

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 March 2024

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

Decision (including any steps ordered)

1. The complainant submitted a request for information relating to the redesigning of Central Hill Estate's MUGA. London Borough of Lambeth (the Council) refused to provide the information requested citing regulation 12(4)(b) (manifestly unreasonable) of the EIR.
2. The Commissioner's decision is that the Council was entitled to rely on regulation 12(4)(b) to withhold the information in scope of the request and that the public interest favours maintaining the exception.
3. However, the Council breached regulation 14 of the EIR by failing to issue its refusal notice within 20 working days.
4. The Commissioner does not require the public authority to take any steps as a result of this decision.

Request and response

5. On 15 June 2023, the complainant wrote to the Council requesting information in the following terms:

"Please could you supply all responses, reports, comments and emails to or from Lambeth's Environmental Dept Head of Service or other officer or employee in that dept on the redesigning of Central Hill Estate's MUGA to any Lambeth officers?"

6. The Council responded on 15 August 2023 citing regulation 12(4)(b) to withhold information in scope of the request and advised the complainant that it would consider a refined or shortened request if the complainant wished to do so.
7. The complainant wrote to the Council on 4 October 2023 raising further points of concern with its response and requested an internal review.
8. The Council conducted its internal review on 14 November 2023. It upheld its reliance on regulation 12(4)(b) for the withheld information.

Scope of the case

9. The complainant contacted the Commissioner on 21 November 2023 to complain about the way their request for information had been handled.
10. They wrote: "As you will see in my request for an internal review, the request is regarding one topic of communication: the building of a Multi-Use Games Area on the Central Hill Estate to one department in the council, the Environmental Department.

The council have said that this will exceed the limit allocated. This is not the case."

11. The Commissioner has therefore considered whether the Council is entitled to rely on regulation 12(4)(b) to refuse to provide the requested information.

Reasons for decision

Is the requested information environmental?

12. As the request is for information relating to the redesign of a building project, the Commissioner agrees that the requested information is likely to be environmental as per regulation 2(1)(c) and 2(1)(d)¹ and therefore, the Council was right to handle the request under the EIR.

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/>

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

13. Regulation 12(4)(b) states that a public authority can refuse to disclose information in response to any request that is manifestly unreasonable.
14. The Council is relying on regulation 12(4)(b) on the grounds of burden. When refusing a request on the grounds of burden, the Commissioner expects a public authority to provide a reasonable estimate as to how long compliance with the request would take. This estimate should be based on the quickest method of retrieving any relevant information. In most cases, this estimate requires the public authority to conduct a sampling exercise.
15. The Freedom of Information and Data Protection (Appropriate Limit and Fees) sets out an appropriate limit for responding to requests for information under FOIA. The limit for local authorities, such as the Council, is £450, calculated at £25 per hour. This applies a time limit of 18 hours. Where the authority estimates that responding to a request will exceed this limit, section 12(1) of the FOIA provides an exclusion from the obligation to comply with the request.
16. Although there is no equivalent limit within the EIR, in considering the application of Regulation 12(4)(b) the Commissioner considers that public authorities may use equivalent figures as an indication of what Parliament considers to be a reasonable burden to respond to EIR requests. However, the public authority must then balance the cost calculated to respond to the request against the public value of the information which would be disclosed before concluding whether the exception is applicable.
17. The Council explained that it had completed an assessment of the time it would take to comply with the request and a search was carried out. Email mailboxes of three key officers involved in the MUGA were searched, using the search term 'MUGA'. This resulted in 400 files being identified.
18. It estimated that to retrieve and collate the information, then review it to determine if it fell within the scope of the request, would take at least 4 minutes per record. There are over 400 files to examine giving a total of approximately 26 hours. The cost limit will therefore be exceeded as 26 hours x £25 per hour gives a total of £650 exceeding the £450 maximum limit.
19. The Commissioner considers that the Council has carried out reasonable searches to locate information falling within the scope of the request and has demonstrated why the cost limit would be exceeded.

20. The Commissioner therefore concludes that regulation 12(4)(b) is engaged; this is because he is satisfied that responding to the request would create an unreasonable burden upon the Council and hence the request was manifestly unreasonable.

Public interest test

21. Regulation 12(4)(b) is subject to the public interest test. This means that, even though the Commissioner accepts that the request was manifestly unreasonable and regulation 12(4)(b) was engaged, the Commissioner must consider whether the public interest in the maintenance of the exception outweighs the public interest in disclosure of the information.
22. The Council has confirmed that: "We consider that compiling a response to this request would be a significant diversion of resources which would not be in the public interest as it may disrupt other decision making or other workloads. It is not in the public interest to divert officer's attention from their core work in order that we respond to a request made by one individual which may have limited wider public interest."
23. The Commissioner accepts that there is a general public interest in this issue and that local residents will have their own interest in knowing how the Council is carrying out its duties and to use its resources to the greatest effect for the community as a whole. However, having considered both the complainant's and Council's arguments the Commissioner is not convinced that providing this information would substantially add to any public interest argument outside of that of the complainant and local residents.
24. Therefore, taking into consideration the significant burden that responding would place on the Council, the Commissioner considers that the public interest in the maintenance of the exception outweighs the public interest in disclosure.

Regulation 9 – Advice and assistance

25. Regulation 9(1) states that a public authority has a duty to provide advice and assistance to a requestor, so far as it would be reasonable to expect the authority to do so.
26. As stated in the Commissioner's [guidance](#), in cases where a public authority refuses a request under regulation 12(4)(b) as manifestly unreasonable because of burden or cost, the Commissioner normally expects it to provide the requestor with reasonable advice and assistance to help them submit a less burdensome request.

27. In this case, the Commissioner considers that given the specific wording of the request it would be difficult to refine it further. Therefore, the Commissioner has concluded that there is no easy way for the Council to suggest how the complainant could refine their request in such a way that it would be able to provide the information requested.
28. In light of the above, the Commissioner finds that the Council has complied with its obligations under regulation 9(1) of the EIR in its handling of the request.

Procedural matters

29. The Commissioner notes that the complainant submitted their request on 15 June 2023, however, the Council did not respond until 15 August 2023.
30. Regulation 14 of the EIR requires a public authority wishing to withhold information to issue a refusal notice within 20 working days. the Council failed to issue a refusal notice within 20 working days and consequently breached regulation 14 of the EIR.

Right of appeal

31. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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