

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

**Decision notice**

**Date:** 3 May 2017

**Public Authority:** London Borough of Lambeth  
**Address:** Olive Morris House  
Brixton Hill  
London  
SW2 1RL

**Decision (including any steps ordered)**

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1. The complainant has requested the council to disclose the financial model used to calculate and provide the figures in the viability assessment for the regeneration of the Westbury estate.
2. The council initially provided some information and withheld other information citing regulations 12(4)(d), 12(5)(e) and 12(5)(f) of the EIR. During the Commissioner's investigation the council claimed a late reliance on regulation 12(4)(b) and asked for the application of this exception to be considered in the first instance.
3. The Commissioner's decision is the council is entitled to rely on regulation 12(4)(b) of the EIR in this case. She therefore does not require any further action to be taken.

**Request and response**

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4. On 5 February 2016, the complainant wrote to the council and requested information in the following terms:  
  
"1. Please provide the financial model (e.g. excel) that was used to calculate and provide the figures in the viability assessment for the Westbury regeneration cabinet report on 9.11. 2015.

2. All the analysis financial or otherwise, behind the decision to select Westbury estate to be included in your regeneration programme
  3. Please provide a copy of the Building Cost Model for Westbury.
  4. Please provide a copy of the financial breakdown for 2012, 2013 and 2014 associated with the Housing Revenue Account, including all incomes and expenditures
  5. Please provide a copy of the 30 year housing revenue account business plan.
  6. On 9th November 2015, a Lambeth cabinet report was presented only two options.
  7. Please provide information as to why that is the case and why the other options were not affordable.
  8. Please provide a full financial analysis to that end.
  9. Please provide scope and explanation of the works and services rendered by Airey Miller and how much was paid to them.
  10. A copy of the financial model (30 year cash-flow) produced by Airey Miller
  11. Any further reports produced by Airey Miller for Lambeth during the last five years.
  12. Please provide all minutes from the internal registration committees meetings to date."
5. The council responded on 8 April 2016. It released some information, confirmed where information was already publicly available and refused to disclose other information citing regulation 12(4)(d). In respect of questions 1, 3 and 10 of the request the council confirmed that it was still deciding what information could be disclosed and needed to contact third parties.
  6. The complainant requested an internal review on 20 April 2016.
  7. The council carried out an internal review on 27 September 2016 and notified the complainant of its findings. In relations to questions 1, 3 and 10 of the request the council advised that it also wished to rely on 12(5)(e) and 12(5)(f) of the EIR.

## **Scope of the case**

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8. The complainant first contacted the Commissioner in March 2016 to complain about the way several requests for information had been handled. His complaint in relation to this request was accepted for investigation in December 2016 once the complainant had received an internal review and informed the Commissioner that he wished her to investigate further.

9. This notice will only address questions 1, 3 and 10 of the request which are all covered by the same withheld information; what the council refers to as the 'bespoke financial model'. During the Commissioner's investigation the council confirmed that it now wished to rely on regulation 12(4)(b) of the EIR and referred her to a case she had already considered for the same information on which a decision notice had been issued.

## **Background**

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10. The council confirmed that it is currently in the process of regenerating several estates including the Westbury estate. It has not started rebuilding work on this estate but it has given residents Initial Demolition Orders. Another estate that is subject to the same regeneration programme is Cressingham Gardens. The council advised that it has already had an information request considered by the Commissioner in relation to this estate and the exact same withheld information; the bespoke financial model developed by Airey Miller. The case reference is FS50606315 and the decision can be found via this link:

<https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1625445/fs50606315.pdf>

(A hard copy of this decision notice is also attached to the council's and the complainant's version of this notice).

11. The council explained that the same model has been used for both estates. It has one model which contains 'drop down' choices by estate which enables the user to generate outputs specific for each. It said that the submissions it made during the Commissioner's investigation under case reference FS50606315 and the decision notice that followed apply equally in this case.

## **Reasons for decision**

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12. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request is manifestly unreasonable.
13. The Commissioner considers that the inclusion of 'manifestly' in regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under this exception, the information request must meet a more stringent test than simply being 'unreasonable'. 'Manifestly'

means that there must be an obvious or tangible quality to the unreasonableness of complying with the request.

14. The exception will typically apply in one of two sets of circumstances; either where a request is vexatious or where compliance with a request means a public authority would incur an unreasonable level of costs, or an unreasonable diversion of resources. In this particular case the council has argued that regulation 12(4)(b) of the EIR applies for the latter reason.
15. Unlike FOIA and specifically section 12, the EIR does not contain a provision that exclusively covers the cost and time implications of compliance. The considerations associated with the application of regulation 12(4)(b) of the EIR are, instead, broader than with section 12 of the FOIA. This means that there are other considerations that should be taken into account when deciding whether the exception applies to environmental information. These include the following:
  - Under the EIR there is no statutory equivalent to the “appropriate limit” – the cost limit beyond which a public authority is not obliged to comply with a request – described in section 12 of the FOIA.
  - The proportionality of the burden that compliance would place on the public authority’s workload, bearing in mind the size of the public authority and its ability to allocate resources to dealing with an information request.
  - The importance of the requested information, and the underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue.
16. The Commissioner considers that public authorities may be required to accept a greater burden in providing environmental information than other information. Unlike section 12 of the FOIA, regulation 12(4)(b) of the EIR is also subject to the public interest test.
17. During the Commissioner’s investigation under case reference FS50606315 the council was asked to reply to a series of questions relating to the claim that complying with the request would be unreasonably burdensome. The Commissioner’s questions and the council’s submissions can be found in paragraphs 25 to 40 of her decision notice under this case reference (link provided earlier).
18. To the extent that these submissions relate to potential provision of the bespoke financial model in response to an information request, the council confirms that it wishes to rely on these arguments for the application of regulation 12(4)(b) of the EIR in this case. It reiterated

that the exact same model has been used for both estates and so the time, cost and diversion of resources that compliance would involve is the same here. As the Commissioner is content that this is the case she sees no need to repeat these arguments here.

19. Paragraphs 41 to 56 of the decision notice for FS50606315 outline the Commissioner's reasoning for upholding regulation 12(4)(b) of the EIR in this case. And, again, as this analysis is equally applicable in this case there is no need to repeat it here.
20. In paragraphs 57 to 60 the Commissioner considered the public interest test and overall decided that the public interest rested in maintaining the application of this exception. Again, this decision is directly applicable in this case, as the requested information is exactly the same, so there is no need to repeat this here.

### **Conclusion**

21. In this case, the Commissioner is satisfied that regulation 12(4)(b) of the EIR applies and that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining this exception for the reasons explained in her decision notice of 22 November 2016 under case reference FS50606315.

### **Procedural matters**

22. As the council failed to respond to the complainant's request within 20 working days of receipt the Commissioner has found the council in breach of regulation 5(2) of the EIR.
23. The council also failed to carry out the complainant's request for an internal review within 40 working days of receipt. The Commissioner therefore finds the council in breach of regulation 11 of the EIR.

## Right of appeal

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24. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

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

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

25. 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.
26. 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** .....

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**