

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

Decision notice

Date: 4 April 2017

Public Authority: London Borough of Camden
Address: Town Hall
Judd Street
London
WC1H 9JE

Decision (including any steps ordered)

1. The complainant has requested information relating to the redevelopment of the Bacton Rise estate and the involvement of a Compulsory Purchase Order (CPO). Six requests were made by the complainant and two others from other applicants using the same address. The council believed they were acting in concert and refused to respond to all eight requests citing regulation 12(4)(b) of the EIR.
2. Five of the requests have been considered under the EIR and the Commissioner has decided that regulation 12(4)(b) does not apply. In respect of the sixth request, this has been considered under the FOIA and the Commissioner's decision is that section 14 of the FOIA does not apply. She therefore requires the council to take the following steps to ensure compliance with the legislation:
 - The council should issue a fresh response under the EIR and the FOIA to the complainant without relying on regulation 12(4)(b) and section 14.
3. The public authority must take these steps within 35 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

4. Between 15 April and 4 May 2016 the complainant made six information requests to the council. The specific wording of each request can be found in the attached annex.
5. The council responded on 23 and 27 May 2016 refusing to disclose the requested information citing regulation 12(4)(b) of the EIR and section 14 of the FOIA.
6. The complainant requested an internal review on 27 May 2016.
7. The complainant contacted the Commissioner on 14 July 2016 to raise a complaint. As no internal review had been carried out, the Commissioner wrote to the council on 1 August 2016 to request that this was carried out no later than 19 August 2016.
8. The council carried out its internal review on 6 September 2016 and notified the complainant of its findings. It confirmed that it upheld its previous application of regulation 12(4)(b) of the EIR and section 14 of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner again on 7 September 2016 to complain about the way his requests for information had been handled. Specifically, the complainant stated that he disagreed that his six requests were vexatious or manifestly unreasonable and believed the information is of significant public importance, in particular to the residents of the Bacton Estate who are directly affected by a Compulsory Purchase Order.
10. Five of the six requests are requests for environmental information and so will be considered under the EIR. However, one request is not and so this request will be considered under the FOIA. There are also two other requests made by different applicants using the same postal address, which have been used by the council in support of its application of regulation 12(4)(b) of the EIR and section 14 of the FOIA.

Reasons for decision

Regulation 12(4)(b)

11. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request(s) for information is/are manifestly unreasonable.
12. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request(s) should 'obviously' or 'clearly' be unreasonable. A request or a number of requests can be manifestly unreasonable for two reasons: firstly where it is vexatious and secondly where the public authority would incur unreasonable costs or where there would be an unreasonable diversion of resources.
13. There is no definition of the term "vexatious" in the Freedom of Information Act, however the issue of vexatious requests has been considered by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield* (GIA/3037/2011). In the Dransfield case the Tribunal concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of formal procedure." The Tribunal identified four factors likely to be relevant in vexatious requests:
 - The burden imposed by the request on the public authority and its staff
 - The motive of the requestor
 - Harassment or distress caused to staff
 - The value or serious purpose of the request.
14. The Upper Tribunal's decision established the concepts of "proportionality" and "justification" as being central to any consideration of whether a request for information or a number of them is or are vexatious. The key to determining whether a request or a number of them is or are vexatious is a consideration of whether the request or requests is or are likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear it is necessary to weigh the impact of the request or requests on the public authority against the purpose and value of the request or requests. To do this a public authority must be permitted to take into account wider factors associated with the request or requests, such as its background and history.
15. The council stated that the six requests (and a further two made by other applicants using the same postal address) are unreasonable when looked at in isolation. It considers these requests are even more unreasonable and are clearly vexatious when considered in conjunction with information already disclosed, the burden to several teams within

the council and the level of correspondence it has received from the complainant on the issues which are the subject of these requests.

