

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

Decision notice

Date: 26 September 2017

Public Authority: Bradford Metropolitan District Council

Address: City Hall
Centenary Square
Bradford
BD1 1HY

Decision (including any steps ordered)

1. The complainant has made a request to Bradford Metropolitan District Council ("the Council") for various information about operational instructions, council tax, the sale and use of land, solicitors, and the actions of councillors. The Council has refused the request under section 14(1) of the Freedom of Information Act ("the FOIA") and regulation 12(4)(b) of the Environmental Information Regulations ("the EIR").
2. The Commissioner's decision is that the Council has correctly applied section 14(1) and regulation 12(4)(b). However, in failing to issue a refusal notice within the time for compliance the Council breached section 17(1) of the FOIA and regulation 14(2) of the EIR.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 29 June 2016 the complainant wrote to the Council and requested information. The full text of the request is recorded in Annex A.

5. The Council responded on 8 August 2016. It provided some held information and advised that it would need further time in order to comply with the remainder of the request.
6. On 8 August 2016 the complainant requested an internal review. This was further requested on 19 August 2016 and 23 August 2016.
7. On 5 September 2016 the Council provided a response that the Commissioner interprets to be an internal review. In this the Council appears to advise that it will respond to outstanding requests, but that any further requests would be refused under section 14(1) and section 14(2) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 5 September 2016 to complain that the Council had not fully responded to the request under the terms of the FOIA and EIR. The Commissioner subsequently issued a decision notice¹ that required the Council to respond in full to the request under the terms of the FOIA or EIR, depending on which regime was applicable. The basis of this decision was that the Council had seemingly confirmed (in its internal review of 5 September 2016) that it had not yet responded to the request in full.
9. Following that decision notice, the Council issued further responses to the complainant on 20 December 2016 and 13 January 2017 in which it disclosed further held information.
10. The complainant subsequently contacted the Commissioner to complain that further recorded information was held besides that already disclosed. The Council then informed the Commissioner on 20 July 2017 that, whilst it has since attempted to respond to the request, it considered that it should have applied section 14(1) and regulation 12(4)(b) to the request upon receipt, and now sought to apply these provisions.
11. The Commissioner therefore considers the scope of this case to be the determination of whether the Council has correctly applied section 14(1) and regulation 12(4)(b).

¹ FS50644973

Reasons for decision

Is part of the information environmental?

12. Information is “environmental” if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(c), any measures that will affect, or be likely to affect, the elements referred to in 2(1)(a) or the factors referred to in 2(1)(b) will be environmental information. The requested information partly relates to the use of land for fairs and other recreation. Such matters can clearly be identified as measures that may affect the elements and/or factors. The Commissioner therefore considers it appropriate to consider those parts of the request that seek environmental information under the terms of the EIR.

Section 14(1) of the FOIA and regulation 12(4)(b) of the EIR

13. Section 14(1) of the FOIA states that:

Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

14. 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;

15. The Commissioner recognises that, on occasion, there can be no material difference between a request that is vexatious under section 14(1) of 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.
16. 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

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

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.

17. 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

18. The Council considers that upon receipt of the request, it should have applied section 14(1) and regulation 12(4)(b). This is because the request seeks a large volume of information across a number of different issues.
19. The provision of a full and concise response under the terms of the legislation would place a significant burden on the Council, which would need to potentially retrieve and consider various types of recorded information held across both hardcopy and electronic forms. The total number of relevant documents is likely to be in the thousands.
20. The Council notes that it has been in communication with the complainant since 2005, and has submitted a chronology to the Commissioner that outlines the various issues that have been raised. The Council considers that as part of its communications with the complainant it has attempted to bring conclusion to the disputed issues, and has provided the Commissioner with an example letter from the Monitoring Officer in 2013 that directs the complainant to the means of appeal he has in respect of various historic issues.

The complainant's position

21. The complainant has asked the Commissioner to note that the Council's handling of his request has been sporadic and piecemeal, and that he has been forced to correspond with the Council in order to pursue a complete response to his request.
22. The complainant considers that the request has been worded clearly, and whilst composed of different parts and relating to different issues, these have been submitted together for the sake of expediency.
23. The complainant has raised various concerns, including the actions of specific officers in undertaking their duties, the legality of the disposal of land, the actions of specific councillors, and the accuracy of information that the Council has provided as part of a Local Government Ombudsman complaint. The complainant specifically states that he believes there is a reasonable suspicion of wrongdoing, and that this indicates a public interest in the request being complied with.

