

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

Date: 8 October 2024

Public Authority: London Borough of Islington
Address: Islington Town Hall
Upper Street
London
N1 2UD

Decision (including any steps ordered)

1. The complainant has requested information about historical roofing working carried out on a residential building. The London Borough of Islington ("the Council") refused the request with reliance on regulation 12(4)(b) (manifestly unreasonable) of the EIR.
2. The Commissioner's decision is that the Council is entitled to refuse the complainant's request and the balance of the public interest favours maintaining the exception.
3. The Commissioner does not require further steps.

Background

4. On 28 November 2023 the complainant contacted the Commissioner to complain about the Council's handling of their two part request, submitted 5 June 2023, for copies of a survey report relating to the most recent re-roofing of the building, and historical roofing information.

5. On 7 June 2024 the Commissioner issued his decision¹. He found, on the civil standard of the balance of probabilities, it was likely that the Council held information within scope of the second part of the complainant's request for historical information, further than that which has already been provided. The Commissioner ordered the Council to issue a fresh response following searches aimed at identifying all information held within scope of the second part of the request.
6. On 19 June 2024 the Council provided the complainant with a fresh response, which forms the basis of this decision notice.

Request and response

7. On 5 June 2023, the complainant wrote to the Council and requested information in the following terms:

"[1]I have been referred to you by Islington Council repairs team who have asked me to contact you to get information on a survey report from Job No [redacted] as they are unable to do so themselves (although it is unclear why)

[2]Also please could I have all information relating to the last re-roofing of [address redacted] and any information of any survey reports to check conditions, leaks etc since then."

8. As stated at paragraph 5 above, following service of the Commissioner's decision in respect of the Council's handling of the second part of the complainant's request, the Council provided the complainant with a fresh response on 19 June 2024. In its response, the Council provided some information within scope of the request in the form of minutes of a Partnering Team Meeting in 2007 redacted with reliance on regulation 13 (personal data), and a roof condition report for the property dated 2008, as well as some narrative information. The Council also claimed reliance on regulation 12(4)(b)(manifestly unreasonable):

"Whilst your request may appear straight forward, as previously explained the roofing works at [address redacted] formed part of a programme of works called Contract 41 which commenced in 2008. Contract 41 included at least 14 blocks and covered different works

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2024/4029927/ic-273403-c9m0.pdf>

including replacing kitchens and bathrooms, mechanical works and external works (which would have included re-roofing).

The council has attempted to resolve your query, however it has taken a considerable amount of work and to continue to work on this is too burdensome for the service. Whilst the EIR do not provide a definition of unreasonable cost I have considered the ICO's view that the 'appropriate limit' as defined in section 12 of the Freedom of Information Act (FOIA) can be used as a reference point. This appropriate limit is set at £450 for councils or 18 hours. Activities being charged at a flat rate of £25 per hour.

The council estimates that it has already spent in excess of 35 hours on dealing with your request at a cost of approximately £875. It is my view that regulation 12(4)(b), manifestly unreasonable is engaged as to deal with your request would be an unreasonable diversion of resources and disruption to service delivery.

The project files are held on the council's shared network drive and are split into multiple folders with thousands of files, as an example one folder contains 646 sub-folders nearly 10,000 files. As the files are on a shared drive it is not possible to carry out a search across all folders at once, each must be searched individually. To satisfy your request, the Homes and Neighbourhood's directorate carried out searches of the project files using the terms '[address redacted], Roofing/Re-roofing and Box Guttering' in an attempt to find relevant information and provide this to you.

Public Interest factors in favour of releasing the information

The council is committed to being transparent about the work it does on council owned properties and its decision making. The council ensures that residents are consulted on the scheme and during the works undertaken in Contract 41 regular updates were provided.

The council has attempted to satisfy your request, where it is easily able to do so, by providing you with information where it is easily able to do so, as well as explaining how information is held.

Public interest factors in favour of maintaining the exception

As outlined above, a considerable amount of officer time has been spent on attempting to resolve your query by searching for information you have requested and this is now having a detrimental impact on the running of core services and causing distress to some members of staff due to the cumulative impact.

