

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

**Decision notice**

**Date:** 13 June 2018

**Public Authority:** Heritage Lottery Fund  
**Address:** 7 Holbein Place  
London  
SW1W 8NR

**Decision (including any steps ordered)**

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1. The complainant has requested information from Heritage Lottery Fund (HLF) about Lewisham Council's Parks for People project for Beckenham Place Park. HLF refused to comply with the request relying on section 14 FOIA – vexatious request and regulation 12(4)(b) EIR manifestly unreasonable request.
2. The Commissioner's decision is that the request falls to be considered under the EIR, that only points one and two constitute valid requests and that HLF is entitled to rely on regulation 12(4)(b) to refuse to comply with the request. She does not require the public authority to take any steps.

**Request and response**

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3. On 11 September 2017, the complainant wrote to HLF and requested information in the following terms:

*"Please advise the Friends of Beckenham Place Park the grant expiry date for Lewisham Council's Parks for People project for Beckenham Place Park.*

*Please also advise whether an extension has been granted on any original date, bearing in mind that it is now almost 9 months since the award was made, 10 months since Lewisham applied for planning*

*permission, the latter remains outstanding and no capital works can commence until such time as it may be granted.*

*Please confirm that you have had the required three monthly updates from Lewisham, as per your Parks for People Receiving a Grant advice and whether you are intending to undertake, or have undertaken, or are currently doing, a review of the project in view of the stalemate situation.*

*We already know that statutory permissions remain outstanding; please advise whether you have received proof of partnership funding. If not, when do you expect this? Or will there be a fund raising plan instead?"*

On the same date, HLF responded advising that it saw no reason to alter its position from a previous refusal under section 14 vexatious request (3 April 2017) following a request for information made under FOIA. Accordingly it refused the request under section 14 FOIA. HLF set out that the complainant had made the request direct to HLF on 5 September 2017 and via What Do They Know (WDTK) on 11 September 2018.

4. The complainant requested a review on 12 September 2017 and HLF responded on 19 October 2017. It maintained its position.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 24 October 2017 to complain about the way her request for information had been handled. She set out that although she had sent previous requests to HLF on the same subject, the one prior to this one was in January 2017. She asserted that the requests submitted up to January 2017 were to establish on behalf of 8000 petition signatories, "the justification for a controversial scheme approved by the HLF."
6. The complainant further set out that the request under consideration in this notice is to establish if HLF is following protocols for oversight of the project and that this is in the public interest.
7. The Commissioner considers that the scope of her investigation is to determine whether HLF was correct to rely on section 14/regulation 12(4)(b) to refuse the request at parts one and two.
8. The Commissioner set out her position in her scoping letters to both the complainant and HLF that the request at part three required HLF to confirm a specific position and explain past and possible future actions

dependent upon that confirmation; in the particular circumstances of this case she considers that HLF would have been entitled to advise the complainant that this aspect of the request was not a valid FOIA request. In respect of the request at part four, the Commissioner considers that it sets out a particular position and then asks if proof of partnership funding has been received. This again requires confirmation or denial. The request further asks, if no such proof has been received will a specific action be undertaken. This requires either a yes or no answer or an explanation regarding future action. Again, the Commissioner considers that HLF would have been entitled, in the circumstances, to advise the complainant that this was not a valid FOIA request.

9. Given the Commissioner's decision in respect of regulation 12(4)(b), she accepts that the HLF's consideration of the entire request as valid is academic in this case.

## **Background**

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10. In June 2014, HLF and Big Lottery Fund Parks for People programme approved a first round pass for Beckenham Place Park which included a development grant of £270,500 to allow Lewisham Council to work on their proposals to restore the park. After public consultation, Lewisham Council made a decision to close the park's Council-run golf course in February 2016 as it had been operating at a loss for a number of years. The golf course closed in October 2016. HLF and Big Lottery Fund joint Board awarded a grant of £4.7M toward the restoration of the park in December 2016.

## **Reasons for decision**

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### **Section 14 – vexatious request and Regulation 12(4)(b)-manifestly unreasonable request**

11. Information is 'environmental' if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. The Commissioner considers that as the requested information relates to the regeneration of Beckenham Place Park, it falls squarely within the EIR. She considers it appropriate therefore to consider the request under that access regime.
12. Regulation 12(4)(b) EIR allows for a request to be refused if it is manifestly unreasonable.

