

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

**Decision Notice**

**Date:** 25 February 2020

**Public authority:** Royal Borough of Kensington & Chelsea  
**Address:** The Town Hall  
Hornton Street  
London  
W8 7NX

**Decision (including any steps ordered)**

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1. The complainant has requested information from the Royal Borough of Kensington and Chelsea (the Council). The Council initially refused the request under regulation 12(5)(b) 12(4)(a), regulation 12(4)(e), regulation 12(5)(f) and regulation 13 of the EIR. The Council subsequently sought to rely on the exception at regulation 12(4)(b) on the basis that the request was manifestly unreasonable.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(b), and the public interest in maintaining the exception outweighs the public interest in disclosure. The Commissioner does however find that the Council failed to comply with some procedural requirements of the EIR. The Commissioner does not require any remedial steps to be taken.

**Background**

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3. The complainant in this case has been in dispute with the Council for several years regarding the Council's handling of noise complaints submitted by the complainant's neighbour about the complainant's family home.

**Request and response**

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4. On 9 February 2018 the complainant wrote to the Council. Amongst other things this correspondence contained several requests for information, which are extracted and set out below (the 2018 request). The "complainant" as described in the request is the person who

submitted the noise complaint, rather than the person who made the request and subsequently complained to the Commissioner.

**Information Requested (7<sup>th</sup> April 2015 to 4<sup>th</sup> July 2017)**

**74. Council and complainant communications and records:**

- (i) *All communications, records, and records of communication between the complainant and the Council in relation to the Property and / or the Notice and / or the Legal proceedings;*
- (ii) *All communications, records and records of communications between elected members and Council Officers (current or former) in relation to the Property and / or the Notice and / or Legal proceedings; and*
- (iii) *The records of all meetings and / or site visits comprising any one or more Council Officers and / or elected councillors and / or the complainant, in relation to the Property and / or the Notice and / or Legal proceedings;*

**75. Acoustic recordings and EHO field notes**

- (iv) *All records and communications in relation to the acoustic recordings in respect of the Property and / or the Notice;*
- (v) *All records and communications in relation to all environmental health officers' field notes including that of the first officer, [personal data redacted] said to have visited the complainant's property for 4 minutes at midday (12.36pm) on 14<sup>th</sup> April 2014 when the complainant was not home;*

**76. Appointment of counsel and legal advice**

- (vi) *Legal advice given by counsel [names redacted] to the Council in respect of the Property and/ or the Notice and / or the Legal proceedings;*
- (vii) *Records and communications held by the Council in respect of the termination of [personal data redacted] services and the decision not to appoint another barrister;*

**77. Maternity Leave**

- (viii) *Records and communications involving Council Officers in relation to pending maternity leave of a council witness.  
Specifically:  
  
(a) why a twelve month adjournment was being sought; and  
(b) why, in the event the witness concerned was able to attend on the date in question.*

5. The Council initially advised the complainant that it was handling her request entirely under the subject access provisions of the Data Protection Act 1998.<sup>1</sup>
6. The complainant contacted the Commissioner on 10 April 2018 to complain that she was dissatisfied with the way the Council handled her request. The complainant argued that the Council ought to have considered her request under the FOIA/EIR as well, since not all of the requested information was her personal data.
7. The Commissioner issued a decision notice<sup>2</sup> on 16 November 2018 requiring the Council to issue a response in respect of the information that was not the complainant's personal data.
8. The Council issued a revised refusal notice to the complainant on 12 December 2018. It referred the complainant to a previous complaint she had made regarding the Council's response to a similar request, submitted in 2015, which was considered by the First-Tier Tribunal (FTT) in 2017 (the 2015 request).<sup>3</sup> In that case the FTT upheld the Council's reliance on the exception at regulation 12(5)(b) of the EIR in respect of the requested information.
9. The Council advised the complainant of its view that the requested information should still be withheld under regulation 12(5)(b). In addition the Council now sought to rely on the exception at regulation 12(5)(f) as well.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 8 January 2019 to advise that she wished to challenge the Council's refusal to disclose the withheld information to her. The Commissioner accepted this complaint without requiring the complainant to request a further internal review because it was clear that the Council had had a number of opportunities to reconsider the request.

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<sup>1</sup> New data protection legislation came into force (the General Data Protection Regulation and the Data Protection Act 2018) on 25 May 2018.

<sup>2</sup> Decision notice FER0737846.

<sup>3</sup> The 2015 request is set out in Annex 1 at the end of this notice.

