

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

Decision Notice

Date: 30 January 2020

Public authority: Royal Borough of Kensington & Chelsea
Address: The Town Hall
Hornton Street
London
W8 7NX

Decision (including any steps ordered)

1. The Council initially refused the request under regulation 12(5)(b), regulation 12(5)(f) and regulation 13 of the EIR, as well as stating that some information was not held. The Council subsequently sought to rely on the exception at regulation 12(4)(b) on the basis that the request was manifestly unreasonable.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(b), and the public interest in maintaining the exception outweighs the public interest in disclosure. The Commissioner does however find that the Council failed to comply with various procedural requirements of the EIR. The Commissioner does not require any remedial steps to be taken.

Background

3. The complainant in this case has been in dispute with the Council for several years regarding the Council's handling of noise complaints submitted by the complainant's neighbour about the complainant's family home.

4. The complainant in this case had previously made a request for similar information to the Council on 20 November 2015 (the 2015 request). The 2015 request was the subject of a decision notice¹ and subsequent appeal to the First-Tier Tribunal (the FTT).² The FTT upheld the Commissioner's decision notice and found that the Council was entitled to rely on regulation 12(5)(b) to refuse to disclose the requested information at the time of the request.

Request and response

5. On 9 November 2018 the complainant submitted a multi-part request for information from the Council (the 2018 request). The complainant specified that her request was limited to information collected or held by the Council during the period 1 March 2014 to 8 April 2015. The time period for the 2018 request was slightly longer than the 2015 request, which covered 1 March 2014 to 22 April 2015, a difference of around two weeks.
6. Owing to the length of the correspondence the specific requests for information are reproduced in Annex 1 at the end of this decision notice. The requested information can be broadly categorised as follows:
 - i. Field notes in respect of site visits carried out by Council officers regarding the various noise complaints.
 - ii. Communication between the neighbour and the Council regarding the various noise complaints.
 - iii. Information relating to acoustic equipment and recordings of the alleged noise nuisance.
 - iv. Communications between Council officers and elected members regarding the various noise complaints.
7. The Council responded to the request on 28 January 2019. It provided some information and stated that some information was not held. The Council also stated that it was withholding information in reliance on the exceptions at regulations 13, 12(5)(b) and 12(5)(f).

¹ Decision notice FER0609019 issued 21 December 2016

² Appeal no EA/2017/0010 issued 27 November 2017

8. On 4 February 2019 the complainant contacted the Commissioner to complain about the Council's response. Having consulted with both parties the Commissioner accepted the complaint without requiring the internal review process to be exhausted. This is because the Commissioner considered that the Council had had sufficient opportunity to reconsider its position since the complainant first submitted her request in 2015.
9. The Commissioner wrote to the Council on 4 February 2019, requesting that the Council provide her with a full and unredacted copy of all the information falling within the scope of the 2018 request.
10. In response, the Council referred the Commissioner to the information it had provided to her in respect of the 2015 request and subsequent appeal to the FTT. The Council also considered that the arguments put forward in that case remained relevant in the present case.
11. The Commissioner spent considerable time going through the information provided in respect of the 2015 request. It appeared that not all of this was relevant to the 2018 request, and there was no schedule or other way of identifying relevant information.
12. Having examined the information the Commissioner wrote to the Council again on 2 May 2019. She explained that the FTT decision regarding the 2015 request did not provide conclusive evidence that the Council was entitled to refuse the 2018 request. She asked the Council to clarify how it had reconsidered the requested information in light of the passage of time and specific circumstances at the time of the 2018 request. The Commissioner also asked the Council to clarify how it was satisfied that it had identified all the information it held that was relevant to the request.
13. Following further exchanges it appeared to the Commissioner that the Council may not have collated the information relevant to the 2018 request. The Commissioner issued an information notice on 30 May 2019 to request clarification, and the Council responded on 1 July 2019.
14. At this stage the Council accepted that it had not handled the complainant's request properly. It had adopted a blanket refusal based on its previous consideration of the request and the FTT's decision, and it had not in fact collated or examined the requested information.
15. As set out above the Council had referred the Commissioner to information it had provided to her case officer during their investigation of the 2015 request. However the Commissioner pointed out that the 2018 request covered a slightly different time period, therefore it was not entirely comparable with the 2015 request. In addition, the questions set out in the 2018 request were phrased differently from

those in the 2015 request, therefore the Council would need to go through each part of the 2018 request and confirm the specific information sought.