13. In the Commissioner's view, regulation 12(4)(b) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress and are therefore vexatious or manifestly unreasonable.
14. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are sufficient to justify the impact on the public authority.
15. It is HLF's position that in the two year period up to 9 March 2017 the complainant sent 121 emails to one individual case officer at HLF. This correspondence was often copied to other members of staff including the case officer's line manager and to the Chief Executive. Whilst HLF acknowledges that the number of emails has reduced since then it remains at 14 in the past year.
16. With regard to the fact that the complainant often copied in the case officer's line manager and the Chief Executive, HLF has set out to the Commissioner that the case officer in question felt undermined and that she was caused distress and embarrassment.
17. HLF has provided the Commissioner with an excerpt from an email written by the case officer in question which explains that handling the correspondence was extremely time consuming. The excerpt sets out that the officer in question was able, initially, to respond to the correspondence in a timely manner; she then felt that it was necessary to institute coping strategies in order to manage the volume of correspondence and the nature of the requests which were often very detailed. Introducing this coping mechanism was prompted, it seems, by new correspondence and responses to other correspondence frequently overlapping and in particular the tipping point was receiving three requests within four days along with a detailed response to a previous request.
18. One of the coping strategies employed was to ask the complainant to refrain from sending new requests until a response to the previous request had been issued. The email from the case officer sets out that even in these circumstances, often a new request would then be submitted within an hour or so of the response being issued to a previous request.
19. It is HLF's position that the time required to handle the correspondence meant that the caseworker was unable to commit to any new assessments or undertake the monitoring of other projects.

20. It is also HLF's position that the requests made under FOIA had placed a burden on the two FOIA staff members causing significant disruption to their daily workloads which meant that they were required to stay late to ensure other work was completed and other requests handled.
21. HLF has also explained to the Commissioner that it considers the complainant's correspondence to be argumentative and repetitive rather than constituting genuine requests for new information. It is often the case, HLF asserts, that the complainant's correspondence refers to collusion between Lewisham Council and HLF.
22. HLF's submission to the Commissioner explains that the complainant also uses social media to express views about HLF. It has provided details of this use which the Commissioner considers to be significant. It has also provided some examples for the Commissioner to consider. The Commissioner notes that on one social media platform alone, the complainant has recorded hundreds of comments over a three year period. Comments are made on other social media platforms too.
23. Whilst the Commissioner considers that the complainant's use of social media is pertinent to the decision, she does not consider it necessary or appropriate to set out the precise detail of the social media use in this notice. She would however note that she has viewed some of the comments made on social media and considers that they can easily be interpreted as laden with sarcasm and, as described by the case officer, unkind, with comments questioning ability or integrity. The Commissioner considers that this is an attempt to publicly 'call out' HLF and is not simply an attempt to raise awareness and influence opinion about an issue. It appears to be more generally intended to publicly discredit the organisation as a whole.
24. In its submission to the Commissioner, HLF has considered the purpose and value of the request. It has acknowledged that there was some public interest in the closure of the Beckenham Place Park golf course and this subject accounted for early correspondence to HLF. In 2016, Lewisham Council took the decision to close the golf course; HLF was not party to that decision.
25. It is HLF's position that following Lewisham Council's decision to close the golf course, the complainant's requests and accusations appeared to be trying to uncover any wrongdoing by Lewisham and were challenging HLF's decision to fund the redevelopment of the park.
26. HLF has further set out that the complainant regularly copies HLF into correspondence with Lewisham Council.