11. The Commissioner confirmed to the complainant and the Council her view that the requested information was entirely environmental information within the meaning of regulation 2 of the EIR. Neither party disputed this. Regulation 5(3) of the EIR states that the personal data of the applicant does not fall within the scope of the EIR. Therefore the Commissioner's decision relates only to information that is not the complainant's personal data.
12. The Commissioner also emphasised that her role is to decide whether a particular request has been handled in accordance with the requirements of the EIR. She cannot comment on or become involved in the complainant's dispute with the Council, and has stressed to the complainant that the EIR only allows for information to be disclosed into the public domain. The Commissioner cannot require information to be disclosed to the complainant unless it could be disclosed to any person who requested it.
13. The Commissioner wrote to the Council on 4 February 2019, requesting that the Council provide her with a full and unredacted copy of all the information falling within the scope of the request. The Commissioner drew the Council's attention to the fact that the request covered a separate time period from the 2015 request, although the subject matter was similar.
14. The Commissioner also asked the Council to confirm whether it had distinguished between the complainant's personal data and the remainder of the requested information, and to identify the information withheld under the various exceptions claimed.
15. On 6 March 2019 the Council referred the Commissioner to the information it had provided to her in respect of the 2015 request and subsequent appeal to the FTT. The Council also considered that the arguments put forward in that case remained relevant in respect of the 2018 request.
16. The Commissioner wrote to the Council again on 2 May 2019. She reiterated that she had not been provided with any information falling within the scope of the 2018 request. The Commissioner asked the Council to confirm whether or not it had conducted a search for the requested information, since she was concerned that the Council may have issued its refusal notice without actually having identified, located, and examined the content of, the requested information.
17. The Commissioner subsequently issued an information notice on 30 May 2019, and the Council provided its response on 1 July 2019. At this stage the Council indicated that it now sought to rely on the exception at regulation 12(4)(b) since it considered that the request was manifestly

unreasonable. At this point the Council also issued a revised refusal notice to the complainant citing the exception at regulation 12(4)(b).

18. The complainant did not accept the Council's revised response. She did however provide the Commissioner with a refined request on 3 October 2019, which was submitted to the Council. Owing to its length this request is set out at Annex 2 to this decision notice. The Council advised the Commissioner that it considered regulation 12(4)(b) to apply equally to the refined request dated 3 October 2019.
19. The complainant sent the Commissioner further suggested revised requests on 28 October 2019 and 26 November 2019. The Commissioner can only make a decision in respect of a request submitted by the complainant to the public authority, therefore the Commissioner's decision in this case cannot relate to the further refined requests as provided to her. The Commissioner recognises that the complainant may choose to submit them to the Council herself.
20. The Commissioner also notes that she has recently issued a decision notice involving the same parties and a request for similar information.<sup>4</sup> This decision notice relates only to the request made on 9 February 2018. Although some of the analysis will be the same as that set out in other decision notices, the Commissioner has carefully considered the correspondence, chronology and specific circumstances of this case.

## Reasons for decision

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### **Regulation 5(3): personal data of the applicant**

21. As set out at paragraph 11 above, regulation 5(3) of the EIR provides that the EIR themselves do not apply to information that is the personal data of the applicant. This means that an individual cannot receive their own personal data under the EIR. In such cases the public authority should identify those parts of the request that involve the applicant's personal data and consider them under the relevant data protection legislation.<sup>5</sup>

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<sup>4</sup> Decision notice FER0808893, issued 30 January 2020.

<sup>5</sup> The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (the DPA).

Is any of the requested information the complainant's personal data?

22. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual"*.

23. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
24. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
25. The Commissioner observes that the requested information was generated and held by the Council in the context of a noise complaint relating to the complainant's home. The Commissioner takes the view that the address of and details about an individual's home would be the personal data of that individual. This is because it could identify the complainant, either on its own or in conjunction with other publicly available information, such as from the Land Registry.
26. In this case the complainant's address is central to the noise complaint, and indeed the Council served an abatement notice on the complainant (which was later withdrawn). In the Commissioner's opinion it follows that much of the information held in respect of the noise complaint does relate to the complainant and should be considered her personal data.
27. As required by regulation 5(3) the Commissioner has thus excluded the complainant's personal data from the analysis set out below. The Commissioner would reiterate that she cannot make any decision relating to the complainant's personal data under the EIR, regardless as to whether she might be entitled to it under other routes of access.

