

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

**Decision notice**

**Date:** 10 October 2011  
**Public Authority:** London Borough of Tower Hamlets  
**Address:** Tower Hamlets Town Hall  
5 Mulberry Place  
London  
E14 2BG

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to complaints received by London Borough of Tower Hamlets (the council) in connection with construction activities or preparations for the 2012 Olympics. The council provided some limited information but refused to provide anything further citing the exemption in section 12 of the FOIA and the exception under regulation 12(4)(b) of the EIR.
2. The Information Commissioner's decision is that the council's calculation of costs was unreasonable and not supported by evidence and therefore section 12 of the FOIA is not engaged. Similarly, he does not find the exception at regulation 12(4)(b) of the EIR engaged.
3. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - provide advice and assistance to enable the requester to refine his request; and
  - reconsider the complainant's request and either release the requested information to him or issue a further refusal notice which complies with section 17 of the Act and regulation 14 of the EIR.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the high court (or the court of session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. The complainant wrote to the council on 15 August 2010 and requested information in the following terms:

*"Please provide a listing of the details of all complaints received by the Council in connection with construction activities or preparations for the 2012 Olympics.*

*This should include any types of pollution and noise, complaints concerning parking, traffic, access or damage and any other matters.*

*Personal information may be redacted as necessary".*

6. The council responded on 9 September 2010, issuing a refusal notice in accordance with the FOIA. It told the complainant that it does not filter Olympic issues raised with the council and therefore all complaints dating back to 2005 would need to be reviewed independently. It advised him that it estimated that the cost of responding to his request would exceed the appropriate limit of £450.
7. The complainant requested an internal review on 10 September 2010, arguing that he considers the requested information to be environmental information. He also clarified that it would be sufficient to limit the request to complaints from the beginning of 2007.
8. Following an internal review the council wrote to the complainant on 21 February 2011. It explained why it considered that there is merit in either regime (FOIA or EIR) being used to handle the request. It told the complainant that, having conducted a search on complaints mentioning "Olympics", five complaints had been received by the council since 2005, with only one citing the 2012 games as a direct factor.
9. Referring to both regimes, the council told him that it considered that conducting a full search would exceed the cost limit under FOIA and would be manifestly unreasonable under the Regulations for complaints whose subject matter fell under the EIR.

## Scope of the case

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10. The complainant contacted the Information Commissioner on 21 April 2011 to complain about the way his request for information had been handled. He said that he was aware that common complaints had been related to dust, noise emissions and environmental issues relating to

construction traffic; he had therefore expected his request to have been dealt with under the EIR.

11. The complainant told the Information Commissioner he considers the council was incorrect to refuse his request under regulation 12(4)(b) for the following reasons:
  - other boroughs he submitted the same request to have supplied the information without apparent difficulty; and
  - his suggestion to restrict the search to start from 2007 was ignored.
12. With respect to the complainant's observation that other councils have supplied the information without apparent difficulty, the Information Commissioner considers each request on a case-by-case basis. Accordingly, his remit in this case is with respect to how London Borough of Tower Hamlets handled this request for information, and how other public authorities were able to address similar requests is not of direct relevance.
13. Given the broad scope of the request in this case, the Information Commissioner considers it likely to cover information that falls under more than one regime: in this case, he considers it is likely that, in order to answer the request, a mixture of environmental information and FOI information may need to be provided. He will therefore consider the council's handling of the request in accordance with both the FOIA and the EIR.
14. In circumstances where it is reasonable to reach the view that a request will involve a mixture of information which should be considered under the FOIA and the EIR, it is the Information Commissioner's approach to consider the public authority's application of section 12 of the FOIA to all the information in the first instance. It is then his approach to consider the request under the EIR. This is because the applicant still has a legal right to request information under the EIR whether the matter is addressed under the FOIA or not.

## **Reasons for decision**

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*Would the cost of compliance exceed the appropriate limit?*

15. Section 12(1) provides a costs threshold for the FOIA. As long as the council can prove that its estimate of the work required to answer the request for information is reasonable and exceeds the statutory limit, then it is not required to provide any information in respect of the request.

16. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") provide that the cost limit for local authorities is £450. This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. If a public authority estimates that complying with a request would exceed 18 hours, or £450, section 12(1) provides that the request may be refused.
17. In this case, the council initially refused the entire request under FOIA. It told the complainant that, as it does not filter Olympic issues, in order to respond to his request it would have to review all the complaints it had received since 2005. It estimated that this would cost approximately £875, in other words that it would exceed the appropriate limit. The council subsequently provided the complainant with details of the search it had undertaken in this case, a search which it described as being "*on a limited basis*". In the Information Commissioner's view, this was not an adequate basis for maintaining that the cost of compliance would exceed the cost limit.
18. In correspondence with the Information Commissioner, the council revised its original cost estimate upwards, explaining that it considered the effort involved in responding to the request would be closer to £50,000. It provided him with details of its calculations.
19. The Information Commissioner accepts that public authorities do not need to provide a precise calculation as part of any estimate. However, in the Information Commissioner's view, an estimate for the purposes of section 12 has to be 'reasonable', which means that the estimate should be realistic, sensible and supported by cogent evidence. In this case, the Information Commissioner does not consider that either the original or the revised estimate satisfies those conditions.
20. It follows that the Information Commissioner does not find the costs exemption engaged.