16. The Council advised the Commissioner that it had subsequently conducted a scoping exercise which indicated that compliance with the 2018 request would constitute a disproportionate burden in terms of time and resources. The Council therefore sought to claim a late reliance on the exception at regulation 12(4)(b). The Council issued a revised refusal notice to the complainant on 29 July 2019.

Scope of the case

17. The complainant contacted the Commissioner on 26 August 2019 to confirm that she wished to challenge the Council's reliance on regulation 12(4)(b). She remained of the opinion that all of the requested information ought to have been disclosed to her, and provided the Commissioner with several detailed submissions in support of her position. Accordingly the Commissioner proceeded to investigate the Council's reliance on the exception at regulation 12(4)(b) of the EIR.
18. The Commissioner confirmed to the complainant and the Council her view that the requested information was entirely environmental information within the meaning of regulation 2 of the EIR. Neither party disputed this. Regulation 5(3) of the EIR states that the personal data of the applicant does not fall within the scope of the EIR. Therefore the Commissioner's decision relates only to the information that is not the complainant's personal data.
19. The Commissioner also emphasised that her role is to decide whether a particular request has been handled in accordance with the requirements of the EIR. She cannot comment on or become involved in the complainant's dispute with the Council, and has stressed to the complainant that the EIR only allows for information to be disclosed into the public domain. The Commissioner cannot require information to be disclosed to the complainant unless it could be disclosed to any person who requested it.
20. The Commissioner has previously explained to the complainant that some of the requested information is her personal data. This is because the request relates to a noise complaint that was made about the complainant's family by their neighbour. The Commissioner considered a data protection concern from the complainant regarding the 2015 request under the Data Protection Act 1998, the data protection legislation in force at that time.

21. Since the request that is the subject of this decision notice was made after 25 May 2018, the date the new Data Protection Act 2018 (the DPA) and General Data Protection Regulation (the GDPR) came into force, the DPA/GDPR applies in this case.
22. As set out in the analysis below, regulation 5(3) of the EIR states that the personal data of the applicant does not fall within the scope of the EIR. Therefore the Commissioner's decision relates only to the information that is not the complainant's personal data.
23. The Commissioner also emphasised that her role is to decide whether a particular request has been handled in accordance with the requirements of the EIR. She cannot comment on or become involved in the complainant's dispute with the Council, and has stressed to the complainant that the EIR only allows for information to be disclosed into the public domain. The Commissioner cannot require information to be disclosed to the complainant unless it could be disclosed to any person who requested it.

Reasons for decision

Regulation 5(3): personal data of the applicant

24. As set out at paragraph 18 above, regulation 5(3) of the EIR provides that the EIR themselves do not apply to information that is the personal data of the applicant. This means that an individual cannot receive their own personal data under the EIR. In such cases the public authority should identify those parts of the request that involve the applicant's personal data and consider them under the relevant data protection legislation.³
25. Regulation 5(1) of the EIR states that, subject to certain exceptions:
"a public authority that holds environmental information shall make it available on request."

³ The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (the DPA).

26. Regulation 5(3) further states that:

"To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data."

27. In effect, information that is the applicant's personal data falls outside the scope of the access regime provided by the EIR, since it falls to be considered under the DPA.

28. The Commissioner asked the Council to provide her with a copy of all of the requested information in order to check that the complainant's personal data had been properly identified. However, since the Council has sought to rely on regulation 12(4)(b) on grounds of burden, it cannot be required to provide the Commissioner with the requested information. To do so would circumvent the Council's reliance on regulation 12(4)(b). The Commissioner is however mindful that she has previously assessed that the Council has provided the complainant with all of her personal data that she is entitled to receive.

Is any of the requested information the complainant's personal data?

29. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

30. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

31. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

32. The Commissioner observes that the requested information was generated and held by the Council in the context of a noise complaint relating to the complainant's home. The Commissioner takes the view that the address of and details about an individual's home would be the personal data of that individual. This is because it could identify the complainant, either on its own or in conjunction with other publicly available information, such as from the Land Registry.

33. In this case the complainant's address is central to the noise complaint, and indeed the Council served an abatement notice was served on the complainant (which was later withdrawn). In the Commissioner's opinion it follows that much of the information held in respect of the noise complaint does relate to the complainant and should be considered her personal data.
34. As required by regulation 5(3) the Commissioner has thus excluded the complainant's personal data from the analysis set out below. The Commissioner would reiterate that she has emphasised to the complainant that she cannot make any decision relating to the complainant's personal data under the EIR, regardless as to whether she might be entitled to it under other routes of access.