**Regulation 12(4)(b): manifestly unreasonable request**

28. Regulation 12(4)(b) of the EIR provides an exception from disclosure to the extent that the request is manifestly unreasonable. The term "manifestly unreasonable" is not defined in the EIR. However the

Commissioner follows the lead of the Upper Tribunal in *Craven v Information Commissioner & DECC*.<sup>6</sup>

29. In *Craven* the Tribunal found that there is, in practice, no difference between a request that is vexatious under the FOIA and one which is manifestly unreasonable under the EIR, – save that the public authority must also consider the balance of public interest when refusing a request under the EIR.
30. A differently constituted Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield*.<sup>7</sup> The Upper Tribunal's approach, subsequently upheld in the Court of Appeal, established that that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious. The Commissioner is of the opinion that these concepts are equally relevant when assessing whether a request for environmental information is manifestly unreasonable.
31. The Commissioner notes that the main provision for dealing with burdensome requests under the EIR is regulation 7(1). This allows a public authority to extend the time for compliance from 20 to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable to meet the 20 day deadline. However, in *Craven* the Tribunal again commented that:

*"...it must be right that a public authority is entitled to refuse a single extremely burdensome request under regulation 12(4)(b) as "manifestly unreasonable", purely on the basis that the cost of compliance would be too great (assuming, of course, it is also satisfied that the public interest test favours maintaining the exception). The absence of any provision in the EIR equivalent to section 12 of FOIA makes such a conclusion inescapable."*

### **The Council's position**

32. The Council considered the complainant's request to be manifestly unreasonable on the grounds that compliance would constitute a disproportionate burden on its resources.

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<sup>6</sup> [2012] UKUT 442 (AAC)

<sup>7</sup> [2012] UKUT 440 (AAC).



33. As set out above the Council had referred the Commissioner to information it had collated relating to the 2015 request. However the Commissioner pointed out that this information only appeared to cover the period to October 2015, whereas the 2018 request specified a different time period, extending to 4 July 2017. The Council had not provided the Commissioner with any information dating between October 2015 and July 2017.
34. The Council accepted that its original response to the request was inadequate in that it had failed to conduct a proper search for the requested information. When the Commissioner required the Council to provide her with a copy of the requested information, it became apparent that the Council had not taken steps to identify, locate and extract the specific information it held that was relevant to the request.
35. The Council explained that it had subsequently examined each part of the request and had carried out electronic searches across its entire estate. It explained that it had consulted the two business areas that it considered most likely to hold further relevant information: Environmental Health and Legal Services.
36. The Council explained that Environmental Health had provided copies of all correspondence from its Acolaid/DOX system for the time period specified by the complainant, as well as copies of correspondence previously received from and sent to the complainant. The Council confirmed that it had checked with staff to ensure that all relevant information had been identified and no relevant information was held elsewhere in Environmental Health.
37. The information identified on the Acolaid/DOC system would then need to be refined in order to separate out any information that was the complainant's personal data, since this was excluded by virtue of regulation 5(3). The Council did not provide a breakdown of the time required to conduct this exercise.
38. The Council further explained that its Legal Services department had also searched its electronic case management databases. The Council confirmed that it had used the complainant's surname as the primary search term so as not to exclude any relevant information. The Council also used search terms such as "acoustic", "recordings", "maternity" and the names of legal advisers involved in the litigation.
39. The Council said that these combined searches returned approximately 4GB of data, around 6000 pages. The search results were saved into a Sharepoint file, and the mailbox files were downloaded individually and exported to a Secure Legal Data Room. The Council estimated that the time required to transfer all the mailboxes was approximately 70 hours.



40. The Council explained that this estimate only covered the time required to transfer the mailboxes to a secure environment; it did not include the time required to identify the specific requested information. Nor did this estimate incorporate the time required to exclude the complainant's personal data (which as explained above does not fall within the scope of the EIR). The Council said it would need to go through the identified data in order to identify and extract the specific information that was relevant to each part of the request. The Council would then need to examine the relevant information in detail in order to ascertain whether any exceptions to disclosure should be applied.
41. Furthermore the Council said that this estimate did not include the time required to consider the remaining information and determine other exceptions that might be required. For example, given that the request related to a noise complaint submitted by the complainant's neighbour the Council recognised that the requested information would inevitably include large amounts of third party personal data. Therefore the data protection rights of other parties would also need to be taken into account when making decisions regarding disclosure into the public domain.
42. In response to the Commissioner's further enquiries the Council arranged for the Commissioner to view a demonstration of its e-Discovery search tool via Skype. The Council showed the Commissioner how it searched using keywords (eg the names of individuals specified by the complainant), conditions (parameters such as dates) and locations (individual email accounts).

### **The complainant's position**

43. During the course of the Commissioner's investigation the complainant provided several submissions in support of her position. This included media reports of the noise complaint and litigation, legal analysis and detailed allegations about the Council's handling of the case. It also included correspondence between the complainant and the Council, and between the complainant and various councillors. The Commissioner has considered all the information provided by the complainant but does not consider it necessary to refer to each document in detail within this decision notice.
44. The complainant strongly disputed the Council's assessment that her request was manifestly unreasonable. She suggested that the requested information was likely to be contained within 30 email accounts, and that most of those email accounts were unlikely to hold more than two to six relevant pieces of information.

