

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

Date: **22 July 2019**

Public Authority: **London Borough of Enfield**
Address: **Thomas Hardy House**
39 London Road
London
EN2 6DS

Decision (including any steps ordered)

1. The complainant has requested copies of site audit reports about a cycle lane scheme. The request was refused as vexatious.
2. The Commissioner's decision is that the London Borough of Enfield ("the London Borough") should have dealt with the request under the EIR but that it would have been entitled to have relied upon Regulation 12(4)(b) of the EIR (manifestly unreasonable) to have refused the request in any case.
3. The Commissioner does not require the London Borough to take any further steps in respect of this request.

Request and response

4. On 19 January 2019, the complainant wrote to the London Borough and requested information in the following terms:

"Please send all 'Site Audit Reports' held by Enfield Council that relate to the recent works introducing cycle lanes and associated works on the A105, Green Lanes."
5. The London Borough responded on 11 February 2019. It refused the above request and four others as vexatious. It did not offer an internal review.

Scope of the case

6. The complainant contacted the Commissioner on 11 February 2019 to complain about the way his request for information had been handled.
7. As no internal review had been offered by the London Borough, the Commissioner decided to exercise her discretion and accept the case without requiring the complainant to seek an internal review.
8. The scope of this notice is to determine whether or not the request was vexatious and which was the appropriate access regime to consider.

Reasons for decision

Was the requested information environmental?

9. 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);

10. The Commissioner has not seen the requested information but, as it is information relating to a construction project, she believes that it is likely to be information about "measures" affecting the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.

Was the request manifestly unreasonable?

11. Regulation 5(1) states that:

"a public authority that holds environmental information shall make it available on request."

12. Regulation 12 of the EIR states that:

(1) *Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—*

- (a) *an exception to disclosure applies under paragraphs (4) or (5); and*
- (b) *in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.*

(2) *A public authority shall apply a presumption in favour of disclosure.*

(4) *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;*

13. Following the lead of the Upper Tribunal in *Craven v Information Commissioner & DECC [2012] UKUT 442 (AAC)*, the Commissioner considers that there is, in practice, no difference between a request that is vexatious under the FOIA and one which is manifestly unreasonable under the EIR – save that the public authority must also consider the balance of public interest when refusing a request under the EIR. The analysis that follows looks at vexatiousness as, if the request is found to be vexatious, then it will also be manifestly unreasonable and hence Regulation 12(4)(b) will be engaged.

14. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield [2012] UKUT 440 (AAC)*. It commented that

"vexatious" could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

15. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
16. *Dransfield* also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: "...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests." (paragraph 45).
17. The Commissioner has published guidance on dealing with vexatious requests, which includes a number of indicators that may apply in the case of a vexatious request¹. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
18. When considering the question of vexatiousness, a public authority can consider the context of the request and the history of its relationship with the requestor, as the guidance explains: "The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request."

The complainant's position

19. The complainant has not provided any detailed reasoning as to why his request was not manifestly unreasonable (although the Commissioner notes that he was under no obligation to do so), but in his letter of complaint noted:

They claim that the inquiry is vexatious, apparently it is vexatious asking questions about highway safety....Action should be taken in

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatiousrequests.pdf>

my opinion against this lawless behaviour in my opinion for me seeking legitimate information in terms of my concerns about highway safety of a highway project and also in relation to information being sought in connection to my role as a Committee Member of Enfield Transport User Group.

Many others who have questioned Enfield's Cycle Enfield project are getting the same treatment.

The London Borough's position

20. The London Borough supplied the Commissioner with a copy of a letter it had sent to the complainant in March 2018, in which it had sought to manage the complainant's correspondence. The letter advised the complainant that he was being allocated a single point of contact (SPoC) and that the London Borough would "no longer be considering Freedom of Information requests which fall within this nature [Cycle Enfield]."
21. The London Borough's letter noted that the complainant was repeatedly failing to follow its established complaints procedure and constantly seeking to reopen matters that had been dealt with. It noted that recent information requests submitted by the complainant

"have placed a burden on the local authority. The effort required to meet your requests are grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply."
22. Whilst the letter was already a year old at the point the Commissioner commenced her investigation, the London Borough also supplied a table summarising the complainant's correspondence dating back as far as the beginning of 2017 showing that he had been in regular contact and that he refused to abide by the SPoC restrictions that had been put in place.
23. The London Borough also supplied copies of emails which the complainant had sent which were abusive. This included describing staff as "*you morons*", an email which began "*Thank you Mr Putin, sorry, [staff name]*" and referring to a policy as "*literally attempted manslaughter*".