Regulation 12(4)(b): manifestly unreasonable request

35. Regulation 12(4)(b) of the EIR provides an exception from disclosure to the extent that the request is manifestly unreasonable. The term "manifestly unreasonable" is not defined in the EIR. However the Commissioner follows the lead of the Upper Tribunal in *Craven v Information Commissioner & DECC*.⁴
36. In *Craven* the Tribunal found 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.
37. A differently constituted Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield*.⁵ The Upper Tribunal's approach, subsequently upheld in the Court of Appeal, established that that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious. The Commissioner is of the opinion that these concepts are equally relevant when assessing whether a request for environmental information is manifestly unreasonable.
38. The Commissioner notes that the main provision for dealing with burdensome requests under the EIR is regulation 7(1). This allows a public authority to extend the time for compliance from 20 to 40

⁴ [2012] UKUT 442 (AAC)

⁵ [2012] UKUT 440 (AAC).

working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable to meet the 20 day deadline. However, in *Craven* the Tribunal again commented that:

"...it must be right that a public authority is entitled to refuse a single extremely burdensome request under regulation 12(4)(b) as "manifestly unreasonable", purely on the basis that the cost of compliance would be too great (assuming, of course, it is also satisfied that the public interest test favours maintaining the exception). The absence of any provision in the EIR equivalent to section 12 of FOIA makes such a conclusion inescapable."

The Council's position

39. The Council considered the complainant's request to be manifestly unreasonable on the grounds that compliance would constitute a disproportionate burden on its resources.
40. The Council accepted that its original response to the request was inadequate in that it had failed to conduct a proper search for the requested information. When the Commissioner asked the Council to provide her with a copy of the requested information, it became apparent that the Council had not taken steps to identify, locate and extract the specific information it held that was relevant to the 2018 request. Rather it had wrongly assumed that the information provided in respect of the 2015 request was exactly the same information.
41. The Council explained that it had subsequently examined each part of the 2018 request and had carried out electronic searches across its estate to identify the information it held which was relevant to the request. It explained that it had consulted the two business areas that it considered most likely to hold relevant information: Environmental Health and Legal Services.
42. The Council explained that Environmental Health had provided copies of all correspondence from its Acolaid/DOX system for the time period specified by the complainant, as well as copies of correspondence previously received from and sent to the complainant. The Council confirmed that it had checked with staff to ensure that all relevant information had been identified and no relevant information was held elsewhere in Environmental Health.
43. The information identified on the Acolaid/DOC system would then need to be refined in order to separate out any information that was the complainant's personal data, since this was excluded by virtue of regulation 5(3). The Council did not provide a breakdown of the time required to conduct this exercise.

44. The Council further explained that its Legal Services department had also searched its electronic case management databases. The Council confirmed that it had used the complainant's surname as the primary search term so as not to exclude any relevant information. The Council provided the following examples of search results:
- Searching the complainant's surname returned 1243 items over 254 email accounts.
 - Search for "acoustic" or "recordings" returned 503 items over 4 email accounts.
 - Search for "maternity" returned 18 items over 4 email accounts.
45. In total, the Council said that 1.5GB of data was identified as a result of the searches. The search results were saved into a Sharepoint file, and the mailbox files were downloaded individually and exported to a Secure Legal Data Room. The Council found that exporting each mailbox took between five and 40 minutes, and taking 15 minutes as an average it estimated that the time required to transfer all the mailboxes would exceed 63 hours.
46. The Council explained that this estimate only covered the time required to transfer the mailboxes to a secure environment; it did not include the time required to identify the specific requested information. Nor did this estimate incorporate the time required to exclude the complainant's personal data (which as explained above does not fall within the scope of the EIR). The Council said it would need to go through the identified data in order to identify and extract the specific information that was relevant to each part of the request. The Council would then need to examine the relevant information in detail in order to ascertain whether any exceptions to disclosure should be applied.
47. Furthermore the Council said that this estimate did not include the time required to consider the remaining information and determine other exceptions that might be required. For example, given that the request related to a noise complaint submitted by the complainant's neighbour the Council recognised that the requested information would inevitably include large amounts of third party personal data. Therefore the data protection rights of other parties would also need to be taken into account when making decisions regarding disclosure into the public domain.
48. In response to the Commissioner's enquiries the Council arranged for the Commissioner to view a demonstration of its e-Discovery search tool via Skype. The Council showed the Commissioner how it searched using keywords (eg the names of individuals specified by the complainant), conditions (parameters such as dates) and locations (individual email accounts).