Like many public sector organisations, the council is operating against extreme funding pressures, and it must protect its resources to ensure that it is able to run its core services efficiently and effectively for all residents. The council has provided what it considers to be core information, and therefore, the council believes that the public interest is better served in maintaining this exemption.

As the council are refusing the remainder of your request, due to the cost and burden of your request, I have reviewed what advice and assistance could be provided. I note that the council has already provided you with information and attempted to explain what information is held therefore, I am of the view that the council has already provided you with advice and assistance."

Scope of the case

9. The complainant contacted the Commissioner on 21 June 2024 to complain about the Council's fresh response to part [2] of their request of 5 June 2023.
10. The Commissioner accepted the complaint for investigation on 12 July 2024 without requiring an internal review. This was due to the amount of time that the complainant had spent engaging with the Council on the matter, and because the Commissioner considered it likely that the Council would rely on its existing position at internal review.
11. The Commissioner considers the scope of the case to be whether the Council is entitled to rely on regulation 12(4)(b) to refuse to process part [2] of the complainant's request. If the Commissioner finds that regulation 12(4)(b) is not engaged, he will consider whether the Council is entitled to rely on regulation 13 to withhold the third party personal data from the information already disclosed.

Reasons for decision

Is the requested information environmental?

12. 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);
13. As the information requested relates to external work on a residential building, the Commissioner believes that the requested information is likely to be information on activities affecting the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 12(4)(b) – manifestly unreasonable

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 the request for information is manifestly unreasonable”.

15. The EIR do not offer a definition of what is considered manifestly unreasonable. Guidance published by the Commissioner explains that:

“In assessing whether the cost or burden of dealing with a request is “too great”, public authorities will need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable” and;

“In assessing whether the cost, or the amount of staff time involved in responding to a request, is sufficient to render a request manifestly unreasonable the FOIA fees regulations may be a useful starting point.”²

16. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
17. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities, including the Council.
18. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours in respect of the £450 threshold.
19. Where a public authority claims that regulation 12(4)(b) is engaged it should, where possible, provide advice and assistance to help the requester refine their request so that it is not manifestly unreasonable.

The complainant’s position

20. In an email to the Commissioner the complainant outlined their complaint in the following terms:

“I was unaware that compliance of the FOI could be avoid by claiming that it is too burdensome and taking too much time therefore cost. Had they kept records in an orderly manner, particularly Building Regulation documents that should be kept indefinitely, then it would not take excessive time to locate. Building Reg documents are fundamental documents in my request. It is very much in the interests of the public as the Council are responsible for a large stock of homes and it would appear, not kept documents that should have been kept by their own standards.

The 3 top flats of [address redacted] have been damp for over 10 years due to water ingress from a defective box gutter. It has been reported to the Council over the years, but no successful remedial work has been done over this period. It is very much in the public interest whether a

² [Manifestly unreasonable requests - Regulation 12\(4\)\(b\) \(Environmental Information Regulations\) | ICO](#)

Council who hold the responsibility of housing families are competent in their role, or whether health and wellbeing of their tenants are being overlooked.

The amount of time I have spent trying to get this issue sorted over the years way exceeds any time they have spent recently trying to find documents that should have been instantly accessible. Therefore I don't agree with their suggestion that they have exceeded an appropriate limit. My buildings insurance company have refused to repair the damage caused to my leasehold flat due to Islington Council failing to fix the leak problem. It's only fair that I am given all the information as to why the leak was never fixed since the roof was refurbished in 2010. Was the original work done incorrectly? Was the design of the box gutter incorrect? There are several Council buildings in the estate with the same design and I understand similar problems have occurred, so it is definitely in the public interest.

I can understand why they are refusing to provide the information requested, because I believe it may highlight individuals who may have fallen short in their legal obligation and duty to maintain the building correctly. They claim to have redacted the names of the staff apart for the senior roles, however they have also redacted the names listed as senior roles. Why?

I don't accept that a further reason to provide the documents requested is because 'causing distress to some members of staff due to the cumulative impact'. Why would simply doing their job in supplying documents for a legitimate FOIC cause distress? Fear of what is contained in the documents could cause distress, but nothing else.

