

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

Decision notice

Date: 4 February 2013

Public Authority: Hillingdon Borough Council
Address: London Borough of Hillingdon
Civic Centre
High Street
Uxbridge
UB8 1UW

Decision (including any steps ordered)

1. The complainant requested emails to and from a number of parties from 2007 onwards containing two specific key words, as well as details of meetings held in 2011 by a Councillor on a specific topic. The complainant also asked for details of any correspondence generated by Hillingdon Borough Council (the Council) as a result of his request. The Council refused to deal with these requests citing section 14(1) and 14(2) of FOIA and stating that, as at the date of the request, it did not hold any correspondence generated as a result of the request.
2. The Information Commissioner's decision is that the Council was; incorrect to apply section 14(2) to parts one and two of the request, but correct to apply section 14(1) to parts one to eleven of the request, and correct to state that it held no information for part twelve of the request
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 18 January 2012, the complainant sent an email to the Council requesting information contained in questions numbered from one to twelve. For ease of reference the Information Commissioner has outlined these below in three broad categories but they are also included in more detail at Annex A of this notice:

- A. (questions 1 -10) copies of emails to and from a number of named parties that had been sent and received from 2007 onwards and containing two key words;
 - B. (question 11) details of any meetings between a named Councillor and others on a specific topic; and
 - C. (question 12) all correspondence generated by the Council's actions as a result of his email request.
5. The Council responded on 15 February 2012. It stated that it was refusing to deal with the request under section 14(1) of FOIA as it would cause a significant burden to the Council in terms of expense and distraction. It also refused to deal with the first two questions claiming that this was a repeat of a previous request and citing section 14(2) of FOIA. Finally, with regard to question twelve the Council informed the complainant that it did not hold the information.
 6. Following an internal review the Council wrote to the complainant on 23 March 2012. It stated that it was maintaining its position that the request was refused correctly under section 14(1) and 14(2) of FOIA. It also confirmed that it did not hold information in respect of question twelve.

Scope of the case

7. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled.
8. The Information Commissioner previously considered a complaint from the complainant which related broadly to the same subject and which will be referred to as part of the background of this notice.
9. The Information Commissioner asked the Council to provide him with a full explanation of its application of section 14(1) and 14(2) to the request.
10. The investigation therefore focussed on the application of section 14(1) and section 14(2) and the Council's position that it held no information for question 12.

Reasons for decision

Background

11. The complainant in this case has had interaction with the Council in a number of areas and the Information Commissioner also notes that the complainant has been involved in legal proceedings with the Council.

Question twelve – held / not held

12. In respect of question twelve, the Information Commissioner notes that the complainant requested all correspondence generated by the Council's actions as a result of his email request of that date (18 January 2012). In effect the complainant was making a request for information that was not, and could not have been held at the time of making the request. The Information Commissioner therefore upholds the Council finding that this information was not held as at the date of the request.

Questions one and two – repeated requests

13. Section 14(2) of FOIA states that where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.
14. The Council applied section 14(2) to questions one and two of the request, which were for emails sent and received by a named party from 2007 onwards. The Council argued that these parts of the request were a repeat of a request previously submitted by the complainant and responded to by the Council. It had previously informed the complainant that the information was not held and had demonstrated this to the Information Commissioner during an investigation into that complaint (case reference FS50431554).
15. Having considered this aspect of the complaint the Information Commissioner is not satisfied that questions one and two qualify as repeated requests. The previous request was for emails containing certain key words, sent to and from a particular individual, between 31/10/07 and 01/09/08. The current requests were made on 18 January 2012 and ask for emails containing the same key words, sent to and from the same individual, since 01/09/07. The Council has stated that the individual in question left its employment in March 2010. Although the Commissioner accepts that there is some overlap between the requests he notes that there is also a considerable period of time (18

months) where the individual was still employed and where there is no overlap in dates. He therefore concludes that the requests were not repeated.