16. It explained that the Bacton Low Rise estate is in Gospel Oak and it is the focus of a £50 million redevelopment which involves the full demolition of the estate. The estate was found to be in poor condition and the redevelopment has involved a Compulsory Purchase Order (CPO). A consultation was undertaken to ascertain what residents thought about their homes and the estate and whether they supported total demolition and new build or refurbishment. The council confirmed that the majority of tenants were in favour of demolition.
17. The council confirmed that the redevelopment forms part of Camden's community investment programme, with the first part already complete. This has been a resident led redevelopment as residents have worked with the council to choose the architect and designs. The council advised that the complainant and other applicants have been using the same address in Bacton and have been attempting to stop the CPO. It explained that at the time of the requests the CPO was the subject of a hearing which was due to be heard by the Secretary of State in September 2016.
18. The council explained further that the complainant has been clear in his objectives. He either wants the council to pay him above the valuation of his property or allow him and a friend from America to purchase the whole estate for £40 million. Both options are not feasible. The council confirmed that the complainant is also the last remaining leaseholder on the estate.
19. The council advised that the complainant has emailed, telephoned, visited and had extensive correspondence with Legal Services, Planning, Information and Records Management, Councillors, the Chief Executive's Office and the Leader's Office. It stated that its Planning and Legal Services have had to dedicate a full time equivalent staff member each in order to manage the work he is generating; replying to emails, preparing reports for the CPO hearing, investigating and responding to the numerous groundless complaints from him.
20. The council explained that it is the feeling in these teams that the purpose of these requests appears to be to wear down the officers and try to make them give in and give him what he wants. It argued that the complainant has submitted hundreds of pages of complaints and raised trivial issues and much of what he complains about is a repetition of what he has sent to the council before.
21. The council confirmed that it has made it very clear to the complainant that it cannot sell the estate to him and his American friend and the

council will proceed with the approved scheme. It has also made it clear that it cannot pay more than the market value for his property plus 10% compensation and expenses as it is a public body accountable to all members of the public.

22. Although the planning enquiry hearing had not been heard by the time of these requests, the council believes the issues that are the subject of these requests had already been extensively addressed with the complainant and the complainant's actions had already led to a disproportionate use of resources. The council believes these requests are just the "tip of the iceberg" when considered in a wider context and bringing into account the level of correspondence it has received and the time already devoted to addressing it.
23. In terms of the two requests made by other applicants to which regulation 12(4)(b) of the EIR has been applied, the Commissioner is satisfied that on the balance of probabilities these applicants are acting in concert with the complainant. The two applicants are using the same postal address for their correspondence and are largely asking for very similar information to the complainant. The council has received objections to the CPO from the complainant and these two other applicants and the complainant specifically stated the following in his correspondence with the council:

"...myself and other objectors have been trying to obtain the information since January 2016."
24. The Commissioner is satisfied that for the complainant to know that the other applicants have been waiting for information as well, in addition to the fact that they are all using the complainant's address for correspondence, it is reasonable to say that they are acting together or in concert. The Commissioner is therefore satisfied that these two requests can be taken into account when considering the application of regulation 12(4)(b) of the EIR.
25. However, the Commissioner wishes to draw a clear distinction between those applicants acting together to legitimately pursue a cause and those applicants acting in concert as a part of a campaign designed to, in the main, cause disruption to the public authority concerned. Just because these two applicants appear to be corresponding with the council alongside the complainant does not automatically mean the requests are manifestly unreasonable on the basis that they are vexatious.
26. During her investigation, the Commissioner asked the council on three occasions to provide evidence to support the application of this exception. Specifically, she asked the council to provide an accurate

chronology of events up to the date of these requests – detailing the number of the requests received, how these had been responded to, what correspondence it had received from the complainant running alongside these requests and details of any complaints or other significant events which may be relevant to the consideration of this exception. Each response the Commissioner has received has provided different information.

27. The initial refusal notice that was issued to the complainant on 23 May 2016 detailed that he, and others acting with him, had made 11 requests for information that year and he alone had sent 1500 emails or piece of correspondence to one member of staff within the council. It is still not known if the council was referring to 11 *previous* requests in this response or the eight referred to in the refusal notice and three earlier requests.
28. In the council's first submissions to the Commissioner dated 3 December 2016 the council similarly, although not quite the same, referred to the eight requests documented in its refusal notice of 23 May 2016 and two previous requests, which it complied with dated 24 January and 8 April 2016. The council provided the Commissioner with a table of these requests, explaining the date they were received and briefly the information requested.
29. As the Commissioner received insufficient information on which to make a decision, she asked the council again for further more detailed arguments to support the application of this exception. The council responded on 14 December 2016 and with this response provided a spreadsheet which it believed detailed the chronology of significant events, correspondence and requests the Commissioner had asked for.
30. In this second response the council argued that it had received 70+ information requests from the complainant over an eight month period and in over 40 of these requests information had been provided in full. The council stated that the complainant often sent the same request to different members of staff across the council and had also used his subject access rights under the Data Protection Act to access information relevant to his enquiries. It stated that although the complainant may be pursuing a legitimate cause, it felt the repetitive way in which he is pursuing this has had the effect of disrupting officers at the council from their work. The council argued that 70+ requests over an eight month period is manifestly unreasonable alongside sheer volumes of other correspondence across the council relating to the same topic.
31. Due to the clear inconsistencies in the council's responses the Commissioner contacted the council again for further information. She

