

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

Decision notice

Date: 27 April 2017

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

Decision (including any steps ordered)

1. The complainant has requested from the London Borough of Lambeth ("the Council") correspondence relating to the Carnegie Library, Herne Hill ("the library"). The Council applied the exception under regulation 12(4)(b) of the EIR (manifestly unreasonable on grounds of cost) as it considered that complying with the request would place an unreasonable burden on the Council's resources. With regard to the public interest test, the Council found that the balance of the public interest favoured maintaining the exception because of the resources that would be needed to comply with the requests, and explained that some information was already in the public domain.
2. The Commissioner's decision is that the Council has correctly applied regulation 12(4)(b) and the public interest favours maintaining the exception.
3. However, the Commissioner considers that the Council has not met its obligations under regulation 9(1) by its failure to provide sufficient advice and assistance to the complainant. Furthermore, she has found that the Council has breached regulation 14(2) by failing to respond to the request and issue a refusal notice within the statutory timeframe.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

- Provide a response to the complainant which complies with regulation 9(1) of the EIR.
5. 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 3 October 2016, the complainant made the following request for information under the FOIA for:

"Please supply all correspondence including emails relating to the Carnegie Library Herne Hill between Lambeth Council and the steering group/Carnegie Library steering group between 2000 and 2016."

7. The Council responded on 8 November 2016 and requested clarification as to: *"which organisation you are making reference to when you refer to the Carnegie library steering group."*

8. The complainant then clarified his request, as follows, on 11 November 2016:

"Please supply all correspondence including emails relating to the Carnegie Library Herne Hill between Lambeth Council and the group/body which preceded the Project Group and Shadow Trust Board between 2000 and 2016. This group / body, whose name I am uncertain of, includes or has included at various times in its membership [named individuals] and is not the Project Group or Shadow Trust Board."

9. The Council responded on 22 November 2016 and refused to provide the requested information, citing the following procedural section of the EIR: section 12(4)(b) (manifestly unreasonable on grounds of cost).
10. The complainant asked for an internal review to be carried out on 2 December 2016. The Council provided an internal review on 22 December 2016 and maintained its original position.

Scope of the case

11. The complainant contacted the Commissioner on 21 October 2016 to complain about the way his request for information had been handled. He was, at that stage, unhappy with the time it had taken the Council to

log his request for information, which it stated it had received on 18 October 2017. He then contacted the Commissioner again on 16 January 2016 to ask her to investigate the Council's handling of his request in the light of the Council's internal review response.

12. During the investigation, it was agreed by the parties to the case that this matter should be dealt with under the EIR.
13. The Commissioner considers that the scope of the case has been to consider the estimated time for compliance and the Council's application of regulation 12(4)(b) of the EIR to the request.

Reasons for decision

Regulation 12(2) – Presumption in favour of disclosure

14. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure.

The exceptions

15. The Council has applied the exception under regulation 12(4)(b) to withhold the requested information.

Regulation 12(4)(b) of the EIR – manifestly unreasonable

16. Regulation 12(4)(b) of the states that:

'a public authority may refuse to disclose information to the extent that-
(b) the request for information is manifestly unreasonable'

17. The Commissioner considers that the inclusion of 'manifestly' in regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under the 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.
18. 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 case, the Council argued the latter, namely that meeting the full terms of the request would place an unjustifiable demand on its resources.

19. In her guidance¹ on the exception, the Commissioner says at paragraph 19 that in assessing whether the cost or burden of dealing with a request is “too great,” public authorities will need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable. The Commissioner considered this will mean taking into account all the circumstances of the case, including:
- the nature of the request and any wider value in the requested information being made publicly available;
 - the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue;
 - the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services; and
 - the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.
20. The Commissioner considers that public authorities may be required to accept a greater burden in providing environmental information than other information. Where it is found to be engaged, regulation 12(4)(b) of the EIR is also qualified by the public interest test. Any exercise carried out to determine whether an exception applies must take into account the EIR’s express presumption in favour of disclosure under regulation 12(2).