45. The complainant also took issue with the Council's assessment of the matter as being of limited public interest. She argued that there was a strong public interest in informing the public as to why the Council decided to serve a noise abatement notice against her family.
46. The complainant made extensive reference to the court proceedings, and the fact that the court had ordered the Council to pay her costs. The complainant said that the court had found that the Council acted unreasonably, and in her view this meant that the public interest in accountability was "irrefutable".
47. The complainant further pointed to the cost to the public purse of the Council's determination to pursue this litigation, only to drop the matter two weeks after the Grenfell tragedy (in which 72 people lost their lives in a tower block fire). The complainant suggested that the Council's "sudden withdrawal" from the litigation showed that its appeal was "frivolous and had no merit".
48. Finally, the complainant argued that the Council had disclosed similar information in "another high profile private neighbour dispute". The complainant argued that this demonstrated a discrepancy in the way the Council applied the law.

### **The Commissioner's findings**

49. During the course of her investigation the Commissioner identified several deficiencies in the way the Council handled the complainant's requests. The Council initially failed to respond to the request at all under the EIR, having failed to recognise that some of the requested information was unlikely to be the complainant's personal data. The Commissioner was disappointed that a decision notice<sup>8</sup> was required in order to ensure that a response under the EIR was issued.
50. The Commissioner was further concerned that the Council's response did not appear to have considered the circumstances of the case. The Council assumed that the exception accepted by the Tribunal in 2017, relating to the course of justice, remained "in force" despite the passage of time and the fact that the litigation had finished. The Commissioner reminded the Council that it was required to consider all the circumstances of the case, rather than seek to maintain a position purely on the basis that it was accepted some years ago.

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<sup>8</sup> See paragraph 7 above

51. When the Council proved unable to provide the Commissioner with a full and unredacted copy of the requested information, it became clear that the Council was not entitled to rely on the exceptions claimed. The Commissioner would stress that public authorities must satisfy themselves that they are able to justify their application of any exemptions or exceptions claimed when refusing any part of a request. In the Commissioner's opinion it is extremely difficult for a public authority to persuade her that an exception based on adverse effect, such as regulation 12(5)(b), is engaged if the authority has not examined or considered the information in question.
52. However, the Commissioner would also point out that the Council's handling deficiencies do not preclude its ability to rely on the exception at regulation 12(4)(b). The Commissioner has observed a demonstration of the Council's eDiscovery tool and accepts that the Council would have to undertake considerable work to identify, extract and examine the specific requested information. For example there does not appear to be a straightforward way to exclude the complainant's personal data from the searches required.
53. The Commissioner is mindful that the complainant has requested "all information" relating to various specified elements of the Council's handling of the noise complaint and litigation. In the Commissioner's opinion the request encompasses a wide range of information, and is likely to include a significant amount of information that would be the complainant's personal data as the subject of the noise complaint. The Commissioner considers it important to bear in mind that an individual may not always be entitled to receive information that is their personal data. Therefore the Council could not be expected to disregard information that is the complainant's personal data on the basis that she may already have received it, since this is not certain to be the case.
54. The Commissioner notes that the Council did not provide a detailed explanation as to its search of the Acolaid/DOX database. However she understands that it comprises the primary records management system within Environmental Health for information relating to noise complaints. It follows that most of the relevant information held in this database is likely to be personal data of the complainant or the person who complained about the noise.
55. Accordingly, the Commissioner again accepts that the Council would be required to undertake considerable work going through and separating out the complainant's personal data before deciding whether exceptions may apply. The Commissioner has also advised the complainant that her request as phrased is likely to encompass a significant amount of information that is the personal data of other private individuals, most notably that of her neighbour who initiated the noise complaint. The

Council would therefore need to identify this information and consider whether its disclosure into the public domain would conflict with data protection legislation.