27. The complainant uses derogatory terms to describe HLF, referring to it as the 'Heritage Lottery Fraud' and describing it as the 'Heritage Gravy Train'. Whilst the Commissioner accepts that public authorities should reasonably expect to receive criticism and negativity from individuals who do not agree with certain actions or who have a strong opinion about its position on certain issues, she does consider that there is of course a point where such criticism borders on obsessive and is undoubtedly unacceptable in terms of the burden placed on the public authority in responding and the distress placed on individuals involved.
28. HLF has explained to the Commissioner that it has provided a large amount of information to address its reasons for awarding a grant to Beckenham Place Park. It is HLF's position that no matter what it provides in relation to the project, it will be unable to satisfy the complainant whatever the response. Accordingly, HLF considers that to continue to respond to the complainant will have an unjustified and disproportionate effect on the organisation and its staff.
29. In summary, HLF considers that the complainant has a personal grudge against Lewisham Council and now against HLF by virtue of its funding for the Lewisham Council project. She demonstrates unreasonable persistence by the volume of correspondence and volume of comments on social media, she attempts to discredit HLF by name calling and insinuations of incompetence and collusion with other organisations and over the years has made frequent and overlapping requests.
30. It is HLF's position that whilst this request is not, in isolation, manifestly unreasonable, when considered in conjunction with other previous requests and with the level of other communication from the complainant, it represents the tipping point and becomes manifestly unreasonable.
31. The Commissioner considers that the issue of the closure of the golf course was clearly of considerable importance to the complainant and she acknowledges that, more widely, individuals and residents of a particular area will often be interested in, and possibly have concerns about projects pertinent to their local area. She notes that following the closure of the golf course, the complainant continued to correspond with HLF about the project more generally. Although she acknowledges the public interest locally, she considers that there is limited wider public interest as the project relates to a small area of one London Borough.
32. Having considered HLF's position regarding the complainant copying correspondence to the Chief Executive and the case officer's line manager, the Commissioner considers that such action may be used not only to have the effect of undermining and embarrassing the case

officer, but could also be seen as an attempt by the complainant to raise the profile of her concerns within the organisation.

33. Although the Commissioner acknowledges the complainant's position that her last request before the one under consideration here was around eight months beforehand, the Commissioner notes that the application of regulation 12(4)(b) relies not only on the volume of requests submitted but the background to those requests and the volume and nature of other correspondence.
34. Given that the complainant's initial concerns were about the closure of the golf course, it appears that she has, since its closure, continued to correspond with HLF on more general issues relating to the project itself. This has included her many comments on social media which are often negative and are used to cast doubt on the credibility and integrity of HLF and its staff.
35. It is the Commissioner's position that HLF has made a strong case to support its application of regulation 12(4)(b) and she considers that responding to this request would serve to keep the floodgates open for yet further requests and/or correspondence on the subject.
36. The Commissioner considers that it is not unreasonable to consider the complainant's behaviour to be obsessive in relation to her pursuit of information and promulgation of her views in relation to the Beckenham Place Project whether that is by FOIA requests, blogging, social media comments or business as usual correspondence.
37. The Commissioner notes the complainant's position that the requests up to January 2017 were to establish, on behalf of 8000 petition signatories, "*the justification for a controversial scheme approved by the HLF.*" HLF has advised the Commissioner that the petition in question was not specific to HLF but was delivered to HLF on 13 December 2016, the day of the second round grant decision.
38. The petition was in opposition to the attempt by Lewisham Council to close the 18 hole golf course. Lewisham Council had already, in October 2016, closed the golf course. The Commissioner recognises that although a petition suggests that there may be some public interest in a particular issue, it does not justify subjecting a public authority, and in this case a public authority which was not party to the decision making process in relation to the golf course, to the significant burden caused by voluminous requests and correspondence from one individual. She considers that a public authority must be able to take appropriate action to prevent any continued burden.

39. It is of note that in relation to the Beckenham Place Park project HLF has received only eight FOIA requests from six individuals, other than the complainant, and the last of these was received in September 2016.

### **Balance of the public interest**

40. Regulation 12(4)(b) is subject to the public interest test and therefore the Commissioner must determine whether the balance of the public interest lies in favour of maintaining the exception at regulation 12(4)(b) or in disclosing the requested information..
41. HLF recognises that disclosing the requested information would enhance transparency and promote accountability. It also acknowledges that there is some public interest in disclosure of the information although this will mainly be on the part of residents affected by the project.
42. In favour of maintaining the exception, HLF has set out that there is a disproportionate burden in complying with the request given that it is apparent that the requester will never be satisfied, irrespective of the response. Compliance would therefore impact on the public authority's capacity to deal with other requests and would serve to increase the burden to HLF.
43. In further support of maintaining the exception, HLF has set out that the purpose and value of the request is limited with the wider public interest also limited.
44. In reaching her decision on the balance of the public interest, the Commissioner considers that although it is in the public interest to promote transparency, it is in the public interest to ensure that public authorities are protected from utilising resources in handling requests which represent a significant burden and to which there seems no apparent conclusion. This, coupled with such limited public interest, leads the Commissioner to conclude that the balance of the public interest lies in maintaining the exception.



## Right of appeal

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45. 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 7395836

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)

46. 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.

47. 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** .....

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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