

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

**Date:** 11 November 2022

**Public Authority:** London Borough of Barking & Dagenham  
**Address:** Barking Town Hall  
Town Hall Square  
Barking  
IG11 7LU

**Decision (including any steps ordered)**

---

1. The complainant has requested information from London Borough of Barking and Dagenham (LBBD) as to how the Controlled Parking Zone (CPZ) permit charges were calculated and the number of permits issued, and income generated in area/zone L, however, the complainant was not satisfied with the response. LBBD provided three different responses as to how parking tariffs had been calculated and the complainant believed they had not received all information available.
2. The Commissioner's decision is that LBBD are entitled to rely on Reg 12(4)(a) of the EIR to provide further information on how permit charges were calculated using a balance of probabilities that they have provided all the information they hold and entitled to rely on Reg 12(4)(d) to withhold the remainder of the request. Additionally, the Commissioner's decision is that the public authority breached regulation 5(2) and regulation 11 of the EIR as a result of the delays in its response.
3. The Commissioner does not require LBBD to take any further steps.

## Request and response

---

4. On 27 July 2021 and 11 October 2021, the complainant wrote to LBBD and requested information in the following terms:

"In relation to your parking permit charges and the £75 diesel surcharge you mention that fees, and charges are set and agreed by the Councils Cabinet. Under the freedom of Information Act I am requesting

details of how the specific charges are calculated. So for example, how is the £75 diesel surcharge arrived at. I am sure this is not a figure plucked out of the air and that there must be some logic and substance of how £75 was created. This is the same question I require you to answer for all the other permit charges. So again, for example a petrol car with CO<sub>2</sub> between 50 to 99gm is £18. Is this £18 calculated based on £0.36p per gram of CO<sub>2</sub>.

can you please confirm the total number of permits that have been purchased in area L CPZ, and the total revenue generated."

5. On 11 October 2021 LBBD acknowledged receipt of the complaint and stated they aimed to provide a response by 8 November 2021.
6. On 13 December 2021 LBBD provided an initial response, providing an estimation of permit revenues between October 2020 and December 2021 and some information related to how charges had been calculated.
7. On 31 December 2021 provided further information with regards to the calculation of permit charges and tariffs, and a new estimation of permit revenues generated in area H/L CPZ following a review. LBBD stated the following in relation to the calculation of permit charges:
- "Permit charges are calculated on an incremental basis, bearing in mind previous charges and what boroughs of similar size, populations and traffic patterns are charging. There are, therefore, no specific mathematical formulae relied upon in this process as it is a result of mostly non-quantifiable factors".
8. On 31 January 2022 LBBD provided you with additional information relating to the calculations of permit charges as follows and declined to make any further comments with regards to your complaint. It provided the following response:

"These charges were submitted to Cabinet for approval in July 2018 by the then Director for Enforcement who left the Council shortly

before the implementation in 2018. His methodology for setting the charge was not recorded and therefore there is nothing further we can add.

The purpose of the FOI Act (Freedom of Information) is to provide a right of access to recorded information held by public authorities. The Act does not require us to provide a reason, opinion or view as to why decisions are made."

9. Following an internal review LBBD wrote to the complainant on 7 March 2022. It revised its previous positions with regards to how the charges for CPZ permits were calculated and provided a partial response within the scope of the request of revised estimations of permits issued in zones HW/L. It refused to provide a more accurate figure citing section 12(1) of the FOIA as the cost of compliance would exceed the appropriate cost limit as its reasons for doing so.
10. LBBD located and provided a cabinet document dated 17 July 2018 summarising the processes that may have been considered in calculating figures for CPZ permits. It stated the following with regards to this matter: -

"The cabinet paper is the formal record by which the council made the decision and is now the only evidence that can be supplied as the officers involved in drafting this report no longer work for LBBD and no record can be found that sets out any further background."

## **Reasons for decision**

---

11. The complainant contacted the Commissioner on 17 March 2022 to complain about the way his request for information had been handled stating that three different responses had been received as to how parking tariffs had been calculated and therefore LBBD had not been honest and transparent or provided all documentation related to this matter.
12. Whilst LBBD handled the request under the FOIA, as it is an information request relating to the determination of CPZ permit charges based on emission charges and permit revenues received, the Commissioner believes that the requested information is likely to be environmental information relevant to regulation 2(1)(c),(d) and (e) of EIR and for procedural reasons, has therefore assessed this case under the EIR.
13. The Commissioner has therefore considered whether LBBD is entitled to rely on regulation 12(4)(a) (information not held) and regulation

12(4)(b) (manifestly unreasonable requests) of the EIR to refuse the requested information.

### **Reg 12(4)(a) - Information not held**

14. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information "to the extent that it does not hold that information when an applicant's request is received".
15. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.
16. LBBD confirmed that searches were made on all team sites on computer systems that may contain this information, as if the information was held, it would not be held in paper format. Additionally, LBBD confirmed that when employees leave employment, there is a handover of all documents and files to the organisation. It is highly unlikely that the information would have been held by other services or teams at LBBD, as each service has a specific system where the information would be held.
17. Whilst the Commissioner understands why the complainant would consider that there must be other documentation that sets out the calculations made by LBBD to set the charges it applies to the CPZ permits, particularly as the LBBD has not been consistent with its responses to the complainant in this matter, he is satisfied that the copy of the cabinet paper dated July 2018 is the only documentation available.
18. The Commissioner is therefore satisfied in this case that, on the balance of probabilities, LBBD has provided all information that it holds and that no further information is held in relation to the request in accordance with regulation 12(4)(a) of the EIR.