56. The Commissioner has not inspected all the information that falls within the scope of the complainant's request therefore she cannot make a decision as to whether the complainant would be entitled to receive this information. However the Commissioner notes that in several previous cases she has found that third party personal data relating to complaints is exempt by virtue of regulation 13 of the EIR. Similarly in this case the Commissioner considers that much of the information in question is likely to fall within the scope of regulation 13.
57. The Commissioner understands that not all of the requested information is personal data, either of the complainant or third parties. Therefore the Council may need to consider other exceptions under the EIR. Again, the Commissioner cannot comment on whether exceptions would apply, but she recognises that the Council would need to inspect the information after separating out personal data, in case it wished to apply other exceptions.
58. The Commissioner has carefully considered the Council's arguments regarding the burden required in order to comply with the request. The Commissioner is also mindful of the extent of correspondence between the complainant and the Council. On the one hand it could be argued that sustained correspondence was necessary in order for the complainant to obtain an appropriate response to her information request. The Commissioner has set out above her concerns about the way the Council handled the request.
59. However the Commissioner does not consider that the complainant's persistence is entirely a result of the Council's request handling deficiencies. The complainant's requests and associated correspondence demonstrate her determination to pursue her wider dispute about the Council's handling of the noise complaint. The complainant has already received her own personal data (to the extent that she is entitled to receive it), and she has been advised that this information falls outside the scope of the EIR by virtue of regulation 5(3) of the EIR. Nevertheless the complainant has continued to submit requests for information that includes her own personal data.
60. The Commissioner is of the opinion that the bar regarding what makes a request "manifestly unreasonable" is, and ought to be, reasonably high. It is insufficient to claim that regulation 12(4)(b) is engaged purely because a request may require substantial effort to comply. However in this case the Commissioner is satisfied that the Council has demonstrated that the request is manifestly unreasonable. The Council

would need to spend considerable time conducting searches of its files in order to have a reasonable chance of capturing information falling within the scope of the request. It would then have to inspect that information in detail in order to separate out the complainant's personal data as required by regulation 5(3). It would then have to inspect the remaining information in order to decide whether or not it could be disclosed into the public domain.

61. For the reasons set out above the Commissioner concludes that the complainant's request dated 9 February 2018 is manifestly unreasonable and therefore the Council was entitled to engage the exception at regulation 12(4)(b).
62. The Council has also considered the refined request dated 3 October 2019, but concludes that compliance would require similar searches to be conducted. It would also require the Council to spend significant time separating out the complainant's personal data. Consequently the Commissioner is also satisfied that the request of 3 October 2019 is manifestly unreasonable within the meaning of regulation 12(4)(b) of the EIR.

#### Public interest in favour of disclosure

63. Regulation 12(4)(b) provides a qualified exception, therefore a public authority may only refuse a request that is manifestly unreasonable if the public interest in maintaining that exception outweighs the public interest in disclosure. Regulation 12(2) of the EIR also provides that the public authority must apply an explicit presumption in favour of disclosure. This means that exempt information must still be disclosed unless there is an overriding public interest in maintaining any exceptions applied.
64. The Council argued that there was very little public interest in favour of disclosure, even taking into account the presumption in favour of disclosure at regulation 12(2). The Council accepted that disclosure of the requested information would inform the public, albeit in a limited manner, as to how it generally handled noise complaints.
65. The Council also accepted that there had been some media interest in the case, but considered that this was because of the circumstances rather than the Council's handling of the noise complaint. The Council also pointed out that all parties except the complainant considered that the matter had been resolved.
66. The Commissioner acknowledges that the complainant has clear personal reasons for pursuing her request. The complainant has suggested that the Council was unduly influenced by third parties,

possibly including elected councillors, when deciding how to proceed with the noise complaint. The complainant has pointed out that she was awarded her costs against the Council, and argues that this could only happen if the judge found that the Council "behaved with impropriety".

67. The Council acknowledged the complainant's allegation that it had conducted the litigation in an improper manner. Whilst the Council recognised that there was a legitimate public interest in transparency around how it spent public money, it did not accept the complainant's allegations to have any merit. The Council argued that the complainant's request was a means for her to revive the dispute about the noise complaint when all the other parties considered that it had been resolved.
68. The Commissioner recognises the legitimate public interest in transparency regarding alleged wrongdoing by a public authority. She is mindful of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, from which the EIR are drawn.
69. The "three pillars" of the Aarhus Convention are: access to information, public participation and access to justice. Access to environmental information is essential in order to support the other two pillars, especially where there are questions about a public authority's conduct.
70. However the Commissioner is guided by the previous FTT's acknowledgement that the court had found that a statutory nuisance existed, and that the Council was entitled to issue an abatement notice. The Council appealed the court's decision to vary the terms of the notice, but later withdrew the notice itself. The Commissioner does not accept the complainant's conclusion that the Council was proven to have acted improperly, and does not afford this public interest argument substantial weight.
71. The complainant also pointed to litigation involving other parties, where she considered that the Council had disclosed similar information. The complainant suggested that this created a precedent for full disclosure in her own case.