The fact that they originally stated categorically that there were no more relevant documents, but when further pushed, find more. This does little to promote trust and confidence in being open: "The council is committed to being transparent about the work". This is starting to emerge as a scandal.

I don't see how throwing a range of excuses in the hope that one sticks with the FOIC is in the original spirit of the FOI Act, and sets a terrible precedent to brush what doesn't suit under the carpet."

The Council' position

21. In a letter to the Commissioner the Council outlined its position in the following terms:

"The council accepts that it has taken some time to provide [name redacted] with the information he is seeking in relation to the re-roofing

at [address redacted], we are of the opinion that the original request was not as straight forward as it may have first appeared. The council has made every effort to provide [name redacted] with the information he was seeking, however, each response by the council resulted in follow up correspondence which broadened the scope of the information being sought. In addition to this request [name redacted] has made three other requests on the topic and, on occasion, he has conflated these requests which has presented the council with a challenge when managing his requests.

During the course of handling this request from [name redacted], the council has provided the following in relation to the re-roofing works at [address redacted]:

The technical brief from Contract 41
A copy of the guarantee of the works
Building control information
Minutes of meetings that related to roof works on the [redacted] Estate
The condition report for the [redacted] Estate
Clarified that no planning approval was required as the works were carried out under permitted development
Explained what works were included as part of Contract 41.”

22. To evidence the amount of work required to comply with the complainant's request, the Council also provided the Commissioner with a detailed breakdown of the hours spent responding to the request. With regard to determining whether the Council holds the requested information, it stated:

“The information sought formed part of contract 41 and the council holds project files that related to this work therefore, at a high level, the council knows what information is held.

Due to the scale of the contract and the different types of work included there is not an easy way of identifying if all relevant information is held. In order to be able to determine this a manual search of the folders would need to be undertaken as these are held on a shared drive and therefore searchability is limited. The contract was split into 7 folders with sub-folders and documents contained within this. It's not always clear what documents or emails related to as they are not always labelled correctly or filed in the correct folder. This means that every folder would need to be manually searched and based on searches to date this takes approximately 10 minutes per folder (667) depending on

the amount of information in each folder. $0.17 \times 661 = 112.37$ – time already spent (21^3) = 91”

23. For the avoidance of doubt, the Commissioner understands from the information above that the Council has already spent 20 hours determining whether it held information about Contract 41 within scope of the complainant’s request.
24. The Council stated that this is inclusive of 17 hours spent searching folders to retrieve information relating to reroofing and box guttering.
25. The Council estimates that it has spent three hours contacting officers still working in the Council that had previously worked on contract 41 to request if they held additional information, including conducting searches of mailboxes.
26. The Council also stated that the building control files within scope of the complainant’s request are held in Council-owned off-site storage, and that retrieval and scanning of relevant material was subject to a service level agreement (SLA) of five working days. Therefore the amount of time spent on capturing building control information is 35 hours.
27. Finally, the Council claims that it had spent 8 hours “extracting relevant information already provided (for all requests and subsequent complaints, time includes pulling information into responses)”.
28. In total, the Council stated that it had spent 65 hours responding to the complainant’s request. However, the Commissioner notes that this estimate included time it had spent responding to the first part of the complainant’s request (1 hour and ten minutes). The Commissioner considers that this is out of scope and therefore not eligible for inclusion in the total estimate.
29. Based on the information given, the Commissioner calculates the total amount of time that the Council claims it has spent processing the second part of the complainant’s request to be 63 hours and 50 minutes.
30. The Council maintained reliance on the public interest arguments provided in its response to the complainant of 19 June 2024, as outlined at paragraph 8 above.

The Commissioner’s position

³ This figure was later clarified by the Council to be 20 hours and not 21 hours.