16. Accordingly he finds that the Council was incorrect to rely on section 14(2).

Questions one to eleven – vexatious requests

The Council's arguments

17. The Council originally applied section 14(1) to questions one to eleven of the request, although it later preferred to rely upon section 14(2) as its primary reason for refusing requests one and two. As the Commissioner has found that section 14(2) does not apply to questions one and two, he has gone on to consider section 14(1), as originally cited by the Council, for questions one to eleven.
18. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request if the request is vexatious. The term vexatious is not defined in FOIA but the Information Commissioner's published guidance explains that 'vexatious' is meant to have its ordinary meaning and there is no link to the legal definitions in other contexts such as 'vexatious litigants'.
19. In respect of questions one to ten the information requested was for emails to and from certain named individuals, containing two key words, and sent from 2007 onwards. Question eleven was for information about meetings held in 2011 between a named individual and other parties as well as meetings between that individual and 'any other party' on a general subject area.
20. The Council's main arguments in this case were that complying with the requests would not only impose a significant burden in terms of expense and distraction but that they also lacked serious purpose or value.
21. The Council told the Information Commissioner that the applicant is not seeking a specified set of information, but rather is requesting all information contained in emails revealed by a random search of officers' mail boxes using two key words as well as details of meetings on a general subject.
22. It argued that to attempt to locate emails that might happen to contain those two key words would place a considerable burden in terms of expense and distraction on the Council. In respect of question eleven it also argued that a burden would be placed on the Council as to conduct a search for details of meetings would also distract its staff and that given the general nature of the topic could produce irrelevant

information. It argued that searching for the information would place a significant burden on its staff and resources and subsequently would impact on it being able to provide a service to local residents.

23. The Council also pointed out that there had been some legal proceedings between the Council and the complainant. It argued that one of the named individuals in the request had acted on behalf of the council and so it was highly likely that those emails would be legally privileged. It argued that in order to find those emails containing the two keywords and then attempting to establish whether those emails were subject to legal privilege could in its view cause an additional significant burden on the council in terms of time and cost and further impact on staff and resources being diverted away from normal work.
24. The Council also argued that complying with the request would impose a significant burden on the Council's FOIA resource and as a consequence would have a detrimental impact on its ability to process and respond to other FOIA requests it receives. It argued that it had a limited resource in the area of FOIA and that this would be taken up with handling this one multi-part request which would have a negative impact in terms of cost and time on the Council's ability to comply with its general obligations under the FOIA.
25. It argued that the complainant is not seeking a clearly defined set of information but any information contained in emails revealed by a search of email inboxes of two random key words and information on meetings on a general subject. As well as imposing a significant burden it argued that the request lacks serious merit, purpose and value as it believes it likely that any such search would produce a significant amount of irrelevant and meaningless information. It argued that in this instance a search would reveal emails in which one of the keywords that had various meanings would produce random, irrelevant and obscure results. It also argued that in respect of question eleven it believed the search would also produce irrelevant information given the subject of it.
26. It told the Information Commissioner that it had conducted a test of this theory and conducted a search using the same parameters and keywords of one of its FOI staff emails. It explained that because one of the keywords could be defined in various contexts it wanted to establish the value of conducting a search. Following the exercise it demonstrated that there were over 100 'hits' in the results on varying subjects from adverts, to holidays to events and vehicles. It pointed out that this search was carried out on emails of someone not named in the request or connected to the background of the case and that doing the same search using the individuals named in the request would be likely to produce more results.

27. Based on these results it argued that conducting a search of all the persons mentioned in the request would then involve each email being looked at to establish the relevance to the request.
28. The Council told the Information Commissioner that, in line with current guidance, it had also considered whether it was appropriate to cite section 12 (costs) to the request:

'If your only or main concern is the cost of compliance, you should consider section 12 rather than section 14'.

29. However, it determined that section 12 does not allow for the time involved in reviewing the information or the application of redactions to be taken into account. However, it had determined that responding to the request would involve an excessive amount of time for its staff to review the information and apply any relevant exemptions. For example, it noted that the request also included emails sent and received by its solicitor which would mean that each email would more than likely also need to be considered in terms of legal professional privilege and consideration of the application of section 42 of the FOIA.
30. The Council informed the Information Commissioner in respect of the legal proceedings between it and the complainant that, had any of the emails sent or received by the named individuals been relevant to the proceedings, the Council would have been obliged to disclose them to the complainant as part of the standard disclosure required in the County Court. It argued that the complainant would have known this, but he insisted on making a request for them anyway.