### Public interest in favour of maintaining the exception

72. The Commissioner's published guidance<sup>9</sup> on regulation 12(4)(b) says that many of the issues relevant to the public interest test will have already been considered when deciding if this exception is engaged. This is because engaging the exception includes some consideration of the proportionality and value of the request.
73. The Council maintained that, given the amount of information located during its searches, the burden of collating and considering the relevant information was out of all proportion to the value of the request. The Council emphasised its assessment that the request related to "an essentially private dispute between neighbours, of little wider public interest".
74. The Council accepted that there had been media interest in the case, but considered this to arise from the specific and unusual circumstances of the noise complaint, rather than any intrinsic importance of the issues to the wider public, or indeed the Council's handling of the noise complaint. The Council concluded that there was a much stronger public interest in maintaining the exception and thus avoiding what it considered would be a disproportionate burden.

### Balance of the public interest

75. In this case the Commissioner is satisfied that the Council is entitled to rely on the exception at regulation 12(4)(b). In doing so the Council has demonstrated that the request is manifestly unreasonable, and that compliance would cause a significant burden.
76. However regulation 12(4)(b) is a qualified exception, therefore there must be circumstances in which the public interest in maintaining the exception do not outweigh the public interest in disclosure. The Commissioner's guidance explains that, in practice, public authorities will often be able to 'carry through' the relevant considerations from engaging the exception into the public interest test. It is also essential to attach appropriate weight to the presumption in favour of disclosure, ensuring that a proper balancing exercise is conducted.
77. The Commissioner has carefully considered the public interest arguments put forward by the complainant and by the Council. The Commissioner agrees with the Council's assessment that there is

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<sup>9</sup> <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>



relatively limited public interest in disclosure, since the requested information relates wholly to the Council's handling of one noise complaint. The Commissioner has emphasised that the complainant's personal information falls outside the scope of the EIR, yet the complainant's revised requests still include information that would be her personal data if held. The Commissioner accepts the Council's explanation of the work required to go through and separate out the information that is not the complainant's personal data, especially given that much of the remaining information is likely to include personal data relating to the complainant's neighbour, another private individual.

78. While the Commissioner acknowledges the complainant's personal sense of grievance, she does not consider this to be a weighty public interest argument in favour of requiring the public authority to comply with the request. The complainant challenged the Council's handling of the noise complaint through the courts, and the Commissioner is not convinced that compliance with the request would in fact inform the public about the way the Council handled the noise complaint.
79. The Commissioner respectfully disagrees that the litigation referred to by the complainant is of significant assistance when considering the public interest in this particular case. The fact that a public authority has disclosed information to parties for the specific purpose of court proceedings does not in itself mean that information should be disclosed under the EIR, ie into the public domain. The Commissioner may only decide whether information should be disclosed to the world at large, without any conditions.
80. Finally, the Commissioner is acutely aware that the Council, like many public authorities, is facing substantial pressures to provide public services with limited resources. The Commissioner accepts that obliging the Council to comply with this request would be likely to have an adverse impact on the handling of other requests for information, and the delivery of services generally. The Commissioner is of the opinion that the public interest in maintaining the exception in this case is sufficiently strong to outweigh the public interest in disclosure, even taking into account the presumption in favour of disclosure.

### **Other matters**

81. Although it does not fall within the scope of this decision notice the Commissioner wishes to offer some good practice advice to both parties. The Commissioner is satisfied that the Council was entitled to refuse the complainant's request of 9 February 2018 and her revised request of 3 October 2019. However the complainant is entitled to consider submitting a further refined request to the Council, who is obliged to respond under the appropriate access regime.

82. If the complainant does wish to submit a further request, the Commissioner would strongly recommend that she consider how to focus the request on information that falls within the scope of the EIR, as opposed to information that is her personal data. The complainant should also bear in mind that the Council may only disclose information relating to her neighbour or other individuals in compliance with the GDPR and the DPA. The Commissioner has directed the complainant to relevant guidance published on the ICO website.
83. As indicated above the Commissioner notes that the complainant provided numerous submissions in support of her complaint. The Commissioner also notes that the complainant's arguments were duplicated across submissions, and on more than one occasion the complainant emailed the Commissioner's case officer two or more times in the space of 24 hours. The Commissioner considers it important that complainants provide relevant information in support of their complaint, since it is important to understand each party's position. However she would respectfully comment that frequent and repeated correspondence often has the detrimental effect of distracting time and resource away from the substantive investigation. The Commissioner would remind complainants that her job is to make a decision in respect of one specific request, rather than to become involved in correspondence between the complainant and the public authority.
84. The Commissioner also considers it appropriate to remind the Council, and all public authorities, that when a request is received it must ensure that it properly interprets the request and the requested information. In this case the Council failed to take proper account of the fact that the complainant's request was slightly different from previous requests, despite the similar wording and scope. Each request must be read objectively and considered carefully by the public authority before deciding how to respond.

## Right of appeal

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85. 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 123 4504  
Fax: 0870 739 5836

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

86. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.

87. 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** .....