drew the council's attention to the fact that it had first argued that it had received 11 requests over an eight month period and then informed her that it had received 70+ requests. The Commissioner confirmed that she had reviewed the spreadsheet provided on 14 December 2016 in detail and it appeared that the council had incorrectly singled out elements of the requests which are the subject of this notice thereby suggesting that each element represented a separate request in its own right. The Commissioner referred the council to one of the requests made by the complainant on 18 April 2016 (reference 20554587) as an example. The complainant had asked for three pieces of information. In the spreadsheet provided the council had separated these three elements out marking them as individual requests when this is one request. The council was advised that this is not the correct approach to be taken when considering the application of regulation 12(4)(b) of the EIR.

32. The Commissioner had also contacted the complainant directly to obtain his recollections of the level of correspondence and number of requests and had received a very different response to that received from the council. The complainant stated that he had only made one or two information requests prior to the requests considered in this notice and had only corresponded with the council around 40 times in the last 10 years and certainly had not sent 1500 pieces of separate correspondence to one member of staff.
33. The council was therefore asked to provide an accurate chronology of requests received detailing the council's individual case reference numbers for each, what information was requested and a copy of the original request for information it had received. In terms of the 1500 emails and pieces of correspondence received, again, as this was clearly in dispute, the Commissioner asked the council to provide some evidence to support this. It was explained that the Commissioner did not need to see each and every email or piece of correspondence but possibly screenshots of the search results the council obtained when establishing this level of correspondence.
34. The council provided a further response on 13 February 2017. It confirmed that it had reviewed the spreadsheet previously provided in light of the Commissioner's concerns and had slightly reduced the number of requests received from 84 to 70. Again this is a stark difference from the refusal notice that was issued to the complainant.
35. It also stated that it had now highlighted sections of the spreadsheet to show where the complainant has asked the same question or made the same request to different officers in the council. It advised that it was not adopting the approach of separating out elements of a request to suggest that each element is a separate request in its own right. The council also provided the Commissioner with a number of computer

screenshots to prove that it has received volumes and volumes of correspondence from the complainant in addition to his information requests.

36. The council advised that it also wished to draw the Commissioner's attention to a subject access request it had received and the specific comments of the member of staff tasked with responding. The comments were:
37. "I have reviewed the information released in response to [name redacted] SAR that was submitted in April. I located 80 inward communications from him, including emails, letters and formal representations. I know from the initial search returns for the latest SAR that he has had a lot of recent contact with the Council so the number will be higher. I thought it might be helpful to add that I obtained two call logs for the request, one identified 202 inward calls from [name redacted] in the period April 2014 to 31 May 16 and a separate one 69 other calls in a period June 13- April 16."
38. The council also referred to a court hearing of 3 February 2017 and the complainant's application being dismissed "totally without merit". It stated that this was a significant declaration; one that could ultimately lead in the future to the court declaring the complainant a vexatious litigant.
39. Despite being afforded three opportunities to explain and provide accurate evidence to support the application of regulation 12(4)(b) of the EIR, the council has failed to do so. It still remains the position at the date of writing this notice that the Commissioner does not know accurately how many other requests the council has received from the complainant and the two other applicants relating to the Bacton Rise estate and the CPO. As detailed above, the refusal notice referred to 11 requests being made but it is not clear if this is referring to 11 made in total or 11 previous requests. The council submissions have then referred to 70+ requests having been made and 40 of these having resulted in information being disclosed. The difference here is significant and the Commissioner cannot make any judgement on the application of an exception without accurate information and a true account of the facts.
40. The complainant has stated himself that he has not made 70+ requests to the council relating to his home and the CPO and strongly disputes that he has sent one member of staff 1500 pieces of correspondence. Given the complainant's submissions and the clear inaccuracies in the council's submissions the Commissioner has no alternative but to conclude that regulation 12(4)(b) of the EIR does not apply.