The Commissioner's analysis

24. Firstly, the Commissioner would like to highlight that there are many different reasons why a request may be vexatious, as reflected in the Commissioner's guidance. There are no prescriptive 'rules', although there are generally typical characteristics and circumstances that assist in making a judgement about whether a request is vexatious. A request does not necessarily have to be about the same issue as previous correspondence to be classed as vexatious, but equally, the request may be connected to others by a broad or narrow theme that relates them. A commonly identified feature of vexatious requests is that they can emanate from some sense of grievance or alleged wrong-doing on the part of the authority.
25. The Commissioner's guidance has emphasised that proportionality is the key consideration for a public authority when deciding whether to refuse a request as vexatious. The public authority must essentially consider whether the value of a request outweighs the impact that the request would have on the public authority's resources in responding to it. Aspects that can be considered in relation to this include the purpose and value of the information requested, and the burden upon the public authority's resources.

The purpose and value of the request

26. The Commissioner has reviewed the request in detail, and has identified that it seeks information in respect of six broad issues:
 - Operational instructions provided to junior and administrative or switchboard staff.

- Council tax paid by the Leader of the Council.
 - The sale of Woodside Play Area.
 - The appropriation of Wibsey Fair.
 - Details of solicitors and associated correspondence.
 - The actions of specific councillors.
27. Within these six issues, the Commissioner recognises that the complainant holds various concerns about the actions of the Council, and in particular the decisions made by specific officers and councillors. It is also understood that the complainant has referred some of his concerns to the Local Government Ombudsman, although the outcome of that referral is not known to the Commissioner.
28. The Commissioner considers that any clear determination of the purpose and value of the whole request is challenging due to the apparent breadth of issues to which it relates. However, it is reasonable for the Commissioner to consider that these issues will have means of complaint or appeal available for them, such as from the relevant public authority or court. In situations where an individual disputes the actions of the public authority, the Commissioner recognises that the appropriate complaint or appeal process should be followed, and that the purpose of the rights provided by the FOIA or EIR is not to supplant such processes, or else be used to express dissatisfaction with the outcome of them.
29. The Commissioner further notes that some of the issues that the request relates to appear to be significantly historic and have been the subject of ongoing correspondence across a number of years. For example, the seeking of information about operational instructions appears to relate to the Council's decision to apply restricted contact in 2005-2006, whilst the seeking of information about solicitors appears to relate to a village green application that the complainant made in 2005.
30. The overall purpose and value of the request is therefore difficult for the Commissioner to clearly identify. However, the likely existence of appropriate routes of complaint or appeal, and the seemingly historic nature of some of the issues, are relevant factors that the Commissioner must consider in this decision.
- The burden upon the Council*
31. It is has become apparent to the Commissioner that extended correspondence has taken place between the parties following the request, as part of which the Council has seemingly attempted to

provide some of the information sought by the request. However, for the purposes of section 14(1) and regulation 12(4)(b) the Commissioner can only consider the potential burden of the request when it was received by the Council.

32. In reviewing the request the Commissioner recognises that it is significantly large compared to other requests that the Council is likely to receive, and the request comprises over four pages of this notice. It is also recognised, as noted in paragraph 26, that the request seeks information about a variety of issues.
33. The Commissioner notes that many of the individual parts of the request seek the 'details' of a specific situation, rather than individual documents known to exist. The Commissioner also considers that some parts of the request appear to seek information based on specific premises, or else ask for the confirmation or justification of an action. It is therefore reasonable for the Commissioner to consider that the Council would need to undertake wide and detailed searches for information across the Council, in addition to consultations, in order to compile any and all relevant information. It is also reasonable, considering the nature of the information sought, that some information may fall under certain exemptions and exceptions, the consideration of which would add to the likely burden that the initial searches would cause.
34. As such, the Commissioner recognises that full compliance with the request under the terms of the legislation would be likely to impose a significant burden upon the Council.

The public interest test

35. Regulation 12(1)(b) provides that:

...a public authority may refuse to disclose environmental information requested if-
(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

36. The Commissioner recognizes that the request relates to issues that are of concern to the complainant, and that some of these issues may have direct impact on the complainant's locale. The disclosure of information may therefore allow the complainant to better understand the basis of those issues.
37. However it is apparent to the Commissioner that some of these issues are significantly historic, and it is further understood that either the

Council has attempted to resolve these issues or that there are likely to be appropriate complaint or appeal processes available.

38. The Commissioner must also consider that compliance with the request as a whole is likely to impose significant burden upon the Council, which would need to divert public resources to address it. The Commissioner recognises that there is public interest in ensuring that such resources are not consumed unnecessarily, as this would affect the Council's ability to manage other information requests.

Conclusion

39. Whilst the Commissioner recognises that the issues referred to in the request remain of concern to the complainant, no strong and compelling public value or purpose has been identified for the request as a whole. It has also been recognised that compliance with the request would be likely to place significant burden upon the Council. The Commissioner has therefore concluded that the Council's refusal of the request under section 14(1) and regulation 12(4)(b) is correct.

