

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

Date: 10 April 2019

Public Authority: London Borough of Lambeth
Address: Southwyck House
Moorland Road
Brixton
London
SW9 8UR

Decision (including any steps ordered)

1. The complainant has requested information on any work carried out on the Carnegie Library ("the Library") at Herne Hill.
2. The Commissioner's decision is that, in the circumstances of this case, the London Borough of Lambeth ("the Council") has appropriately applied regulation 12(4)(b) (manifestly unreasonable request) in response.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 24 May 2018, the complainant wrote to the Council and requested information in the following terms:

"Please state what works, other than those carried out by forcia in relation to the installation of the gym, have been carried out in the carnegie library herne hill since April 1st 2016. Please state from which council budget/s these works have been paid and how much the amount/s was/were please state who authorised these works and when."

5. The Council responded on 22 June 2018. It stated that it was relying on regulation 12(4)(b) to refuse to respond to the request.
6. The Council provided the complainant with a perfunctory internal review on 8 August 2018 upholding its initial response.

Scope of the case

7. The complainant contacted the Commissioner on 18 July 2018 to complain about the way his request for information had been handled. However, the complainant had requested an internal review only two days before. The complainant contacted the Commissioner with his substantive complaint on 16 October 2018.
8. The Commissioner considers the scope of her investigation to be whether the Council is entitled to rely on regulation 12(4)(b) to refuse to respond to the request.

Reasons for decision

The applicable access-regime – FOIA or the EIR?

9. The Commissioner is satisfied that the information in the scope of the request in this case comprises environmental information¹ falling within regulation 2(1)(c).

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

10. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
11. The Commissioner considers that the inclusion of 'manifestly' in regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under the exception, the information request must meet a more stringent test than simply being 'unreasonable'. 'Manifestly' means that there must be an obvious or tangible quality to the unreasonableness of complying with the request.

¹ https://ico.org.uk/media/for-organisations/documents/1146/eir_what_is_environmental_information.pdf

12. A request may be manifestly unreasonable for two reasons; either where it is vexatious or where compliance with a request means a public authority would incur an unreasonable level of costs, or an unreasonable diversion of resources. In this case the request is deemed to be vexatious.
13. In practice there is no material difference between a request that is vexatious under section 14(1) of FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR. The Commissioner's guidance on vexatious requests therefore considers both the FOIA and the EIR together. Although there are some differences between the structure of the relevant provisions in FOIA and the EIR, these should make no difference in practice. There is no definition of the term "vexatious" in the Freedom of Information Act. However, the nature of vexatious requests has been considered by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield* (GIA/3037/2011). In the Dransfield case the Tribunal concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of formal procedure."
14. The judgment proposed four broad issues that public authorities should regard when considering whether requests are vexatious:
 - (i) the burden of meeting the request;
 - (ii) the motive of the requester;
 - (iii) the value or serious purpose of requests; and
 - (iv) any harassment or distress caused.
15. The Commissioner's guidance on vexatious requests suggests that the key question a public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. In addition, where relevant, public authorities also need to take into account wider factors such as the background and history of the request.

The Council's view

16. At the time of the request the Library was closed, however, it has now re-opened with the Council posting an explanatory article on its website.
17. The Council explained to the Commissioner that it had received 36 requests for information from the complainant regarding the Library

between October 2016 and May 2018. The complainant submitted twenty one separate requests in one day which were handwritten and delivered in person to the Council. The Commissioner notes that she has received several complaints from the complainant following the Council's responses.

18. The Council considers that submitting several requests on the same day for largely similar information creates a significant burden both on the team responding to the requests and the team logging and acknowledging the requests.
19. The Council considers that the complainant submitted multiple handwritten requests to cause inconvenience and a burden to the Council.
20. The Council went on to explain its belief that the number of requests indicates an obsessive interest in the Library. The Council considers that providing responses to the complainant leads to further questions with no prospect of satisfying his questions. This creates an ongoing burden to Council officers and a significant distraction of resources.
21. The Council quoted the complainant from previous requests for information where he makes reference to a "secret organisation" regarding the development of the Library. The Council advised the Commissioner:

"We have provided information to [the complainant] previously but his requests continue to attempt to uncover more about the 'secret' organisation; unfortunately we cannot provide information to support his views and therefore his requests have continued."
22. The Council explained that it considers the complainant's requests on matters pertaining to the Library to be obsessive and focussed on attempting to be provided with information about the "secret" organisation relating to the Library. The Council stated that such information either does not exist or would not bring to light any secret or "nasty" actions undertaken by the Council.

The complainant's view

28. The complainant addressed the points made by the Council in its response which determined the request to be vexatious.
29. The complainant considers that the work undertaken on the Library does not comprise 'the redevelopment of a building', as described by the Council. He advised the Council:

"These are INTERNAL works the nature of which appears to be a closely-guarded secret. It is not a redevelopment."

29. The complainant explained that he requested the information he seeks in the particular format of separate requests "so it made them easier to deal with".

30. The complainant refutes the Council's consideration that by providing a response will be likely to lead to further questions. He explained:

"At the time I doubted if I would have any more FOI requests relating to Carnegie library, Herne Hill. It is a one-off request for matters which have only occurred over the last year.

As I have said before, if a council is refusing to provide an answer to a question, then the journalist in me asks what have they got to hide. The answer may be: 'Nothing'. But by your very persistence in continuing to refuse to answer certain questions, the suspicion remains: 'What have they got to hide?'

31. The complainant provided the Commissioner with the background to the request as follows:

".. merely to establish what other works were going on in the library while Forcia, a perfectly reputable company, were installing the gym in the library's basement. Residents living above the library complained of noise from out-of-hours building works."