The complainant's position

49. During the course of the Commissioner's investigation the complainant provided several detailed submissions in support of her position. This included media reports of the noise complaint and litigation, legal analysis and detailed allegations about the Council's handling of the case. It also included correspondence between the complainant and the Council, and between the complainant and various councillors. The Commissioner has considered all the information provided by the complainant but does not consider it necessary to refer to each document in detail within this decision notice.
50. The complainant strongly disputed the Council's assessment that her request was manifestly unreasonable. She suggested that the requested information was likely to be contained within 30 email accounts, and that most of those email accounts were unlikely to hold more than two to six relevant pieces of information.
51. The complainant also took issue with the Council's assessment of the matter as being of limited public interest. She argued that there was a strong public interest in informing the public as to why the Council decided to serve a noise abatement notice against her family.
52. The complainant made extensive reference to the court proceedings, and the fact that the court had ordered the Council to pay her costs. The complainant said that the court had found that the Council acted unreasonably, and in her view this meant that the public interest in accountability was "irrefutable".
53. The complainant further pointed to the cost to the public purse of the Council's determination to pursue this litigation, only to drop the matter two weeks after the Grenfell tragedy (in which 72 people lost their lives in a tower block fire). The complainant suggested that the Council's "sudden withdrawal" from the litigation showed that its appeal was "frivolous and had no merit".
54. Finally, the complainant argued that the Council had disclosed similar information in "another high profile private neighbour dispute". The complainant argued that this demonstrated a discrepancy in the way the Council applied the law.

The Commissioner's findings

55. During the course of her investigation the Commissioner identified several deficiencies in the way the Council handled the complainant's requests. The Council initially failed to respond to the request at all under the EIR, having failed to recognise that some of the requested information was unlikely to be the complainant's personal data. The

Commissioner was disappointed that a decision notice⁶ was required in order to ensure that a response under the EIR was issued.

56. The Commissioner was further concerned that the Council's response did not appear to have considered the circumstances of the case. The Council assumed that the exception accepted by the Tribunal in 2017, relating to the course of justice, was equally valid some time after litigation had finished.
57. When the Council proved unable to provide the Commissioner with a full and unredacted copy of the requested information, it became clear that the Council was not entitled to rely on the exceptions claimed. The Commissioner would stress that public authorities must satisfy themselves that they are able to justify their application of any exemptions or exceptions claimed when refusing any part of a request. In the Commissioner's opinion it is extremely difficult for a public authority to persuade her that information has been properly withheld if the authority has not examined or considered the information in question.
58. However, the Commissioner would also point out that the Council's clear request handling deficiencies do not preclude its ability to rely on the exception at regulation 12(4)(b). The Commissioner is mindful that the complainant has requested "all information" relating to several elements of the Council's handling of the noise complaint and litigation. In the Commissioner's opinion the request encompasses a wide range of information, and is likely to include a significant amount of information that would be the complainant's personal data as the subject of the noise complaint.
59. With regard to the information held by Legal Services, the Commissioner has observed a demonstration of the Council's eDiscovery tool and accepts that the Council would have to undertake considerable work to identify, extract and examine the specific requested information. For example there does not appear to be a straightforward way to exclude the complainant's personal data from the searches required.
60. The Commissioner considers it important to bear in mind that an individual may not always be entitled to receive information that is their personal data. Therefore the Council could not be expected to disregard information that is the complainant's personal data on the basis that she may already have received it, since this is not certain to be the case.