31. As the Commissioner understands, the Council is claiming that it is entitled to rely on regulation 12(4)(b) in respect of the time already spent responding to the complainant's request.
32. The Commissioner has considered previous decisions he has issued wherein a public authority has applied regulation 12(4)(b) to a request having already disclosed information within scope. For example, at paragraphs 40 to 48 of his decision FER0694844⁴, and 35 to 39 of his decision in IC-155074-R4X4⁵ in which he found that regulation 12(4)(b) was engaged based on the time spent by the public authorities in preparing their responses to requests. For brevity, the Commissioner will not reproduce the wording of these decisions in this notice.
33. The Commissioner is sympathetic to the complainant's position, and recognises that the figure of 63 hours and 50 minutes spent responding to the request may not seem overly significant given the time they say they have personally spent engaging with the Council in order to resolve the roofing issue. However, based on the schedule of hours provided by the Council, the Commissioner finds that the amount of time it has spent responding to the second part of the request is sufficient to engage the exception at regulation 12(4)(b). As noted at paragraph 15 above, whilst the limit of 18 hours work set out in the Fees Regulations is only a useful starting point in determining whether a request is manifestly unreasonable, the time spent by the Council clearly far exceeds this. The Commissioner is therefore satisfied the request is one that can be seen as placing an unreasonable burden on the Council.
34. The complainant argues that the manner in which the Council has stored historical Building Regulation information relating to the second part of their request has impeded its access and, consequently, resulted in the request taking a considerable amount of to process. The Commissioner understands the complainant's frustration, but is not convinced by the supposition that the Council has stored relevant information in a way that's designed to be obstructive to officers responding to requests under the FOIA or EIR. Furthermore, even if the Commissioner subtracted the 35 hours required for retrieving Building Regulation documents, the amount of time the Council had spent on responding to the request would still be far above 18 hours.

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2258431/fer0694844.pdf>

⁵ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024479/ic-155074-r4x4.pdf>

35. The Commissioner agrees that the searches initially conducted by the Council when responding to the request were inadequate for the purposes of identifying the information it held, but this matter has already been considered in his previous decision notice under IC-273403-C9M0.
36. The Commissioner therefore finds that regulation 12(4)(b) is engaged.

Public interest test

37. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.
38. The Commissioner's guidance⁶ is clear that:
- "The public interest here means the public good, it is **not**:
- What is of interest to the public; or
 - The private interests of the requester (unless those private interests reflect what is the general public good, eg holding public authorities to account)"
39. The Council takes the position that the amount of time it had spent on responding to the second part of the complainant's request resulted in a detrimental impact on the delivery of core services. The Council also stated that it had already provided the complainant with information within scope of their request, and that the public interest is better served by reallocating its resources away from continuing to processing the complainant's request and towards completing other tasks.
40. In their grounds of complaint (outlined in full at paragraph 20 above), the complainant stated that "it is very much in the public interest whether a Council who hold the responsibility of housing families are competent in their role, or whether health and wellbeing of their tenants are being overlooked" and that "there are several Council buildings in the estate with the same design and I understand similar problems have occurred, so it is definitely in the public interest."
41. In essence, the complainant's argument is that overturning the exception at regulation 12(4)(b) is in the public interest, as information

⁶ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/the-public-interest-test/>

within scope of the second part of their request may affect the tenants and owners of the specific residential properties captured by Contract 41.

42. The Commissioner is also mindful that the information sought by the request is significant to the complainant due to their own private interests, however, this is not a factor that can be considered when considering the balance of the public interest test⁷, as explained above.
43. With regard to the complainant's argument that "it is very much in the public interest whether a Council who hold the responsibility of housing families are competent in their role, or whether health and wellbeing of their tenants are being overlooked", the Commissioner finds it unlikely that the information sought by the second part of their request, even the information already made public, would satisfy this specific requirement.
44. With regard to their second argument that other buildings sharing the same design have been affected by the similar issues, and therefore information disclosed in relation to the complainant's property would be applicable to tenants and owners of other Council properties, the Commissioner understands the argument but hasn't been presented with any evidence that the issues across all Council residential buildings are like-for-like.
45. While he recognises that the Council's arguments in favour of maintaining the exemption are broad, he finds that the public interest in ensuring that the Council can preserve its limited resources and carry out its functions effectively carries significant weight. In this instance, he finds that the public interest in maintaining the exception outweighs the public interest in disclosure.
46. Whilst the Commissioner has been informed by the presumption in favour of disclosure, he is satisfied that, for the reasons given above, the exception has been applied correctly.

⁷ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/how-exceptions-and-the-public-interest-test-work-in-the-environmental-information-regulations/#a3>

Right of appeal

47. 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

48. 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.
49. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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