Manifestly unreasonable in terms of costs and diversion of resources

21. The considerations associated with the application of regulation 12(4)(b) of the EIR on the grounds of cost are broader than its closest relative in FOIA, section 12, which explicitly permits a public authority to refuse a request purely on the basis of the time and cost implications of compliance. However, while recognising the differences between section 12 of the FOIA and regulation 12(4)(b), the Commissioner considers that the “appropriate limit” in section 12 may serve as a useful guide when considering whether a request is manifestly unreasonable on the

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

basis of costs. This is because the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"), which have the effect of prescribing the "appropriate limit," is taken to give a clear indication of what Parliament considers to be a reasonable charge for staff time.

22. The Fees Regulations state that a public authority's estimate that compliance would exceed the appropriate limit can only take into account the costs it would reasonably expect to incur in: determining whether it holds the requested information; locating the information; retrieving the information; and extracting the information. The Fees Regulations confirm that the costs associated with these activities should be worked out at a standard rate of £25 per hour per person. For local authorities, the appropriate limit is set at £450, which is the equivalent of 18 hours' work.
23. In addition, as noted in the Commissioner's guidance referenced previously, the costs of considering whether information is exempt, and in preparing it for disclosure, may also be taken into account under regulation 12(4)(b), which is not the case under section 12 of the FOIA.
24. In this case, the Council has argued that disclosing the requested information would be manifestly unreasonable in view of the time, cost and effort required to identify, locate, retrieve and extract it, together with the time it would take it to review the information and apply any relevant exceptions.
25. The Council initially estimated in its response of 22 November 2016 that it would take over 40 hours to comply with the request, since there would be a large volume of correspondence generated "*over six [sic] years*", and that it would be likely to contain personal data and commercially sensitive information. It did not at this stage offer a more detailed breakdown of this estimate.
26. In its internal review response of 22 December 2016, the Council stated that it maintained that it would take the Council "*a significant amount of time to attempt to locate all of this correspondence and provide a response to this request.*" It also reiterated that the information was likely to contain commercially sensitive information about planning matters, and personal data.
27. Following the Commissioner's investigation, the Council has explained in more detail why it considers that the request is manifestly unreasonable on grounds of cost. It explained that in its view the majority of correspondence would be contained in the email mailbox of an officer who has now left the Council. The Council therefore accessed this mailbox as its starting point in assessing what information was held.

28. Accessing this mailbox, and using the search term "Carnegie library," the Council retrieved 1574 emails dating from April 2013 to the date of its search. 710 of the emails contained "multiple attachments." The Commissioner appreciates that some filtering of the correspondence could be done by restricting the searches to specific contacts within the email account. However, she considers that for completeness a wider check of the information would need to be carried out to ensure that all the relevant material was captured.
29. The Council also explained that it was unable to retrieve emails prior to 2012/13 without significant further expense, due to the Council's move to a different system for storage of emails around that time. However, it seemed likely that there might be approximately another 3000 relevant emails in the officer's mailbox prior to this date, were it to retrieve them.
30. The Council initially estimated that it would take ten minutes to assess each email in order to consider its relevance and whether it needed redacting.
31. With regard to the need to redact the information, the Council has explained that it considers that it is likely that the correspondence would contain personal data, which would need to be redacted in accordance with regulation 13 of the EIR, and may also contain commercially sensitive information which would need to be redacted under regulation 12(5)(e).
32. Accordingly, in the Council's view, to assess the 1574 emails initially recovered by the search would take the Council in excess of 260 hours.
33. The Commissioner asked the Council to carry out a sampling exercise based on retrieving 20 of the recovered emails. The Council carried this out and found that in fact it took five minutes to deal with each email in order to apply redactions where necessary, as is permitted under the EIR. It found that redaction was, in its view, necessary to remove personal data from each of the 20 emails, specifically the names of third parties corresponding with the Council and Council employees not in senior roles, since it did not consider that disclosure of the data would be fair. Its revised estimate for dealing with the 1574 retrieved emails was therefore still in excess of 130 hours.
34. The Council has also explained that it had discovered that the officer whose emails it had retrieved had corresponded with 150 other Council employees about the library. This gave an indication that there was a relatively wide pool of Council members interested in the project, who may potentially have generated correspondence with the group in question.. Accordingly, checking for information falling within the scope

of the request would require multiple officers to carry out a search of their mailboxes to check for information falling within the scope of the request.

35. The complainant expressed the opinion that he did not consider there had been *"such a volume of correspondence"* between Lambeth Council and the members of the group in question, and had guessed that there would be less than 100 documents falling within the scope of his request.