41. The spreadsheet she has received still separates elements of these requests into separate requests despite the council being advised that this is not the correct approach. It has also referred the Commissioner to matters which post-date the requests – the court hearing referred to in paragraph 38 above and a number of items on the screenshots provided with the council's third response of 3 February 2017.
42. The Commissioner has also noted that the screenshots not only contain correspondence or emails from and to the complainant but internal correspondence relating to the CPO, his involvement in it and the processing of the requests received; a number of which again post-date the requests. These screenshots are not an accurate reflection of the incoming and outgoing correspondence from and to the complainant alone up to the date of the requests which are the subject of this notice. They also seem to contain internal correspondence, 'read' receipts from emails sent and internal electronic reminders or actions required on the complainant's requests and SAR. The Commissioner therefore cannot accept that the council's previous statement that it has received 1500 pieces of correspondence from the complainant is accurate and a true reflection of events.
43. The council has referred to the complainant making requests for information to a number of staff members in the council. The Commissioner has received evidence to support this statement. However, it is apparent that at the time of the requests the complainant was in correspondence with the council's solicitor over the CPO and up and coming public hearing. Some of the requests were made to this solicitor and members of staff who deal with the council's FOIA/EIR obligations. It is understood that this may have caused a little disruption and involved more staff time than normal. However, the Commissioner considers there are genuine reasons for this approach. The complainant felt he required the requested information for the up and coming hearing well in advance in order to prepare accordingly. Some of the requested information would be provided under the court disclosure rules but some of the information would not. So it is understandable, possibly, why the complainant felt it necessary to contact both the council's solicitor and the FOIA/EIR function. In any event, the requests and who was dealing with them could have easily been co-ordinated between two departments or the complainant could have been asked to direct correspondence to one area.
44. In conclusion, the Commissioner has received insufficient evidence on which to decide that the requests are manifestly unreasonable. It may be the case that the requests are manifestly unreasonable but without clear and accurate information from the council the Commissioner has no option other than to conclude that regulation 12(4)(b) of the EIR is not engaged.

45. As the Commissioner has decided that regulation 12(4)(b) of the EIR is not engaged, there is no need to go on to consider the public interest test.

Section 14 of the FOIA

46. The council applied the FOIA to the complainant's second request of 18 April 2016 (details of which can be found in the attached Annex). The Commissioner is satisfied that this request is not a request for environmental information as defined in regulation 2(1)(a) to (f) of the EIR and so the correct legislation to apply here is the FOIA.
47. The council stated that it wished to rely on the same submissions the Commissioner has received, detailed above, for the application of regulation 12(4)(b) of the EIR, for the application of section 14 of the FOIA.
48. Paragraphs 13 and 14 above describe the circumstances in which a request or a number of requests may be deemed vexatious for the purposes of section 14 of the FOIA and regulation 12(4)(b) of the EIR. So there is no need to repeat them here.
49. Similarly, as the arguments presented by the council are the same for regulation 12(4)(b) of the EIR and section 14 of the FOIA there is no need to repeat them here.
50. The Commissioner considers the same decision reached above must apply to this request for the very same reasons. To date she has been provided with inaccurate submissions and differing responses from the council. Similar to the council's application of regulation 12(4)(b) of the EIR, the Commissioner cannot make any decision on whether section 14 of the FOIA applies or not without accurate submissions and a true account of the key events and issues surrounding the request that has been made.
51. She has therefore no alternative but to conclude again that section 14 of the FOIA does not apply to this request.

Procedural matters

52. At the beginning of this investigation there was a lengthy dispute with the complainant and the council over whether a request for an internal

review had been made. The Commissioner ultimately decided that the complainant's correspondence of 27 May 2016 (following the receipt of the council's second refusal notice) constituted a request for an internal review and from this point one should have been carried out for all the complainant's requests detailed in the refusal notices of 23 and 27 May 2016 in accordance with regulation 11 of the EIR.

