

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 December 2024

Public Authority: London Borough of Richmond upon Thames

Address: Civic Centre
44 York Street
Twickenham
TW1 3BZ

Decision (including any steps ordered)

1. The complainant has requested, from the London Borough of Richmond upon Thames (LBRUT), information about estimated costs of renovating a health suite at Pools on the Park, a Grade II listed building. LBRUT originally denied holding some information, and refused to disclose other information on the basis of section 43(2) of FOIA (commercial interests); LBRUT also disclosed other information, at internal review stage. During the Commissioner's investigation, LBRUT retrospectively applied section 14(1) of FOIA (vexatious requests) to the request; in the alternative, LBRUT maintained its original and internal review positions.
2. The Commissioner's decision is that LBRUT is entitled to refuse to comply with the request, on the basis of section 14(1). However, he also finds that LBRUT breached section 17(5) of FOIA, due to its late reliance on section 14(1).
3. The Commissioner doesn't require any steps.

Request and response

4. On 17 November 2023, the complainant wrote to LBRUT and requested information in the following terms:

- “... Please provide any written supplier estimates and/or internal/external communications that were used to determine these two estimates”.
5. LBRUT responded on 29 December 2023. It said “There are no supplier estimates ...”; it also refused to disclose other information, citing section 43(2) of FOIA as its basis for doing so.
 6. Following an internal review, LBRUT wrote to the complainant on 6 February 2024. It maintained its original position regarding section 43(2) for some of the withheld information (figures), but disclosed other information.

Scope of the case

7. The complainant contacted the Commissioner on 31 March 2024 to complain about the way their request for information had been handled.
8. The complainant disputed LBRUT’s application of section 43(2).
9. The complainant said that they’re not interested in the estimated costs of one of the options referenced (‘Option 1’).
10. The Commissioner wrote to LBRUT for submissions. In response, LBRUT applied a new FOIA exemption, section 14(1), to the request. In the alternative, LBRUT maintained its original and internal review position.
11. During the Commissioner’s investigation, the complainant provided some further comments (28 October 2024) relating to their complaint about their request of 17 November 2023. The Commissioner’s understanding of those comments is that the complainant considers that some information disclosed by LBRUT, in response to a later request of theirs, actually falls within scope of their request of 17 November 2023 (so, a concern about late disclosure of that information); and that certain information within scope of the request of 17 November 2023 remains outstanding. The complainant described that information to the Commissioner.
12. The Commissioner wrote to LBRUT about the ‘outstanding’ information specified by the complainant because, at that time, he was considering LBRUT’s alternative position. In response to that correspondence, LBRUT

disclosed a redacted copy of a 'parent email' the complainant was seeking, relating to some disclosed photographs; regarding the other 'outstanding' information, LBRUT said it doesn't hold that information.

13. Both LBRUT and the complainant consider that the request falls under FOIA rather than the Environmental Information Regulations 2004. The Commissioner is also satisfied that FOIA is the relevant access regime – he notes the point made by LBRUT and the complainant that the requested information relates to internal works at Pools on the Park.
14. The Commissioner considers that the scope of this case is to decide, first, whether LBRUT is entitled to refuse to comply with the request, on the basis of section 14(1). He'll only consider the exemption originally cited by LBRUT (ie section 43(2)), the 'outstanding' information issue and LBRUT's 'information not held' response, if he determines that section 14(1) doesn't apply. Finally, the Commissioner will also consider relevant procedural matters.

Reasons for decision

Section 14(1)

15. Section 14(1) of FOIA allows public authorities to refuse to comply with a request if it's vexatious.
16. Section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
17. As the Commissioner's detailed guidance¹ notes, four broad themes provide a useful structure to start analysing whether a request is vexatious (although they aren't a checklist, and aren't exhaustive):
 - The burden on the public authority and its staff.
 - The motive of the requester.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/>

- The value or serious purpose of the request.
 - Any harassment or distress of and to staff.
18. The Commissioner has recently issued a decision notice² regarding several other requests made by the complainant, on the subject of the indoor renovation project at Pools on the Park. Those requests were made in February and April 2024, and the Commissioner upheld LBRUT's refusals on the basis of section 14(1).
19. He didn't include the present case in that decision notice; since then, however, the Commissioner has carefully considered the request of 17 November 2023 further (and, in particular, the circumstances that existed at the time that LBRUT's response was due), and has been able to finalise his decision.
20. LBRUT's reasons for relying on section 14(1) in the present case are the same as its reasons for relying on that exemption in the cases covered by the decision notice cited in paragraph 18 above. LBRUT has emphasised considerations including the number and frequency of requests and complaints it has received from the complainant, on the subject of the Pools on the Park project, and the burden of the complainant's contact. For detail on LBRUT's reasoning, including the dates of the complainant's requests and complaints, the Commissioner directs readers to the decision notice he's cited at paragraph 18 above.
21. The complainant's comments about section 14(1) in the present case, similarly, echo their comments about section 14(1) in the cases covered by the decision notice cited above.
22. The Commissioner's understanding is that the request of 17 November 2023 was the third request from the complainant following (and ultimately relating to) LBRUT's decision of 7 November 2023 about Pools on the Park.

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4031720/ic-300052-g2z8.pdf>

23. However the date for compliance, in relation to the request of 17 November 2023, was 18 December 2023 (there was a bank holiday on 30 November 2023, in Scotland).
24. The Commissioner has therefore considered the circumstances at 18 December 2023.
25. The Commissioner's understanding is that, by 18 December 2023, the complainant had made six requests to LBRUT in quick succession, relating to Pools on the Park (three in November 2023, including the request that is the focus of the present case, and three in December 2023); and three complaints relating to LBRUT's decision of 7 November 2023 about Pools on the Park.
26. The Commissioner considers that the reasoning he set out in his previous decision notice (see paragraph 18), about the complainant's requests of February and April 2024, applies to the present case too.
27. He directs readers to the 'reasons for decision' section of that decision notice, containing his comments on 'value or serious purpose', 'burden' 'motive', 'harassment or distress' and the balancing exercise he carried out.
28. For the same reasons, the Commissioner determines that, in the present case, section 14(1) of FOIA is engaged and that LBRUT is entitled to refuse to comply with the request of 17 November 2023, on the basis of that exemption.

Procedural matters

29. LBRUT took longer than 20 working days to refuse to comply with the request in reliance on section 14(1) of FOIA. Consequently, the Commissioner finds that LBRUT breached section 17(5) of FOIA.

Right of appeal

30. 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

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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