The Commissioner's findings on whether the exception applies

36. Returning to the wording of the request, the Commissioner notes that the complainant requested *"all correspondence [relating to the library]... between Lambeth Council and the group/body which preceded the Project Group and Shadow Trust Board."* In view of the fact that *"Lambeth Council"* and *"all correspondence"* are such broad terms, the Commissioner accepts that the Council would need to check multiple mailboxes in order to locate the information which it holds falling within the scope of the request.
37. In view of the fact that the complainant's request is couched in general terms and seeks information over a lengthy period of time, the Commissioner considers that the Council's search parameters are appropriate and adequate.
38. Furthermore, based on her consideration of a sample of emails provided by the Council, the Commissioner accepts that it is not unreasonable that the Council would need to consider redacting the information as they may contain information that would be excepted from disclosure.
39. While the Commissioner considers that the estimate of five minutes per email might be excessive, since some emails might be assessed as being able to be disclosed at a glance and others might be redacted more quickly, the volume of correspondence retrieved by the search parameters would still require far in excess of the starting point of the "appropriate limit" for cases falling under section 12 of the FOIA; that is, 18 hours.
40. The Commissioner has therefore considered whether it would be manifestly unreasonable for the Council to deal with the complainant's request.
41. As stated, the inclusion of the word "manifestly" means that there must be an obvious or clear quality to the unreasonableness and that public authorities should not face a disproportionate burden or an unjustified level of distress, disruption or irritation, in handling information requests.

42. In the Commissioner's view, the number of emails, and possibly other types of correspondence yet to be located, needing to be prepared for disclosure to fulfil the terms of the request would cause a disproportionate and unjustified level of disruption in terms of time.
43. The Commissioner is satisfied that the exception under regulation 12(4)(b) of the EIR for the Council is engaged, and has therefore gone on to consider the public interest test.

The balance of the public interest

44. Regulation 12(4)(b) is a qualified exemption and is therefore subject to the public interest test at regulation 12(1)(b) which states that information can only be withheld if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Public interest arguments in favour of disclosing the information

45. The complainant has drawn the Commissioner's attention to the circumstances surrounding the proposed redevelopment of the library, which closed its doors last Spring. The Council is planning to reopen the library later in 2017 after some redevelopment.
46. The Commissioner is aware that the library is a Grade II listed building. Amongst the issues causing concern to some of the local community is the proposal to open a gym in the basement of the library.
47. The complainant has explained that, in his view, there has been a poor level of engagement with the local community and indeed the wider public over decisions which have been made, or are in the process of being made, about the future of the library.
48. The complainant has further explained that two groups have submitted applications to the Council with a view to taking over the running of the library: the Carnegie Library Association ("CLA") and the Carnegie Community Trust ("CCT"). Both groups are charitable incorporated organisations. The Commissioner understands that the complainant is not a member of either group.
49. It is the Commissioner's understanding that the Council is still, at the date of this notice, assessing each group's applications.
50. The complainant is concerned that the trustees of the CCT include former members of Lambeth Council. He has also stated that the CCT has been formed from a steering group which also comprised members and former members of the Council. His request is for correspondence between the Council and these individuals.

51. The complainant doubts that, in view of its membership past and present, the CCT's application can be assessed in an impartial manner by the Council.
52. Furthermore, the complainant considers that there is evidence that the Council is already working closely with the CCT. He has expressed concern that in November 2015 a Lambeth councillor stated that the Council was working with the CCT *"to develop a workable proposal"* for the reopening of the library. This comment was made at a Council question and answer session on 18 November 2015, the report of which is published here.²
53. Furthermore, the complainant is concerned that in its response of 17 November 2016 to his request for information, the Council referred him to the website www.carnegiehernehill.org.uk, since this is the website for the CCT. In his view this shows a lack of impartiality by the Council.
54. The complainant has explained that, in his view, the disclosure of the information he has requested will shed light on the working arrangements between the Council and the CCT (under its current and former names).
55. The complainant also expects the correspondence broadly to relate to decisions that have been taken or were under consideration at the date of the request regarding the future of the library.
56. The complainant is aware that there is already information in the public domain concerning two ongoing planning applications for the library's redevelopment.
57. However, in his view, the perceived lack of engagement with local residents and indeed the wider public during the period leading up to the planning applications being submitted, has made it impossible to assess the Council's impartiality in making its decisions.
58. It is the complainant's view that there is a public interest in disclosure of the information since he considers that the Council should be transparent regarding its decision-making processes, and that the activities of the Council and the CCT *"are clearly a matter of public concern."*