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Annex 1: request submitted on 20 November 2015**

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### **Covering the time period 01/03/14 – 22/04/15**

- (i) All communications from [Mrs X] to the Council in relation to the Property;
- (ii) All communication from Council to [Mrs X] in relation to the Property;
- (iii) All records and records of communication from X to the Council, and from the Council to X, in relation to the Property;
- (iv) All communication from [Mr X] to the Council in relation to the Property;
- (v) All communication from Council to [Mr X] in relation to the Property;
- (vi) All records and records of communication from [Mr X] to the Council, and from the Council to Mr X, in relation to the Property;
- (vii) All communications, records and records of communications between elected members, officers and/or employees (current or former) of the Council in relation to the Property; and
- (viii) All communications, records and records of communications between elected members, officers and/or employees (current or former) of the Council in relation to the Notice; and
- (ix) All records held by the Council in relation to the Notice.

## **Annex 2: refined request dated 3 October 2019**

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### **AMENDED ANNEX 2: FER0817232: 9th February 2018**

RBKC has stated that the information requested is spread over 254 email accounts. The information requested is:

1. The list of account holders of the 254 email accounts involved in this dispute, and their positions;

RBKC can exclude from the request all communications from [personal data redacted] and legal counsel for [personal data redacted] (Oliver Fischer Solicitors and Landmark Chambers).

In this document, as Annex 3, I have provided a method for conducting a search of the information requested. This will make a search considerably more expedient.

### **Records and Communications Between 7th April 2015 and 4th July 2017**

2. **All** emails and letters in relation to this dispute, to and from and between the following individuals, and including councillors, the in-house legal team and external correspondents\*
  - a. Mr Raymond Asagba
  - b. Ms Georgina Seraphim
  - c. Mr Keith Mehaffy
  - d. Mr Tim Davis
  - e. Biborough Director of the Environment\*\*
  - f. Former Leader of RBKC, Cllr Nicholas Paget-Brown
  - g. Former Lead Members for the Environment Cllrs Tim Coleridge and Tim Ahern

\*External correspondents including the complainants [personal data redacted], other elected individuals holding public office, any organisations or unions, legal counsel or influential private citizens exerting influence - for example [personal data redacted].

\*\*RBKC Councillor Lindsay informed me that the Bi-borough Director of the Environment made the decision to appeal the judgment in our favour. I have requested the name of the person who held this position at that time but this has not yet been disclosed.

3. Minutes of any and all meetings where the Property was discussed.

## **Internal and Other Communications**

### **Between 7th April 2015 and 17th August 2015**

This information will likely be included in 2. above, but for the avoidance of doubt:

4. Instructions given to environmental health officers between 7th April 2015 and 17th August 2015 in relation to the dispute, the Property and the preparation of their witness statements;
5. Communications between environmental health officers and to and from their senior officers in respect of the Property;

### **Communications with RBKC Legal Department**

Ms Joyce Golder signed the original appeal document. This document was of questionable origin and legally unsound. It was subsequently discarded and a new appeal document was rewritten by James Pereira QC upon his appointment as lead counsel several weeks later.

The former Leader of the Council, Nicholas Paget-Brown, confirmed in letters that he and the Cabinet took advice from senior officers and legal advisors and in view of this advice approved RBKC's decision to appeal the judgments in our favour. The decision to appeal was legally unsound. What was this advice and who gave it?

To answer this question the following information is requested ***over a four month period*** only:

### **17th February 2016 until the vacating of all legal proceedings on the 28th June 2017**

6. Communication between any member of the in-house legal team (secretaries, personal assistants, solicitors etc.) to or from any one or more of the following officers and / or councillors:
  - a. Ms Georgina Seraphim
  - b. Mr Keith Mehaffy
  - c. Mr Tim Davis
  - d. Biborough Director of the Environment (name currently unconfirmed)
  - e. Sue Harris
  - f. Nicholas Holgate
  - g. Cllr Ahern
  - h. Cllr Coleridge
  - i. Cllr Paget-Brown

## **Communications with External Legal Counsel**

RBKC ignored the correct position in law throughout the entire duration of legal proceedings - 7th April 2015 until 4th July 2017.

In late 2015 the services of Jack Parker from Cornerstone Barristers ended abruptly and prematurely, leading RBKC to suffer a resounding loss in legal proceedings and substantial costs awarded against them. It is in the public interest to understand why legal counsel services were terminated and never replaced.

It is also in the public interest to understand if RBKC ever requested and received legal advice on the correct position in law.

The information requested is:

7. All communications between RBKC (including any officer, agent or elected member) and legal counsel from Cornerstone Barristers.

