

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

Decision notice

Date: 15 December 2022

Public Authority: Royal Borough of Greenwich

Address: 35 Wellington Street
London
SE18 6HQ

Decision (including any steps ordered)

1. The complainant has requested information from Royal Borough of Greenwich ("the Council") relating to property boundaries. The Council has refused to disclose the requested information, citing regulation 12(4)(b) of the EIR as a basis for non-disclosure.
2. The Commissioner's decision is that the Council has correctly applied regulation 12(4)(b) to the requested information. The Council has also fulfilled its obligation under to provide advice and assistance to the complainant. Therefore the Commissioner requires no steps to be taken.

Request and response

3. On 16 November 2021 the complainant made the following request for information:

"Please confirm the name and position of the member of staff who confirmed the boundaries in order to erect your fence on the land adjacent to [specified address]. Please confirm the name and position of member of staff that authorised the erecting of the fence alongside the boundaries of [specified address]. For the avoidance of doubt

please do not come back to me confirming that it was a department decision. I require you to confirm who the authorising individual was.

Please also confirm all information you hold which confirms your confirmation of the boundaries. Please also confirm all steps that you took to confirm the boundaries. Please confirm all communications with all members of staff with reference to the boundaries and disputed land. This is also to confirm all communications with your external solicitors and your internal solicitors. Due to your failures to confirm your boundaries you are currently trespassing on private property."

4. The Council responded on 14 December 2021 and stated the following:
"The Council considers your request to be manifestly unreasonable in accordance with regulation 12(4)(b) of the EIR."
5. On 16 January 2022 the complainant requested an internal review of the Council's handling of his request. The Council provided its internal review response on 14 February 2022. The reviewer upheld the Council's original decision.

Scope of the case

6. The complainant contacted the Commissioner on 15 January 2022 to complain about the way their request for information had been handled.
7. The Commissioner has considered the Council's application of regulation 12(4)(b) of the EIR.

Reasons for decision

8. The following decision notice analyses whether the council was correct to rely upon Regulation 12(4)(b) to refuse the request for information.
9. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. The exception can be applied where it would create a manifestly unreasonable burden upon the authority to respond to the request.
10. The Freedom of Information and Data Protection (Appropriate Limit and Fees) sets out an appropriate limit for responding to requests for information under FOIA. The limit for local authorities is £450,

calculated at £25 per hour. This applies a time limit of 18 hours. Where the authority estimates that responding to a request will exceed this limit the authority is not under a duty to respond to the request.

11. Although there is no equivalent limit within the EIR, in considering the application of Regulation 12(4)(b) the Commissioner considers that public authorities may use equivalent figures as an indication of what Parliament considers to be a reasonable burden to respond to EIR requests. However, the public authority must then balance the cost calculated to respond to the request against the public value of the information which would be disclosed before concluding whether the exception is applicable.
12. In estimating the time and cost which it would take to respond to a request, the authority can consider the time taken to:
 - determine whether it holds the information
 - locate the information, or a document which may contain the information
 - retrieve the information, or a document which may contain the information, and
 - extract the information from a document containing it.
13. Where a public authority claims that Regulation 12(4)(b) is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit. This is in line with the duty under Regulation 9(1) of the EIR.
14. The Council stated that, in order to determine whether it holds the requested information, there are 3 substantive electronic files that need to be viewed. Collectively the files hold 6,865 records and the Council informed the Commissioner that it would take one officer approximately 2 minutes to view 1 record to locate the information requested. Therefore, it would take approximately 229 hours.
15. The Council also stated that, in order to retrieve and extract the requested information, an officer will have to read through each file entry. The Council estimates that there are 1000 relevant records that

would need to be retrieved and extracted. It would take approximately 1 minute to retrieve and extract each file, therefore this would take approximately 17 hours. The total time to respond to the request would be approximately 246 hours, which would be far in excess of the cost and time limits set out in FOIA.

16. Having considered the Council's position the Commissioner is satisfied that the exception in regulation 12(4)(b) has been correctly engaged by the Council. The Commissioner has therefore gone on to consider the public interest test required by regulation 12(1)(b)

Regulation 12(1)(b) – public interest test

17. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
18. There will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation, all of which ultimately contribute to a better environment. The Council accepts that this is the case.
19. However, in this case, the Council has explained that the resources which would be required in order to respond to the complainant's request for information would be significant and disproportionate compared to any public interest in the disclosure of the requested information.
20. Having considered past requests, the Council is also of the view that the complainant would not be satisfied with the response received from the Council, if it were to respond to this request, and further requests would most likely be submitted, placing a further burden on it in having to deal with this matter, which would be disproportionate to any public interest in disclosure. The Commissioner accepts this point of view.
21. The Commissioner is therefore satisfied that, in this case, the balance of the public interest lies in the exception being maintained.

Regulation 9(1) – duty to advise and assist

22. Broadly, Regulation 9(1) of the EIR provides that, where an authority is refusing the request because an applicant has formulated a request in too general a manner, the authority must provide advice and assistance to the requestor, insofar as it would be reasonable to expect the authority to do so, to allow them to reframe the request so that relevant information can be provided.
23. The Council said that it could not provide any advice on how the complainant could submit a more manageable request. It said that the only way to access the information is to search through a voluminous amount of records as already specified, and the complainant's request is very specific, therefore cannot conceivably be narrowed or refined.
24. The Commissioner's decision is that the Council has therefore complied with the requirements of Regulation 9(1) of the EIR.

Right of appeal

25. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

26. 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.
27. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF