of the request that this was a repeat of question 4 in his request of 21 April 2016 which was submitted in the following terms: "Please clarify when (year and month) the conversion of the basement at 38 Coombe Road obtained its completion certificate....." The public authority explained that it had previously responded to the same request in 3 December 2014 in the following terms: "As no separate planning or BR application exists for 38, only for numbers 34-36, I refer you to our answer provided to your previous request relating to nos. 34-36 which we sent you on 7 October."
26. The public authority provided the following response to item 5 of the complainant's request: "This information is contained in the completion certificates which are publically available on the Council's Building Control Portal."
27. The public authority submitted that the complainant is using the rights provided by the FOIA and EIR to "force continued engagement by the Council on a historic matter that it considers to be closed..." Further,

the complainant had shown an unreasonable persistence in an attempt to reopen issues "which have been comprehensively addressed by the Council."

28. It explained that previous requests by the complainant have already consumed significant public resources and complying with this request would place a further burden on the public authority's resources. Responding to the request would be highly likely to generate further requests and correspondence from the complainant about the matter.
29. It argued that there is limited public interest value inherent in the request. The information requested refers to records regarding the conversion of the properties in Coombe Road at a particular point in time as detailed within individual requests. However, any information held has been released. The conversion of the flats took place some years ago and nothing further has been done following the conversions.
30. It explained that it had endeavoured to answer the complainant's requests for information on the matter and has offered him an opportunity to view the records held in situ in an effort to satisfactorily answer his requests.
31. With respect to the balance of the public interest, the public authority explained that in addition to the general public interest in transparency and accountability, the request may relate to issues that are of concern to the complainant and that some of the issues may have direct impact on the complainant's community. The disclosure of information may therefore allow the complainant to better understand the basis and nature of those issues. However, "the general public interest in transparency and accountability may have been met to a significant extent by the Council through the disclosures made to the complainant in previous responses but the complainant remains dissatisfied." The public authority was therefore of the view that the public interest in maintaining the exception outweighs the public interest in complying with the request.

Complainant's submissions

32. The complainant's pertinent submissions are reproduced below.

"The local authority refused to provide a response, issuing a refusal notice on 13 April 2018 considering my request as 'repeated request' under Regulation 12(4)(b) of the Environmental Information Regulations'.

This is strongly objected. The request is not repeated for several reasons which are detailed below:

1 – Firstly, any information previously released has not provided the information requested in a clear and unequivocal manner or at all; on contrary, it raised serious concerns that the local authority is knowingly concealing the fact that its records are utterly incorrect causing detriment to the general public who needs the recorded data. (See Letter to the ICO dated 1st May 2018 in Appendix 2).

The information provided in 2018 are misleading for the public.

The local authority cannot refuse a request from the same requester just because it is for information on a related topic because of the response previously released by the council has not provided the recorded data requested.....

Then, the local authority cannot refuse a request as repeated once a reasonable period has passed.

In this case, four years elapsed since the information was requested for the first time in 2014.

The reasonable period is not defined precisely in law but depends on the circumstances, including, for example, how often the recorded information changes or if data are rectified for accurate record keeping.

The local authority inspected the building in 2014 when further last inspections were requested. (See response online at: https://www.whatdotheyknow.com/request/conversion_in_eight_flats_at_34#incoming-642582)

Despite, the inspection and much reasonable time to rectify its recorded data, the key information is still denied and the few data provided to the public in 2018 are misleading.

I am aware that the Council is only required to provide the public with information which the Council holds. But the local authority cannot deliberately provide misleading information as this is unlawful.

The evidence shows that in 2018 the council is still attempting to generate misleading information in order to cover-up its wrongdoing and satisfy a request."

Commissioner's considerations

33. As mentioned, the Commissioner considers that the exception at regulation 12(4)(b) will typically apply where a request is vexatious or where compliance with a request means a public authority would incur an unreasonable level of costs, or an unreasonable diversion of resources.
34. The Commissioner considers that the inclusion of 'manifestly' in regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under the exception, the information request must meet a more stringent test than simply being 'unreasonable'. 'Manifestly' means that there must be an obvious or tangible quality to the unreasonableness of complying with the request.
35. The public authority's position is that the request is a 'repeated request' and, ultimately vexatious on the grounds that it would place an unreasonable burden on the public authority's resources.
36. The Commissioner first considered whether the request is vexatious.
37. The term 'vexatious' has been defined by an Upper Tribunal as a "manifestly unjustified, inappropriate or improper use of a formal procedure."²
38. In considering whether a request for information is vexatious, the key question in the Commissioner's view is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the public authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority. Where relevant, this will involve the need to take into account wider factors such as the background and history of the requests.
39. There is no specific provision in the EIR regarding a repeated request. Under section 14(2) FOIA, a public authority does not have to comply

² Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC) at paragraph 27.

with a request which is identical or substantially similar to a previous request submitted by the same individual unless a reasonable period has elapsed between those requests.