Section 17(1) of the FOIA and regulation 14(2) of the EIR

40. Section 17(1) of the FOIA and regulation 14(2) of the EIR specify that a refusal notice must be provided no later than 20 working days after the date on which the request was received.
41. In the circumstances of this case the Council did not seek to apply section 14(1) or regulation 12(4)(b) until the Commissioner's investigation. The Council therefore breached section 17(1) and regulation 14(2).

Other matters

42. Although the Commissioner recognises that some requests may be treated as 'normal course of business' correspondence, it is clear that the request in this case required a clear and formal response under the terms of the legislation. The Council's failure to provide this led to the Commissioner's previous decision notice, and has caused what appears to be a significant amount of email correspondence between the complainant and Council. Had the Council given proper consideration to the request upon receipt it is likely that this would have prevented the significant diversion of the Council's resources that subsequently occurred.
43. The Commissioner refers the Council to her public guidance about managing requests under the FOIA and EIR.

44. In relation to the FOIA, this guidance can be accessed at:
<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/>
45. In relation to the EIR, this guidance can be accessed at:
<https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/receiving-a-request/>

Right of appeal

46. 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

47. 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.
48. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

49. On 29 June 2016, the complainant wrote to the Council and requested the following information:

(i) Please provide details of all operational instructions provided to junior and administrative or switchboard staff regarding enquiries made to the office of CEO resulting in Confidential or HLE (High Level Enquiries) being deferred

In the matter of Non Payment of Council Tax by the Leader of Bradford Council [redacted name] this year . I request that the council provide in the Public Interest the following information

(i) Whether that individual was fiscally more than one month in arrears at any given time

(ii) When such arrears occurred (Periods) and for for avoidance of doubt (what period they persisted over

(iii) Details of any papers or declarations held as part of electoral process declaring No Arrears (iv) Details of all committees that the Leader has sat upon or presided upon for avoidance of doubt participated in , made a decision on or influenced an outcome financial or otherwise

(v) Confirmation that any or all of these matters have been investigated in the context of the Local Government Finance Act in the interest of Probity of The City

Matter Appropriation of Public Open Spaces (POS) & Asset Management -

That in the Matter of Woodside Play Area dealt with by [redacted name] Director Sport & Recreation and sub sequentially auctioned part thereof after attaining a £60 K Government Grant

(i) Please provide details of Advertisement under ss122 of The Local Government Act appropriating Public Open Space for this site (for avoidance of Doubt Play Area Meadway , Brow Woods BD6 2SPand requested of [redacted name] (Solicitor) and [redacted name] (Solicitor) for sometime outstanding

(ii) Please provide details of the conveyancing chain and legal advisors engaged or instructed on advising on the matter

(iii) Please provide appraisal report on Best Value Consideration in the disposal of this asset by auction , fees and officer time for avoidance of doubt the Sale Value of the asset after costs and auction and by whom completed (outstanding enquiry)

Matter of Appropriation of Wibsey Fair, Fair Road , Wibsey

(i) Please provide details times and dates of all engagements, discussion, which the council allege to have undertaken in the process of lawful appropriation made by objectors , duly made . Please respond with specific regard to the Act (i) To include an exhaustive report as to why the land was no longer needed (ii) What land would be given in lieu (iii) what market rights existed under to interpretation of the Domesday Book or otherwise (iv) what arrangements where in place to allow the Follyhall Rd use to use the Fairground to perpetuate the right in sucession to exercise horses for travellers in regard to the anual horse fair (v) what the Council assume to be the legal definition of Fair (vi) Why the only consultees where a Fairmans Guild consisting of the only contracted party with City of Bradford not that at large with Right to Use (v) what other users where likely to be affected

(ii) Please provide details indicating that the land was no longer required for its intended purpose by the above named officer deemed to have appropriated it

(iii) Please provide details of Delegated Power , relevant to the named signatory , for avoidance of doubt [redacted name], for avoidance of doubt , any meeting held in accordance with the councils constitution , delegating authority under the Process of Delegation of Officer Powers at any time prior to the signatory date

(iv) or in the alternative , that which the council, takes to rely upon as a lawful basis to supersede the duties inherent under the Local Government Act which protects or affords process to the taking of Open Space. Please therefore with due regard to the Councils Constitution with reference to Page 91 Table " Statutory and Proper Officers "identify under what remit [redacted name] acted in accordance with that clearly defined and to supply any document affording that delegated authority to the named party

(v) Please identify , given [redacted name] absence at Corporate Scrutiny and Overview what delegated powers the officers presenting the case with reference Page 91 Table " Statutory and Proper Officers of the council constitution had in the furtherance of this matter with specific reference to the Local Government Act under Item E of the agenda and for that matter at Call in at Scrutiny and Environment

(vi) Thereafter please provide the express advice given to Corporate Committee and by which solicitor , which by implication allowed members who did not hold proper or statutory office in accordance with the constitution had a right over rule objections duly made as a lawful process as part of a Corporate Body,

Executive Powers do not supersede the law , no one is above the law.