The Commissioner's view

23. As detailed in paragraph 14 above, in considering whether a request for information is manifestly unreasonable in terms of being vexatious, the key question in the Commissioner's view is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the public authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value of the request are enough to justify the impact on the public authority. Where relevant, this will involve the need to take into account wider factors such as the background and history of the requests.

24. The Commissioner has considered the request in respect of the four points set out above in paragraph 14.

25. The Commissioner has considered the burden created by the complainant's request in the circumstances of the case. She notes that

the Council has provided a good deal of information regarding the Library, the work undertaken and future plans on its website². The Commissioner considers that the information provides detailed explanation. Nevertheless, she notes that the points of the complainant's request are not specifically addressed there.

26. The Commissioner understands that the complainant has requested information from October 2016 to the date of the request deemed to be vexatious. During this period the Council has found that responding to the requests has created a burden which the Commissioner accepts is disproportionate when weighed against the purpose and value of the request.
27. The Commissioner accepts that although the requests may have, in the first instance, had an important purpose she is not convinced that the request of 24 May 2019 can be considered in the same way. She equally accepts the Council's view that a response to one request will likely be followed by another, with the complainant being unlikely to be satisfied. The Commissioner is not convinced by the complainant's suggestion that he is 'uncertain' whether he will make further requests. His behaviour and desire for further information on the Library appears to suggest the opposite.
28. The Commissioner notes that the complainant refers to himself as a journalist. The Commissioner has read articles by the complainant and from this she understands that there is a wider concern within the Borough in respect of library closures which has been documented in articles on-line. The Commissioner accepts that the complainant's requests have reflected the local area's concerns about the Council's handling of library closures and their redevelopment. Consequently, there has been value in the requests for information. However, the Commissioner's view is that, notwithstanding the specific content of the request, there is now a significant amount of information available on the Council's website. She is satisfied that a reasonable person would think that the purpose and value of the request of 24 May 2018 are not sufficient to justify the impact on the public authority.
29. In respect of any harassment or distress caused by the complainant's requests, the Commissioner notes that the complainant has adopted a facetious, flippant tone in his correspondence with the Council. However, the Commissioner considers that experienced officers should be able to

² <https://www.lambeth.gov.uk/places/carnegie-library>

handle requests from persistent complainants who may make unsubstantiated allegations, with minimal amount of irritation or distress. Nevertheless, she recognises that spending the limited resource available dealing with requests for information on the same matter can cause an unjustified level of irritation or distress.

30. The Commissioner acknowledges the importance of public authorities being accountable to the public. However, she also acknowledges that the Council has proactively placed information in the public domain.
31. The Commissioner considers that the complainant's correspondence has now passed a point where it has become unreasonable for the Council to continue to respond. The Commissioner's decision is that the burden created is disproportionate for the resources available at the Council. Consequently, the Commissioner has decided that regulation 12(4)(b) is engaged in respect of the request of 24 May 2018.
32. Having determined that Regulation 12(4)(b) is engaged, the Commissioner has gone on to consider whether the balance of the public interest in maintaining the exception outweighs the public interest in responding to the request.

Public interest arguments in favour of disclosure

33. The Council acknowledged the presumption in favour of disclosure as provided by regulation 12(2).
34. The Council relied on the information already in the public domain to demonstrate its consideration of the public interest in disclosure.

Public interest arguments in favour of maintaining the exemption

35. The Council advised the Commissioner that responding to the request:

"..represents a significant burden to the Council as we consider that it would encourage further requests and correspondence if we comply.

It is not in the public interest for the Council to continue to respond to requests deemed unreasonable or vexatious as this is a misuse of public resources."

36. The Council advised the complainant:

"We see no further public interest in disclosure of this information especially as the library is now open."

37. The complainant considers this to be:

"an utterly inane claim....it is an appalling insult to the people of Herne Hill."

Balance of the public interest

38. The public interest can cover a wide range of values and principles relating to what is in the best interests of society. There is also a public interest in transparency and accountability, to promote public understanding and to safeguard democratic processes. There is a public interest in good decision-making by public bodies and in upholding standards of integrity. However, these examples of the public interest do not in themselves automatically mean that information should be disclosed, or withheld, in any particular case. The public interest is not necessarily the same as what interests the public.
39. A potential public interest in transparency can exist when there is a suspicion of wrongdoing on the part of the public authority. A requester may, for instance, allege that a public authority has committed some form of wrongdoing, and that the information requested would shed light on this. For this to be considered as a factor in the public interest test, disclosure must serve the wider public interest and go beyond the requester's private interests and the suspicion of wrongdoing must amount to more than an allegation. The outcome of an Ombudsman's independent investigation is indicative of whether there is substance in an allegation of wrongdoing.
40. In this case the Commissioner acknowledges that the complainant has suggested that the Council is deliberately hiding information about activities concerning the Library. The complainant is critical of the Council and implies wrongdoing. However, the Commissioner has seen no evidence to support this. Therefore she cannot consider the implied criticism as a factor in favour of disclosure.
41. The Commissioner does not agree with the Council's statement that the completion and opening of the Library marks an end to any public interest in disclosure of information in respect of the Library.
42. The Commissioner considers that there is always an inherent value in organisations which spend public money being open, transparent and accountable for the way in which that money is spent.
43. However, weighed against that is the strong public interest in protecting public authorities from an ongoing burden of answering continuous correspondence on the same topic where previous requests have failed to resolve matters.
44. There is a strong public interest in ensuring that resources are not disproportionately used to respond to requests for information from an applicant who is clearly dissatisfied about an issue and seeks to keep it alive until there is a conclusion or resolution he considers favourable.

45. The Commissioner therefore finds that on balance, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in complying with the complainant's request for information.

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

Susan Hughes
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