### **Regulation 12(4)(b) - Manifestly unreasonable**

19. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.

20. The Commissioner considers that a request can be manifestly unreasonable either if the request is vexatious, or where compliance with the request would incur a manifestly unreasonable burden on the public authority both in terms of costs and the diversion of resources.
21. The Council has relied upon the latter interpretation of regulation 12(4)(b), that it considers the amount of work required to comply with this request in full would bring about a manifestly unreasonable cost burden or an unreasonable diversion of resources.
22. Under FOIA, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') specify an upper limit for the amount of work required beyond which a public authority is not obliged to comply with a request. This is set at £450 for public authorities such as LBBD.
23. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, effectively imposing a time limit of 18 hours for LBBD to deal with this request.
24. The Fees Regulations state that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
25. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that compliance with a request would expend. However, the Fees Regulations are not the determining factor in assessing whether the exception applies.
26. The Commissioner's guidance on regulation 12(4)(b) states that public authorities may be required to accept a greater burden in providing environmental information than other information.
27. Regulation 12(4)(b) sets a robust test for a public authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request is "manifestly unreasonable", rather than simply being "unreasonable". The Commissioner considers that the term

"manifestly" means that there must be an obvious or clear quality to the identified unreasonableness.

28. Given the high burden referred to within paragraph 28 the Commissioner expects a public authority to provide both a detailed explanation and quantifiable evidence to justify why complying with a request would impose such an unreasonable burden on it, and therefore why regulation 12(4)(b) is engaged.
29. LBBD confirmed in its communications to the commissioner that Searches were carried out on the specific systems within Parking Services where all information was held in regard to CPZ permits issued and revenues generated. LBBD stated that the search would have involved circa 4366 permits. For each search the member of staff would have had to undertake the following:
  - Search the account holder's name
  - Search the permit applications
  - Check the permits that have been issued
  - Check if these permits are renewals or first-time purchases
  - Check the zone
  - Check the amount paid.
30. LBBD confirmed that the Service Manager undertook a sampling exercise of 5 permits to determine the time needed to locate and retrieve the information on the numbers of permits LBBD issued and the income received between October 2020 and December 2021.
31. LBBD estimated that it would take approximately 6 minutes to review each record within the scope of the request, equating to a total of 26,196 minutes (6 minutes x 4366 permits).LBBD therefore considered that over 436.60 hours would be required to check all 4,366 records.
32. The commissioner considers the council's estimate of 436.60 hours to provide the requested information to be reasonable. Even if LBBD took a minimum of 3 minutes, and halved the time , it would still require a member of staff to take well over 18 hours to retrieve the information requested.
33. The Commissioner's decision is that the request is manifestly unreasonable and therefore, regulation 12(4)(b) is engaged.

### **Public interest test**

34. Regulation 12(4)(b) is subject to the public interest test (PIT). This means that, when the exception is engaged, public authorities also have to consider whether, in all the circumstances of the case, the

public interest in maintaining the exception outweighs the public interest in disclosing the information.

35. LBBD did not address the PIT in any of its responses , however, the commissioner considers that there may be some public interest both in the transparency and accountability of the local authority and in how vehicle emissions effect the calculation of permits in CPZ's, and income generated.
36. Furthermore, the commissioner recognises that the requested information is of value to the complainant. However, the commissioner does not consider the requested information to be of strong interest to the wider public.
37. In the Commissioner's view, complying with the request would place an exceptional burden on LBBD staff to provide the requested information and additionally divert staff from delivering its core duties and functions. This action would be disproportionate and not in the public interest.
38. The Commissioner's view is that the public interest in the maintenance of the exception provided by regulation 12(4)(b) outweighs the public interest in disclosure of the withheld information and that regulation 12(4)(b) was applied correctly. LBBD is not, therefore, required to disclose this information .

### **Procedural matters**

39. Reg 5(2) of EIR states that a public authority must respond to a request promptly and in any event not later than the twentieth working day following the date of receipt.
40. Reg 11 of EIR states that a public authority must provide a reconsideration (internal review) of a response within 40 working days
41. The initial request for information was made on 7 February 2021. The Council responded with a refusal notice on 7 March 2022. As this was more than 20 working days after the request was made, the Commissioner finds that LBBD breached both reg 5(2) and reg 11 of EIR. However, as a response was issued to the complainant, no further steps are required by LBBD.

### **Regulation 9 – advice and assistance**

42. Regulation 9(1) of the EIR says that a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so.

43. In its initial response to the request, LBBD provided the complainant with details of permits issued and income generated between Oct 2020 and February 2022 in CPZ L .There appears to have been some confusion as to what areas within the borough included zone L and whether the information provided was within the scope of the complainants request.
44. Following an internal review LBBD reduced the scope of the request, reducing the time period for estimated figures for CPZ HW to be between July 2021 and February 2022 and provided the complainant with figures for CPZ HW (which included zone L) within the appropriate cost and time limits .
45. The Commissioner considers that this was an appropriate response in the circumstances. The Commissioner decision is that LBBD met its obligations under regulation 9(1) of the EIR and no further action is required.

## 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Catherine Fletcher**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**