The complainant's arguments

31. The complainant informed the Information Commissioner that his request was not designed to have a burden on the Council and that his request does have serious purpose and value. He argued that he had serious concerns about the manner in which a procurement exercise had been run by the Council and in particular the involvement of one particular member of Council staff and that this had driven him to make the request. He told the Information Commissioner that he had been involved in that exercise and that during the process he had concerns with the accuracy of some of the information he was provided with. He was also concerned that the procurement rules were not being followed. He outlined how he had attempted to seek answers on the inaccuracies but was unable to and he believes the answers he seeks are contained within the requested information.
32. He also told the Information Commissioner that there had been other instances during separate planning processes that made him question

the decisions being taken by the Council. He said that the issues he had with both the planning and the procurement exercises made him concerned about the motives of the member of Council staff involved.

The Commissioner's analysis

33. The Commissioner considered the Council's arguments and raised some queries with it. Firstly he asked the Council to explain why the test keyword search had brought in what appeared to be SPAM emails, as he would have expected the Council to have an email policy that required officials to only retain emails required for business purposes and to delete SPAM emails. The Council explained that email deletion was left to the discretion of individual officers and that the Council did not have an email retention policy.
34. The Commissioner also asked the Council to establish how many emails falling within the scope of the request were actually held (rather than relying upon a test search that didn't include any of the named individuals). He asked the Council to make sure that it excluded any emails received after the date of the request when carrying out this exercise. The Council carried out a keyword search on four of the named individuals email accounts which it stated had produced 4896 emails. In relation to the remaining individual (covered by requests one and two) it had already informed that Commissioner and the complainant that as this person was no longer employed by the Council the email account had been deleted and no emails would be held.
35. The Council also provided the Commissioner with an estimate of 10 minutes per email to "catalogue, review, and consider the application of any exemptions"
36. The Information Commissioner has some sympathy with the argument that where large volumes of information have been requested, and there are obvious and substantiated concerns about potentially exempt information, which cannot be easily isolated because it is likely to be scattered throughout the whole of the requested information, then a request could potentially be deemed to be vexatious (or manifestly unreasonable under the EIR) because of the disproportionate time and effort that would be needed to review and remove the exempt information.
37. The First Tier Tribunal (Information Rights) in the case of *The Independent Police Complaints Commission vs The Information Commissioner EA/2011/0222* stated in relation to section 14 FOIA that "A request may be so grossly oppressive in terms of the resources and time demanded by compliance as to be vexatious, regardless of the intentions or bona fides of the requester."

38. In this case the Commissioner accepts that 4896 emails amounts to a large volume of information. However he does have some concerns about the Council's arguments.
39. Firstly, he considers that the volume of emails returned by the keyword search has probably been inflated by the Council's lack of email deletion policy and is therefore, to some extent, self-inflicted.
40. Secondly he considers that an estimate of 10 minutes per email to consider exemptions is excessive. The nature of emails is that although some may be long and include large attachments, many are very short communications that would not take very long to review. Also any SPAM emails would be unlikely to require any consideration for exempt information. He notes in this respect that although he suggested that the Council could indicate how many of the emails included attachments it did not chose to support its case in this way.
41. However, the Commissioner does accept the Council's point that, given the background legal proceedings and the fact that one of the named individuals is the solicitor representing the Council in those proceedings, there are real concerns about potentially exempt information. He also considers that even if he were to cut the estimate down drastically to an average of 1 minute per email to take account of his above concerns this would still amount to over 80 hours of work, and that this doesn't include the work in reviewing any of the information covered by question 12.
42. The Commissioner has also considered both the Council's and the complainant's submissions about the serious purpose and value behind the request. He accepts that the complainant has genuine concerns and is following what he believes to be a valid line of enquiry. However, he also considers that the complainant must take some responsibility for submitting a wide ranging request that is likely to capture a large volume of information, some of which is likely to be of little use in furthering his own aims and of little wider benefit to the public. He considers that the value of the request has been limited by the complainant's choice to frame his request in a way that is likely to bring in extraneous information.
43. He also considers that there is no value in submitting the requests for emails sent to the individual who left the Council's employments in March 2010 (questions one and two) when it has already been established that these email accounts have been deleted.
44. Having considered all of the above, the Commissioner concludes that in the circumstances of this case the serious purpose and value is not sufficient to justify the impact that responding to this request would