⁶ See paragraph 7 above

61. The Commissioner notes that the Council did not provide a detailed explanation as to its search of the Acolaid/DOX database. However she understands that it comprises the primary records management system within Environmental Health for information relating to noise complaints. It follows that most of the information that is relevant to the 2018 request is likely to be personal data of the complainant or the person who complained about the noise.
62. Accordingly, the Commissioner again accepts that the Council would be required to undertake considerable work going through and separating out the complainant's personal data before deciding whether exceptions may apply.
63. The Commissioner has also advised the complainant that her request as phrased is likely to encompass a significant amount of information that is the personal data of other private individuals, most notably that of her neighbour who initiated the noise complaint. The Council would therefore need to identify this information and consider whether its disclosure into the public domain would conflict with data protection legislation.
64. The Commissioner has not inspected all the information that falls within the scope of the complainant's request therefore she cannot make a decision as to whether the complainant would be entitled to receive this information. However the Commissioner notes that in several previous cases she has found that third party personal data relating to complaints is exempt by virtue of regulation 13 of the EIR. Similarly in this case the Commissioner considers that much of the information in question is likely to fall within the scope of regulation 13.
65. The Commissioner understands that not all of the requested information is personal data, either of the complainant or third parties. Therefore the Council may need to consider other exceptions under the EIR. Again, the Commissioner cannot comment on whether exceptions would apply, but she recognises that the Council would need to inspect the information after separating out personal data, in case it wished to apply other exceptions.
66. The Commissioner has carefully considered the Council's arguments regarding the burden required in order to comply with the request. The Commissioner is also mindful of the extent of correspondence between the complainant and the Council. On the one hand it could be argued that sustained correspondence was necessary in order for the complainant to obtain an appropriate response to her information request. The Commissioner has set out above her concerns about the way the Council handled the request.

67. However the Commissioner does not consider that the complainant's persistence is entirely a result of the Council's request handling deficiencies. The complainant's requests and associated correspondence demonstrate her determination to pursue her wider dispute about the Council's handling of the noise complaint.
68. The complainant has already received her own personal data (to the extent that she is entitled to receive it), and she has been advised that this information falls outside the scope of the EIR by virtue of regulation 5(3) of the EIR. Nevertheless the complainant has continued to submit requests for information that includes this personal data.
69. The Commissioner is of the opinion that the bar regarding what makes a request "manifestly unreasonable" is, and ought to be, reasonably high. It is insufficient to claim that regulation 12(4)(b) is engaged purely because a request may require substantial effort to comply. However in this case the Commissioner is satisfied that the Council has demonstrated that the request is manifestly unreasonable. The Council would need to spend considerable time conducting searches of its files in order to have a reasonable chance of capturing information falling within the scope of the request. It would then have to inspect that information in detail in order to separate out the complainant's personal data as required by regulation 5(3). It would then have to inspect the remaining information in order to decide whether or not it could be disclosed into the public domain.
70. For the reasons set out above the Commissioner concludes that the complainant's request dated 9 February 2018 is manifestly unreasonable and therefore the Council was entitled to engage the exception at regulation 12(4)(b). The Council has also considered the refined request dated 3 October 2019, but concludes that compliance would require similar searches to be conducted. It would also require the Council to spend comparable time separating out the complainant's personal data.
71. Consequently the Commissioner is also satisfied that the request of 3 October 2019 is manifestly unreasonable within the meaning of regulation 12(4)(b) of the EIR.

Public interest in favour of disclosure

72. Regulation 12(4)(b) provides a qualified exception, therefore a public authority may only refuse a request that is manifestly unreasonable if the public interest in maintaining that exception outweighs the public interest in disclosure. Regulation 12(2) of the EIR also provides that the public authority must apply an explicit presumption in favour of disclosure. This means that exempt information must still be disclosed

unless there is an overriding public interest in maintaining any exceptions applied.

73. The Council argued that there was very little public interest in favour of disclosure, even taking into account the presumption in favour of disclosure at regulation 12(2). The Council accepted that disclosure of the requested information would inform the public, albeit in a limited manner, as to how it generally handled noise complaints.
74. The Council also accepted that there had been some media interest in the case, but considered that this was because of the circumstances rather than the Council's handling of the noise complaint. The Council also pointed out that all parties except the complainant considered that the matter had been resolved.
75. The Commissioner acknowledges that the complainant has clear personal reasons for pursuing her request. The complainant has suggested that the Council was unduly influenced by third parties, possibly including elected councillors, when deciding how to proceed with the noise complaint. The complainant has pointed out that she was awarded her costs against the Council, and argues that this could only happen if the judge found that the Council "behaved with impropriety".
76. The Council acknowledged the complainant's allegation that it had conducted the litigation in an improper manner. Whilst the Council recognised that there was a legitimate public interest in transparency around how it spent public money, it did not accept the complainant's allegations to have any merit. The Council argued that the complainant's request was a means for her to revive the dispute about the noise complaint when all the other parties considered that it had been resolved.
77. The Commissioner recognises the legitimate public interest in transparency regarding alleged wrongdoing by a public authority. She is mindful of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, from which the EIR are drawn.
78. The "three pillars" of the Aarhus Convention are: access to information, public participation and access to justice. Access to environmental information is essential in order to support the other two pillars, especially where there are questions about a public authority's conduct.
79. However the Commissioner is guided by the previous FTT's acknowledgement that the court had found that a statutory nuisance existed, and that the Council was entitled to issue an abatement notice. The Council appealed the court's decision to vary the terms of the

notice, but later withdrew the notice itself. The Commissioner does not accept the complainant's conclusion that the Council was proven to have acted improperly, and does not afford this public interest argument substantial weight.