The Commissioner's view

24. The Commissioner's view is that the request, when considered in context, was manifestly unreasonable.
25. In reaching her view, the Commissioner has taken a number of factors into account and, whilst no single factor alone would have made the

request manifestly unreasonable, taken together, they impose a burden on the London Borough which is unjustified.

26. The Commissioner recognises that the complainant has a long standing interest in road safety and that this is a theme which reoccurs in his correspondence. She also notes that, leaving aside the question of tone, the examples of correspondence which the London Borough has highlighted suggest the complainant has a detailed understanding of many of the issues involved.
27. Set against that, the Commissioner also notes that the tone of the correspondence crosses the line from persistence to belligerence. The examples quoted above are at the extreme end, but there is a general derisory tone which runs throughout. Whilst the Commissioner accepts that having to push a case repeatedly can, over a period of time, cause frustration and annoyance, the correspondence often appears designed to harangue and ridicule rather than to persuade.
28. On burden, the London Borough has demonstrated that it has received a considerable amount of correspondence from the complainant (some 80 pieces) over the last two years. Without the specific wordings it is not possible for the Commissioner to estimate the burden that was imposed on the London Borough – and the evidence provided suggests that much of this correspondence was not responded to at all (in line with the contact restrictions). The Commissioner also notes that, according to the schedule of correspondence, the London Borough had received very little correspondence from the complainant for several months prior to the request.
29. However, the Commissioner has also had regard to the tendency of the complainant (as evidenced in the schedule of correspondence) to submit a large volume of correspondence within a short period. For example, in a three-week period spanning July and August of 2018, the complainant submitted a total of eight items of correspondence – half of which were submitted on the same day. The schedule that has been provided shows that this is a recurring pattern: a lull followed by a cluster of correspondence.
30. The Commissioner also notes the tendency of the complainant, despite his SPoC restrictions, to address or copy his correspondence to large numbers of councillors and officers within the London Borough. This causes a great deal of disruption for the London Borough which has to determine who has responded to which piece of correspondence and what response has been provided. The Commissioner considers that the complainant must be aware that submitting correspondence in such a way will have the effect of causing disruption to the work of the London Borough.

31. It seems clear that the complainant is having an ongoing argument with the London Borough over its road safety priorities when it comes to highway improvement works. Whilst there is clearly a strong public interest in considerations around road safety, in the case of this particular request, the Commissioner considers that the complainant's conduct has drifted from the pursuit of matters of public interest to unwillingness to accept a decision.
32. Having considered all the factors involved, the Commissioner's view is that the request in question is a means by the complainant of prolonging his dispute with the London Borough. The Commissioner is also of the view that complying with this request would be likely to generate a fresh round of correspondence covering the same issues.
33. If the complainant believes the London Borough has acted improperly there are avenues through which those issues can be pursued. Attempting to revisit and reopen matters by way of making information requests is an inappropriate use of the legislation.
34. The Commissioner's view is that Regulation 12(4)(b) is engaged.

Public interest test

35. In order for a public authority to rely on Regulation 12(4)(b) to refuse a request, as well as demonstrating that the request is manifestly unreasonable, it must also demonstrate that the public interest lies in favour of maintaining the exception.
36. The Commissioner considers that there is always an inherent value in public authorities being transparent about the ways in which they spend taxpayers' money. She also considers that matters relating to road safety are of substantial public interest.
37. Set against that is the equally valid public interest in public authorities being able to protect themselves from requests which are unreasonable and which would divert money from important services.
38. In this case, as set out above, the Commissioner takes the view that the strong value of the requests which the complaint has made has diminished over time to the point at which their value is now outweighed by the unreasonable manner in which the complainant continues to pursue matters.
39. The Commissioner therefore considers that the public interest in maintaining the exception now outweighs the public interest in disclosure and thus the London Borough was entitled to refuse the request.

Right of appeal

40. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.
42. 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

Ben Tomes
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