² <https://moderngov.lambeth.gov.uk/documents/s78083/Council%20Questions%20-%2018.11.15%20-%20with%20answers.pdf>

Public interest in maintaining the exception

59. The Council has agreed that there is public interest in the development of the library.
60. However, it considers that this interest is met through the publication of planning information, and through other websites which publish information about the library project.
61. The Council's arguments in favour of maintaining the exception relate to the burden which would be imposed on the Council in complying with the request.
62. The Council has informed the Commissioner that it receives more than 2000 FOIA/EIR requests a year and that it is mindful of its obligations for compliance within the statutory timeframe.
63. In the Council's view, a member of the Council's freedom of information team would need to work for approximately three weeks on this request alone in order to comply with it.
64. The Council considers that the public interest in maintaining the exception outweighs the public interest in disclosure "*due to the significant and serious burden which would be caused to Lambeth Council*" should they be ordered to comply.
65. In addition, the Council has stated that it cannot see a public interest in the disclosure of "*more historic*" information in addition to the information which is already in the public domain, although it accepts that the complainant has a particular interest in it.

The Commissioner's view

66. The Commissioner considers that there is always considerable public interest in transparency over matters pertaining to the environment, including the redevelopment and partial change of use of listed buildings, especially when those buildings play an important public role in the community. In her view, this public interest would extend to historical information regarding how decisions have been made and by whom.
67. However, there is also a strong public interest in not placing a manifestly unreasonable burden upon public authorities. In this case, due to the volume of correspondence that would need to be searched to collate the required information, in disclosable form, in the terms it has currently been requested, it would be manifestly unreasonable to comply with it.

68. In addition, the Commissioner considers that the complainant is seeking relatively non-specific information. He is hoping to add to his general view of the Council's working relationship with the CCT, both in its current and previous forms. He cannot be certain, however, that the Council holds recorded information which addresses his particular concerns, and this lessens the public interest in the information that has been requested.
69. The Commissioner's decision is that the public interest in maintaining the exception outweighs the public interest in the information being disclosed.

Regulation 9(1) – Duty to provide advice and assistance

70. Regulation 9(1) of the EIR states:

"A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants."

71. When refusing a request for environmental information under regulation 12(4)(b) as being manifestly unreasonable because the burden of compliance is too great, the Commissioner views regulation 9(1) as an obligation for public authorities to assist requesters to reduce the scope of the request as far as it would be reasonable to do so.
72. In this case, the Council had asked the complainant for some clarification as to which group he was seeking correspondence with, following which, the complainant revised his request to make it more specific.
73. However, in its application of regulation 12(4)(b), the Council has largely relied on the fact that the complainant asked for 16 years of correspondence. The Council did not, however, suggest that the complainant could limit the time frame of the information he was seeking.
74. In addition, it is clear to the Commissioner that the general wording of the request and in particular the phrase "*all correspondence...* [from] *Lambeth Council*" has led to the Council having to conduct a wide search in order to locate all information falling within the scope of the request.
75. In the Commissioner's view, therefore, there are a number of ways in which the Council could potentially have suggested that the complainant narrow his request in order to make it possible for them to provide some relevant information within a reasonable timeframe.

76. The Commissioner's decision is that the Council has breached regulation 9(1) of the EIR and accordingly she now asks the Council to provide a response to the complainant which complies with the requirements of regulation 9(1).

Regulation 14(2) – Refusal to disclose information

77. Regulation 14(2) of the EIR states that a public authority wishing to withhold information in response to a request is required to provide the requester with a refusal notice stating that fact within 20 working days after the date of receipt of the request.
78. In this case, the complainant delivered his request by hand to the Council on 3 October 2016. The Council has acknowledged that a delay occurred, resulting in the request not being logged until 17 October 2016.
79. The Commissioner's guidance states that the date a request is received by a public authority is "the day on which the request is physically or electronically delivered to the authority."³
80. Since the Council's first response was made on 8 November 2016, 26 working days after the date it received the request, the Council has breached regulation 14(2) in this regard.

³ <https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf>

Right of appeal

81. 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

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

82. 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.
83. 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

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