80. The complainant also pointed to litigation involving other parties, where she considered that the Council had disclosed similar information. The complainant suggested that this created a precedent for full disclosure in her own case.

Public interest in favour of maintaining the exception

81. The Commissioner's published guidance⁷ on regulation 12(4)(b) says that many of the issues relevant to the public interest test will have already been considered when deciding if this exception is engaged. This is because engaging the exception includes some consideration of the proportionality and value of the request.
82. The Council maintained that, given the amount of information located during its searches, the burden of collating and considering the relevant information was out of all proportion to the value of the request. The Council emphasised its assessment that the request related to "an essentially private dispute between neighbours, of little wider public interest".
83. The Council accepted that there had been media interest in the case, but considered this to arise from the specific and unusual circumstances of the noise complaint, rather than any intrinsic importance of the issues to the wider public, or indeed the Council's handling of the noise complaint. The Council concluded that there was a much stronger public interest in maintaining the exception and thus avoiding what it considered would be a disproportionate burden.

Balance of the public interest

84. In this case the Commissioner is satisfied that the Council is entitled to rely on the exception at regulation 12(4)(b). In doing so the Council has demonstrated that the request is manifestly unreasonable, and that compliance would cause a significant burden.
85. However regulation 12(4)(b) is a qualified exception, therefore there must be circumstances in which the public interest in maintaining the

⁷ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

exception do not outweigh the public interest in disclosure. The Commissioner's guidance explains that, in practice, public authorities will often be able to 'carry through' the relevant considerations from engaging the exception into the public interest test. It is also essential to attach appropriate weight to the presumption in favour of disclosure, ensuring that a proper balancing exercise is conducted.

86. The Commissioner has carefully considered the public interest arguments put forward by the complainant and by the Council. The Commissioner agrees with the Council's assessment that there is relatively limited public interest in disclosure, since the requested information relates wholly to the Council's handling of one noise complaint. The Commissioner has emphasised that the complainant's personal information falls outside the scope of the EIR, yet the complainant's revised requests still include information that would be her personal data if held. The Commissioner accepts the Council's explanation of the work required to go through and separate out the information that is not the complainant's personal data, especially given that much of the remaining information is likely to include personal data relating to the complainant's neighbour, another private individual.
87. While the Commissioner acknowledges the complainant's personal sense of grievance, she does not consider this to be a weighty public interest argument in favour of requiring the public authority to comply with the request. The complainant challenged the Council's handling of the noise complaint through the courts, and the Commissioner is not convinced that compliance with the request would in fact inform the public about the way the Council handled the noise complaint.
88. The Commissioner respectfully disagrees that the litigation referred to by the complainant is of significant assistance when considering the public interest in this particular case. The fact that a public authority has disclosed information to parties for the specific purpose of court proceedings does not in itself mean that information should be disclosed under the EIR, ie into the public domain. The Commissioner may only decide whether information should be disclosed to the world at large, without any conditions.
89. Finally, the Commissioner is acutely aware that the Council, like many public authorities, is facing substantial pressures to provide public services with limited resources. The Commissioner accepts that obliging the Council to comply with this request would be likely to have an adverse impact on the handling of other requests for information, and the delivery of services generally. The Commissioner is of the opinion that the public interest in maintaining the exception in this case is sufficiently strong to outweigh the public interest in disclosure, even taking into account the presumption in favour of disclosure.