Likewise, it is in the public interest to understand the legal advice given to RBKC when it made the astonishing and reckless decision to appeal the Magistrates' Court judgments to the High Court. There was no realistic prospect of success and RBKC should be held accountable for this squandering of public funds. The information requested is:

8. All communications between RBKC (including any officer, agent or elected member) and legal counsel from Francis Taylor Building Chambers.

## **Communications Around Maternity Leave of RBKC's Witness** [personal data redacted]

RBKC made false representations to the Magistrates' Court that a witness would be on maternity leave at the time of the scheduled Magistrates' Court proceedings and so, they claimed, the proceedings would need to be adjourned for twelve months. This would have caused unbearable hardship for [personal data redacted]. Representations of maternity leave were not correct, the witness in question, [personal data redacted], attended the proceedings as scheduled and this vexatious threat of adjournment was likely intended to apply pressure on [personal data redacted] to submit to RBKC's unacceptable terms.

The information requested is over the period **1<sup>st</sup> September 2015 to 16<sup>th</sup> February 2016:**



9. Communications concerning [personal data redacted] misrepresented maternity leave schedule between:
- a) Georgina Seraphim
  - b) Keith Mehaffy
  - c) Tim Davis
  - d) RBKC legal team

### **ANNEX 3: PROPOSED SEARCH METHOD**

A suggested method for carrying out the search is as follows:

Search Terms:

- 1) RBKC Database: Reference number SRCON/14/148340 or 148340.

This Database information likely contains much (perhaps most) of the requested information.

Search also:

- 2) Email accounts of:

- a) Mr Raymond Asagba
- b) Ms Georgina Seraphim
- c) Mr Keith Mehaffy
- d) Mr Tim Davis
- e) Biborough Director of the Environment (name currently unconfirmed)
- f) Former Leader of RBKC, Cllr Nicholas Paget-Brown
- g) Former Lead Member for the Environment Cllr Tim Coleridge
- h) Former Lead Member for the Environment Tim Ahern
- i) Any employee / officer of RBKC legal services

These emails accounts should each be searched using the following search terms:

- a) [personal data redacted]
- b) [personal data redacted]
- c) [personal data redacted]
- d) Ahern
- e) Paget-Brown
- f) Borwick
- g) Acoustic
- h) Recordings
- i) Maternity
- j) Parker (Cornerstone Barristers)
- k) Pereira (Francis Taylor Buildings)

**Exclude:**

**All copied emails. This will immediately eliminate repeated information on the database 148340, and other unnecessary email duplications.**

**Exclude Multiple Copies of the same email; for example, if Keith Mehaffy receives an email from Tim Davis, then the same email sent by Mr Davis to Mr Mehaffy need not be provided.**

A method to do this would be for example, search Mr Asagba's email account for all emails received and sent using above search terms, excluding "Cc:" emails.

A similar search of Ms Seraphim's emails could then exclude all emails to and from Mr Asagba.

A search of Mr Mehaffy's emails could then exclude all emails to and from Mr Asagba and Ms Seraphim.

A search of Mr Davis's emails could then exclude all emails from Mr Asagba, Ms Seraphim and Mr Mehaffy.

And so on.

**Exclude all emails to and from [personal data redacted], and legal representatives from Oliver Fisher Solicitors and Landmark Chambers**

3) For information not on the above email accounts or the database reference 148340, the following search terms can be used:

- a) [personal data redacted] + acoustic
- b) [personal data redacted] + acoustic
- c) [personal data redacted] + recordings
- d) [personal data redacted] + recordings
- e) [personal data redacted] + witness Statements
- f) [personal data redacted] + witness statements
- g) Maternity + [personal data redacted]

Using this method should dramatically simplify RBKC's search. Then, if RBKC continues to rely on the "manifestly unreasonable" exception, could RBKC please complete the following schedule, using the suggested search terms and exclusions in 2 and 3 above?

	<b>Number of Items Found</b>
<b>Database: 148340</b>	
<b>The following email accounts:</b>	
1. Raymond Asagba	
2. Ms Georgina Seraphim	
3. Keith Mehaffy	
4. Mr Tim Davis	
5. Biborough Director of the Environment**	
6. Former Leader of RBKC, Cllr Nicholas Paget-Brown	
7. Former Lead Member for the Environment Cllr Tim Coleridge	
8. Former Lead Member for the Environment Cllr Tim Ahern	
9. Any employee / officer of RBKC legal services	
<b>Using search terms not including email communications or database 148340:</b>	
1. [personal data redacted] + acoustic	
2. [personal data redacted] + acoustic	
3. [personal data redacted] + recordings	
4. [personal data redacted] + recordings	
5. [personal data redacted] + witness Statements	
6. [personal data redacted] + witness statements	
7. Maternity + [personal data redacted]	