53. As the council failed to recognise this as a request for an internal review, one was not carried out until the Commissioner requested the council to do so. The internal review was finally issued on 6 September 2016.
54. It is the Commissioner's view that an internal review should have been carried out within 40 working days of the complainant's correspondence of 27 May 2016 in accordance with regulation 11 of the EIR. As the council failed to do so, the Commissioner has recorded a breach of regulation 11 of the EIR in this case.

Other matters

55. The Commissioner would like to draw the council's attention again to the inaccurate submissions she has received and remind the council that the onus is on a public authority to demonstrate that a particular exception is engaged. It is not the Commissioner's responsibility to argue on a public authority's behalf. If insufficient or inaccurate information is supplied and opportunities have been given to enable a public authority to present its position accordingly, the Commissioner can only consider what has been presented and possibly reach a decision that is not in the public authority's favour.

Right of appeal

56. 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

57. 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.
58. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Requests received by the council on 15 April 2016 (references: 20552788 and 20552821)

"It came to my attention that the Camden Council is seeking to demolish my house (150 Bacton, Haverstock Road, London NW5 4PS) to build another house on the site. Could you please provide me with the information showing whether other options have been considered and what options were considered, the minutes from the meetings of the Camden Council executives, including the list of participants and resolutions. Please also include supporting evidence and reports used in making the decision.

Please also include supporting evidence and reports used in making this decision."

And;

"Could you please provide me with the following information?"

- 1. List of land plots and real estate owned by Camden Council*
- 2. List of land plots and real estate leased by Camden Council"*

Requests received by the council on 18 April 2016 (references 20554789 and 20554587)

"The viability report of the proposed redevelopment/regeneration of the Bacton Low Rise Estate located at Haverstock Road, London NW5 4PS."

And;

"The following information for 2005-2015 calendar years, please?"

- 1. Number of applicants on the housing list as of December 31 of the respective years.*
- 2. Number of priority applicants and definition of priority applicants.*
- 3. Number of accommodations provided to the applicants."*

Request received by the council on 29 April 2016 (ref: 20570552)

"Since my house is also affected by the potential Compulsory Purchase Order in respect of the Bacton Estate (also referred to as Bacton Low Rise Estate), please also provide me all internal and external communication relating to the discussed Compulsory Purchase order, including but not limited to:

1. The viability report
2. The Environmental Assessment Report
3. Communications with architects (including Karakusevic Caersen Architects (KCA) and regulatory bodies.
4. Copies of the feedback forms received from regulatory bodies and members of the local community
5. All documents the Council relies on in its application for Compulsory Purchase Order, including but not limited to:
 1. Circular 06/2004: Compulsory Purchase and the Crichel Down Rules
 2. Planning Consent dated 25 April 2013 and referenced 2012/6338/P
 3. National Planning Policy Framework 2012
 4. London Plan 2011
 5. Camden Council's Local Development Framework (2010)
 6. Camden's Housing Strategy 2011/2016
 7. Camden's Sustainable Community Strategy 'Camden Together'
 8. Camden Community Investment Programme (2010-25)
 9. Cabinet report, minutes and decision endorsing the redevelopment of the Scheme dated 12 September 2012
 10. Director's delegated authority dated 6 February 2015 and associated report approving the making of the compulsory purchase order
 11. Planning Application submission documents for application referenced 2012/6338/P including:

- Application form
 - Site Plan
 - Proposed ground floor plan
 - Planning Statement (Quod Planning)
 - Design and Access Statement
6. Officer's report to Planning Sub-Committee recommending grant of planning permission and minutes of Planning Sub-Committee
 7. Planning Application submission documents for applications reference 2014/3633/P
 8. GLA, Housing in London 2014: the evidence base for the Mayor's Housing Strategy (April 2014)
 9. GLA, The 2013 London Strategic Housing Market Assessment: Part of the evidence base for the Mayor's London Plan (January 2014)
 10. Housing in London 2014: the evidence base for the Mayor's Housing Strategy (April 2014)"

Request received by the council on 4 May 2016 (ref: 20576223)

"A copy of the Planning permission application 2012/6338/P, supporting documents and any communication, please?"

Please also provide information on whom the information, including notices about the planning application was disclosed and when.

If a Shadow Section 106 Agreement has been made, please provide me with a copy of such agreement along with exhibits and addendums"