Other Matters

90. Although it does not fall within the scope of this decision notice the Commissioner wishes to offer some good practice advice to both parties. The Commissioner is satisfied that the Council was entitled to refuse the complainant's request of 9 February 2018 and her revised request of 3 October 2019. However the complainant is entitled to consider submitting a further refined request to the Council, who is obliged to respond under the appropriate access regime.
91. If the complainant does wish to submit a further request, the Commissioner would strongly recommend that she consider how to focus the request on information that falls within the scope of the EIR, as opposed to information that is her personal data. The complainant should also bear in mind that the Council may only disclose information relating to her neighbour or other individuals in compliance with the GDPR and the DPA. The Commissioner has directed the complainant to relevant guidance published on the ICO website.
92. As indicated above the Commissioner notes that the complainant provided numerous submissions in support of her complaint. The Commissioner also notes that the complainant's arguments were duplicated across submissions, and on more than one occasion the complainant emailed the Commissioner's case officer two or more times in the space of 24 hours. The Commissioner considers it important that complainants provide relevant information in support of their complaint, since it is important to understand each party's position. However she would respectfully comment that frequent and repeated correspondence often has the detrimental effect of distracting time and resource away from the substantive investigation. The Commissioner would remind complainants that her job is to make a decision in respect of one specific request, rather than to become involved in correspondence between the complainant and the public authority.
93. The Commissioner also considers it appropriate to remind the Council, and all public authorities, that when a request is received it must ensure that it properly interprets the request and the requested information. In this case the Council failed to recognise that the complainant's request covered information that was not her personal data. The Commissioner appreciates that such hybrid requests can be difficult to manage, but good request handling procedures should help public authorities comply with their obligations.

Right of appeal

94. 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 123 4504
Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

95. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
96. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1: request submitted on 20 November 2015

Covering the time period 01/03/14 – 22/04/15

- (i) All communications from [personal data redacted] to the Council in relation to the Property;
- (ii) All communication from Council to [personal data redacted] in relation to the Property;
- (iii) All records and records of communication from X to the Council, and from the Council to X, in relation to the Property;
- (iv) All communication from [personal data redacted] to the Council in relation to the Property;
- (v) All communication from Council to [personal data redacted] in relation to the Property;
- (vi) All records and records of communication from [personal data redacted] to the Council, and from the Council to Mr X, in relation to the Property;
- (vii) All communications, records and records of communications between elected members, officers and/or employees (current or former) of the Council in relation to the Property; and
- (viii) All communications, records and records of communications between elected members, officers and/or employees (current or former) of the Council in relation to the Notice; and
- (ix) All records held by the Council in relation to the Notice.

Annex 2

Extract from the complainant's correspondence dated 9 November 2018 setting out the requested information

4. The request is for information collected and held by the Council from 1st March 2014 until 8th April 2015.

...

Information requested

Council Officer Field Notes

13. Field notes from site visits are requested from each of the environmental health officers who are said to have attended the complainant's property to consider complaints. Council officers' underoath testimony in Magistrates' Court confirmed they had prepared original field notes immediately following visits to the complainant's property, the date of known visits are recorded as follows:

- (i) 14th April 2014
- (ii) 9th December 2014 and 8th March 2015
- (iii) 12th December 2014
- (iv) 13th December 2014
- (v) 8th March 2015

Field notes and records of all other site visits are also requested, including (but not limited to) those listed below which are known to have taken place:

- (vi) the installation of the acoustic recording equipment (date unknown);
- (vii) the removal of the acoustic recording equipment (date unknown);
- (viii) at least one other date in 2014.

Records of Complaints Received and Council Response

16. The information requested is:

- (i) All complaints and communications, and records of complaints and communications, from Mr and / or Ms X to the Council in relation to the Property;
- (ii) All communications and records of communications from the Council to Mr and / or Ms X in relation to the Property;

Acoustic recordings

17. In a letter dated 11th May 2017 from RBKC to [the complainant]'s legal counsel, RBKC confirms that acoustic recordings taken by the Council at the complainant's residence had been destroyed.

The information requested is:

(i) All communications, records and records of communications between the complainant, elected members, officers and/or employees (current or former) of the Council in relation to the acoustic recordings taken at the complainant's property of the piano playing, specifically:

- (a) In relation to the installation of the acoustic recording equipment;
- (b) In relation to the removal of the acoustic recording equipment;
- (c) In relation to the results of the acoustic recordings;
- (d) In relation to the instructions to reformat the memory card containing the acoustic recordings;
- (e) In relation to the reasons given for reformatting the memory card; and
- (f) In relation to proposed steps to be taken following the supposed "malfunction" of the acoustic recording equipment.

Councillor Involvement

17. Mr X testified in Court that he wrote to "all" the Councillors;

18. Ms X has referred to Mr Husband forwarding her email on to the noise team. She also refers to the Councillors as being very supportive and states that Cllrs Borwick and Gardener were very helpful.