40. A request will be substantially similar if the wording is different but the scope of the request is the same or the scope does not differ significantly from that of the previous request. The reasonable interval is largely dependent upon the likelihood of any of the information caught within the scope of the request differing or having changed from that previously provided.
41. In the Commissioner's view, a repeated request can be a significant factor in considering whether a request is vexatious and consequently whether it is manifestly unreasonable within the meaning of regulation 12(4)(b).
42. It is clear from the public authority's submissions that the complainant has, since 2014 at least, been seeking to establish whether completion certificates were issued under Building Regulations further to the conversion of the houses located at 34-36 and 38 Coombe Road in Croydon into flats.
43. The complainant is clearly dissatisfied with the responses he has received from the public authority further to his requests. The Commissioner is not unsympathetic to the complainant's view that in some instances the public authority's response could have been clearer. However, she notes that the complainant was invited by the public authority to inspect the relevant records held in situ. There is no indication that he took up that offer. The Commissioner also offered to discuss the case with the complainant with a view to explaining the limitations of the EIR in the context of the broader objective of his request. The complainant did not take up that offer.
44. The Commissioner considers that there is a serious purpose to a request which ultimately seeks to establish whether completion certificates were issued further to construction work undertaken to convert houses into flats. However, the public authority has explained that it has disclosed all of the relevant information it holds further to the complainant's request and has confirmed that information has not changed since "nothing further has been done following the conversions." Therefore, subsequent requests submitted on the grounds that the public authority has allegedly provided misleading information and "has not provided the recorded data requested" constitute a manifestly unjustified, inappropriate or improper use of the access rights provided by the EIR.

45. The complainant has been informed by the public authority that he is able to challenge the accuracy of the disclosed information should he choose to do so through a separate complaints procedure provided by the public authority. The EIR is not the correct mechanism to challenge the accuracy of recorded information which has been disclosed further to a request submitted under that legislation.
46. Furthermore, rather than re-submitting the same requests or substantially the same requests to the public authority, the complainant could have asked the Commissioner to investigate whether the public authority held additional information within the scope of his requests if he felt that was the case.
47. Instead, the complainant sought to use his information access rights under the EIR in a manner that is inconsistent with the purpose of the legislation. The right to information under the EIR and indeed the FOIA is a significant but qualified right which reflects other countervailing public interests including the importance of an efficient system of public administration. Regulation 12(4)(b) serves the legitimate public interest in not placing a disproportionate burden on public resources.
48. Taking all of the above into account the Commissioner finds that the public authority was entitled to engage the exception at regulation 12(4)(b).

Balance of the public interest

49. The exceptions from the duty to disclose information are subject to the public interest test set out in regulation 12(1)(b) EIR. Therefore, the Commissioner has gone on to consider whether in all the circumstances of the case the public interest in maintaining the exception at regulation 12(4)(b) outweighs the public interest in complying with the request.
50. There is a general public interest in openness and transparency and complying with the request would enhance that public interest. 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 and more effective participation in environmental decision making.
51. However, there is a strong public interest in ensuring that scarce public resources are not disproportionately used to respond to requests for information from an applicant who is clearly dissatisfied about an issue and seeks to keep it alive until there is a conclusion or resolution he considers favourable. That is simply not what information access

legislation was designed to achieve and consequently there is a strong public interest in ensuring that the EIR is not brought into disrepute from a manifestly unjustified and improper use of the legislation.

52. The Commissioner therefore finds that in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in complying with the complainant's request.

Procedural Matters

53. Under regulation 14(2) EIR a public authority refusing a request for environmental information is required to do so in writing as soon as possible and in any event no later than 20 working days following the date the request was received.
54. The request was submitted on 9 February 2018 and the public authority issued its refusal notice on 13 April 2018.
55. The Commissioner therefore finds the public authority in breach of regulation 14(2) for failing to respond to the request within the statutory time limit.
56. Under regulation 11(4) EIR a public authority is required to notify an applicant of its decision further to a request for an internal review as soon as possible and in any event no later than 40 working days following the date the request for an internal review was received.
57. Although the complainant is of the view that 12 March 2018 is the determinative date since that was when he requested an internal review further to the delay by the public authority in responding to his request, the Commissioner is satisfied that the determinative date is in fact 17 April 2018.
58. It was on 17 April 2018 that the complainant queried the substantive response he had received from the public authority on 13 April 2018. The outcome of the internal review was issued to the complainant on 10 May 2018.
59. The Commissioner therefore finds that the internal review was completed within the statutory time limit.
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Right of Appeal

60. 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
61. 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.
62. 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

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