have on the Council in terms of a diversion of resources. He therefore upholds the Council's application of section 14(1) in this case .

EIR regulation 12(4)(b) – Manifestly unreasonable

45. The Commissioner has noted that some of the complainant's concerns relate to planning matters. In light of this he considers it likely that at least some of the information held will be environmental information which will fall for consideration under regulation 12(4)(b), the exception for manifestly unreasonable requests.
46. To the extent that the EIR apply the Commissioner considers that this exception is engaged for the same reasons as he has found that section 14(1) is engaged.
47. Regulation 12(4)(b) also requires the application of a public interest test. Having found that the exception is engaged the Commissioner has gone on to consider the public interest. The Commissioner accepts that there is a general public interest in transparency and accountability in relation to the Council's actions and the spending of public money.
48. He also considers that there is a public interest in the disclosure of information about planning matters and related procurement exercises, so that the public can satisfy itself as to the probity of the Councils actions in these matters.
49. He has not however taken into account the Complainant's private interests in this respect because these are not relevant to the public interest test and he also notes that, because of the way the request is framed, it is likely to also bring in some information of little if any wider public value.
50. The Commissioner accepts that there is a public interest in protecting public authorities from having to absorb disproportionate costs and diversion of resources in dealing with requests for very large volumes information, especially where it is likely that some of the information will be little value. He also considers that there is a public interest in not bringing information rights legislation into disrepute by requiring public authorities to respond to manifestly unreasonable requests.
51. In this particular case, although there is a clear public interest in transparency in relation to the planning and procurement matters the Commissioner notes that the complainant has chosen to submit a very broad request, rather than focusing on particular issues of concern, and that inevitably this means that the burden imposed on the public authority is very considerable. In light of all of the above the Commissioner has concluded that the public interest in maintaining the exception in this case exceeds the public interest in disclosure.

Other matters

52. The responses that the Council gave to the Commissioner's enquiries have raised some concerns about the Council's records management practice. The Commissioner strongly recommends that the Council review its practice against the provisions of the [section 46 code of practice on records management](#).

Right of appeal

53. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

54. 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.
55. 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

Lisa Adshead
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

Request

'Please supply the following information under the Freedom of Information Act 2000.

- 1) All e-mails to/from [named individual 1] from September 2007 onwards which contain the word [specific word 1].
- 2) All e-mails to/from [named individual 1] from September 2007 onwards which contain the word [specific word 2].

- 3) All e-mails to/from [named individual 2] from September 2007 onwards which contain the word [specific word 1].
- 4) All e-mails to/from [named individual 2] from September 2007 onwards which contain the word [specific word 2].

- 5) All e-mails to/from [named individual 3] from September 2007 onwards which contain the word [specific word 1].
- 6) All e-mails to/from [named individual 3] from September 2007 onwards which contain the word [specific word 2].

- 7) All e-mails to/from [named individual 4] from September 2007 onwards which contain the word [specific word 1].
- 8) All e-mails to/from [named individual 4] from September 2007 onwards which contain the word [specific word 2].

- 9) All e-mails to/from [named individual 5] from September 2007 onwards which contain the word [specific word 1].
- 10) All e-mails to/from [named individual 5] from September 2007 onwards which contain the word [specific word 2].

- 11) Details of the meetings held, and any documentation associated with those meetings, by [named Councillor] in 2011 with:
 - a. [named third party 1]
 - b. [named third party 2]
 - c. [developers in relation to various sites]
 - d. [Any other parties in relation to various sites]

- 12) All correspondence in relation to your actions as a result of this e-mail'