(vii) Please provide the Date to which the Officer Appropriated the decision and whether that decision was arrived at before committee

(viii) In accordance with 14.25B2 please provide an evidential record of the decision taken along with reasons for the decision;

(ix) Please provide the constitutional basis as to why matters of administration relevant to s122 of The Local Government Act were being handled by the Receiving Directorate Highways and on what authority the receiving directorate had to assume objections duly made would be no longer considered if not responded. Please identify Which of those officers [redacted name] and one other was delegated to be a Statutory or Proper Officer and whether in their undertaking as a consequence acted ultra vires

(x) Please identify as requested any site of any document submitted by [redacted name] as evidence or [redacted name] regarding a notional petition taken some years previous to the beginning of the lawful process specifically identifying the wording on the Questionnaire relevant to open space or appropriation

(xi) Please provide details of the lease , a lease being a contract made , outside process, to which the advertisement made reference in error as part of statutory notice. Please confirm in writing that the City accepts a Statutory notice with error to be acceptable under the principles of Wednesbury

(xii) Please confirm that an error was made on advertisement of notice that implied objection relation specifically to a lease or in the alternative a copy of the notice demonstrating it was not clear

(xiii) Please provide details of set aside funding for the Site at Wibsey Fair for avoidance of doubt, The amount sequestered in Total, the amount set aside incrementally and when, The Budget and its designated funding use – that given to be visible and known to the District Auditor. And any report indicating how the Car Park would over the course of 3 years contribute to Road Safety (Safer Roads Budget)

(xiv) Please provide copies of the committee decisions identifying which members voted for appropriation at the Executive Corporate Meeting of and which against viz the release at call in Environment & Scrutiny 29th June 2016 Please identify clearly as a matter of record all those Councillors who made declaration of conflict of interest but persisted in the decision making process , for avoidance of doubt , that given to include any member who participated in the South Bradford Area Committee that was responsible for funding acquisitions, any

member on a planning panel relevant to the that matter, Please identify any member who held port folio or cabinet decisions that would likely have prejudiced the same that did not declare an interest Re Planning, Transportation and Design

Please provide as requested

(i) Details of the City Solicitors SRA (Soliicitors Regulatory Authority) number or any practice identification held by the authority (as requested and outstanding in person)

(ii) Details , for avoidance of doubt , date of commencement of any contract relating to the post of City Solicitor (as requested and outstanding from HR)

(iii) Please confirm and provide any instruction given to or executed by any Solicitor Acting on Behalf or engaged by of The City of Bradford Metropolitan Council relating to any matters presented under diverse acts, to which the authority is incumbent by Duty , a duty being required in law , for avoidance of doubt Statutes of England and Wales , relating to [redacted name] or [redacted name].

(iv) Please provide letter of correspondence relating to separate matter [redacted name] View on Challenge [redacted name] versus City of Bradford MDC regarding funding and any alleged threat to recover personal assets (for avoidance of doubt retained elsewhere) to myself [redacted name].

(v) Please confirm and provide details of any instruction put in place by a Council Officer in writing , verbally recorded minutes or any IT system that has or would interfere in lawful communication duly made under any Statute or Act many and diverse or amount to interception by instructing members to forward confidential correspondence for either signatories on this request

(vi) Any and all forms of correspondence /communications, letters, emails, fax, and records in relation to all dialogue between any member legal or other employed by Bradford Metropolitan Council (whether or not a third party) and any member of 9 stone buildings London in particular any form of correspondence to or from [redacted name] and [redacted name] in relation to the application to Register land as a town or village green application VG 10 made to Bradford Metropolitan Council on the 1st April 2005 and relevant to the principle and co-applicant as a matter of Public Interest and consideration

In the Matter of representation by elected members (Councillors!) and as agents of the Council. Two of whom hold Cabinet positions in the same ward " Royds "

(i) Please provide details from all correspondence from the elected Members Clr [redacted name] and Clr [redacted name] indicating that they could not or would not under Section 3:3:3 of The Councils Constitution represent Constituents Concerns and in the former would not engage in any Planning representation for constituents because they had a Conflict of Interest

(ii) Please provide details of that interest referred to or any reason from the same from any source (Letter emails Planning file etc) regarding their failure to represent constituents in accordance with the Code of Conduct.