19. It has been established in previous proceedings that councillor communications are "held" for the purposes of EIR where a councillor has involved himself or herself in the execution of council functions. Mr and Ms X's testimony has indicated that councillors Husband, Borwick and Gardener (and perhaps others) have involved themselves in council action.

The information requested is:

(i) All communications, records and records of communications between elected members, officers and/or employees (current or former) of the Council in relation to the Property;

(ii) All communications, records and records of communications between elected members, officers and/or employees (current or former) of the Council in relation to the acoustic recordings taken at the complainant's property of the piano playing.

(iii) All communications, records and records of communications between elected members, officers and/or employees (current or former) of the Council in relation to the Notice.

Annex 3

The complainant's suggested revised response dated 3 October 2019

AMENDED ANNEX 1: FER0808893: 9th November 2018

For the avoidance of doubt all information requested is in relation to **only** the piano dispute between [personal data redacted] and RBKC.

Records and Communications of Bi-Borough Director of the Environment Between 1st March 2014 and 8th April 2015

RBKC Councillor Lindsay (Lead Member for the Environment) informed me (letter attached) that the Bi-borough Director of the Environment, Nicholas Austin (London Borough of Hammersmith and Fulham ("LBHF")), authorized the legal proceedings in this case.

1. All communication between 1st March 2014 and 8th April 2015, between (to and from) Nicholas Austin and any of the following officers:
 - a) Ms Georgina Seraphim
 - b) Mr Keith Mehaffy
 - c) Mr Tim Davis
 - d) Mr Richard Buckley
 - e) Former Chief Executive, Mr Nicholas Holgate

Councillor Involvement From 1st March 2014 and 8th April 2015

2. From 1st March 2014 until 8th April 2015 all communication between (to and from) any officer of RBKC (including LBHF officers) and the following elected officials;
 - a) Former Lead Member for the Environment, Cllr Tim Coleridge;
 - b) Former Lead Member for the Environment Cllr Tim Ahern;
 - c) Former Leader of RBKC, Cllr Nicholas Paget-Brown
 - d) Former MP and Abingdon Ward Councillor, Victoria Borwick;
 - e) Abingdon Ward Councillor, Cllr James Husband
 - f) Former Abingdon Ward Councillor, Cllr Joanna Gardner

Environmental Health Officers' Communications Between 1st March 2014 and 8th April 2015

Communications between 1st March 2014 and 8th April 2015 between (to and from) the following environmental health officers:

- a) Mr Dom Stagg
- b) Ms Melanie Adam
- c) Mr James Guinan
- d) Mr Raymond Asagba

And their senior officers:

- a) Ms Georgina Seraphim
- b) Mr Keith Mehaffy
- c) Mr Tim Davis
- d) Mr Richard Buckley
- e) Mr Nicholas Austin

in relation to the dispute, the Property (defined as piano playing and practice at our home), instructions given to environmental health officers in respect of site visits to the Property, and officers' observations at these site visits.

Records of Complaints Received and Council Action

- 1) All entries on the Acolaid database relating to the Property. The Acolaid database is a factual database of complaints received and action taken, and so this can be produced with personal data redacted;

Council Officer Field Notes

- 2) Original field notes from site visits from each of the following officers who are known to have attended to consider complaints. The date of the known visit is recorded with each name:
 - a) Dom Stagg (14th April 2014)
 - b) Raymond Asagba (9th December 2014, 8th March 2015; at least one other date in 2014)
 - c) [personal data redacted] (9th December 2014)
 - d) [personal data redacted] (12th December 2014)
 - e) Unknown officer attending with [personal data redacted] (12th December 2014)
 - f) [personal data redacted] (13th December 2014)
 - g) [personal data redacted] (13th December 2014)
 - h) [personal data redacted] (8th March 2015)
- 3) All other field notes from any other visit;

Acoustic Recordings

- 4) Logged results of acoustic recordings known to have been taken by RBKC officers of the alleged nuisance;
- 5) Communications between RBKC officers and others including the [personal data redacted] in respect of the installation, operation and results of the recording equipment;

Internal and Other Communications

- 6) Minutes of any meeting where the Property was discussed.
- 7) Communications to or from any other elected individuals holding public office, any organisations or unions, or influential private citizens exerting influence (eg. [personal data redacted] as Cllr Tim Coleridge's brother and associate of [personal data redacted] on the Board of Trustees of the V&A Museum and member of the subcommittee of the Museum of Childhood) involved in any manner in this dispute.