*Is any of the information environmental?*

21. The Environmental Information Regulations (EIR) set out the definition of what is environmental information. Amongst other things, it includes information recorded in any form on:
  - the state of the elements of the environment, such as air, water, soil, land; and
  - emissions and discharges, noise, energy, radiation, waste and other such substances.
22. Having considered the wording of the request for information in this case, the Information Commissioner considers that most, if not all, of

the information within the scope of the request is likely to be environmental information because it falls within the definition in regulation 2(1). He has therefore next considered the council's handling of the request with respect to that regime.

*Is the request manifestly unreasonable?*

23. Regulation 12(4)(b) provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
24. The EIR does not describe the circumstances under which a request could be deemed 'manifestly unreasonable'. In addition, unlike the FOIA, there are no cost limits in respect of responding to requests for environmental information.
25. The Information Commissioner accepts that before the council is in a position to provide the environmental information falling within the scope of the request, it must first determine what environmental information it holds. Therefore, in relation to whether the council can rely on regulation 12(4)(b) the decision the Information Commissioner effectively has to reach is whether responding to the request would place a burden on the council that is manifestly unreasonable.
26. The Information Commissioner considers it appropriate to consider whether, in this case, regulation 12(4)(b) provides an exception to the duty to comply with a request for environmental information on the basis that it would incur unreasonable costs for the public authority or an unreasonable diversion of resources.
27. In this case, the council told the complainant that it had received over 10,000 complaints since 2005, *"many of which could be related to matters concerning the games in any capacity"*.
28. It told him:  
  
*"For complaints whose subject matter may fall under the Environmental Information Regulations I would regard having to view each and every complaint to see if the Olympics were, in any way, the reason for the discontentment of the complainant to be manifestly unreasonable under section 12(4)(b) of the EIR"*.
29. During the course of the Information Commissioner's investigation the council confirmed that it considered that it would constitute an unreasonable diversion of resources to perform a manual search of each complaint record. With respect to the refined scope of the request, it told the Information Commissioner that:

*"A manual search of each complaint record from 2007, to determine context, would still be manifestly unreasonable".*

30. With respect to this request for information, the council acknowledged that:

*"Whilst clearly [the complainant's] focus is, in particular, construction activities they could be, for example, about 'digging' or 'contamination' without specifically mentioning the games".*

31. During the course of his investigation, the council told the Information Commissioner:

*"there are a number of other potential searches that could be undertaken on our entire complaints database".*

32. It also told the Information Commissioner:

*"I think we have clearly shown that individual complaints would need to be examined for context to determine whether they are, or are not, about a particular activity".*

33. However, the Information Commissioner is not satisfied that the council has clearly explained either why it has not performed the other searches it referred to, or why it would need to conduct a manual examination on the scale it suggests. He therefore does not find the exception engaged.

34. As the Information Commissioner has not found exception 12(14)(b) engaged, he has not gone on to consider the public interest test.

#### *Regulation 9(1) Advice and assistance*

#### *Section 16 Duty to provide advice and assistance*

35. When refusing a request for environmental information on the basis of costs under regulation 12(4)(b), the Information Commissioner expects that a public authority should, in line with its obligation under regulation 9(1), provide advice and assistance to enable the applicant to refine or reformulate their request. Similarly, where a public authority intends to refuse a request under section 12 of the FOIA it has an obligation under section 16 of the FOIA to provide advice and assistance to an applicant. For example, a public authority could consider providing an indication to the requester as to what information could be provided within the cost ceiling or advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee.

36. The Information Commissioner acknowledges that, having cited the costs exemption, the council told the complainant:

*"You may wish to refine and resubmit your request so that it reduces the cost below this upper limit".*

37. However, the council failed to provide the complainant with any advice and assistance about how to refine his request. Furthermore, having received a refined request from the complainant, the council ignored the change he made to the date range of the scope of the request.
38. In response to the Information Commissioner's question about the complainant changing his request to start from 2007, the council told the Information Commissioner that it saw no reason to explain why it continued to search from 2005.
39. The Information Commissioner is concerned that not only did the council fail to provide the complainant with adequate advice and assistance, but also that it subsequently failed to act on the revised scope of the request.
40. The Information Commissioner requires the council to provide advice and assistance to the complainant, in line with the FOIA and EIR Code of Practice, to enable him to refine his request.

## Right of appeal

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41. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

42. 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.
43. 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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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