

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

**Date:** 28 March 2022

**Public Authority:** London Borough of Lewisham  
**Address:** Laurence House  
1 Catford Road  
London  
SE6 4RU

**Decision (including any steps ordered)**

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1. The complainant submitted a request to the London Borough of Lewisham (the Council) seeking objections to the Low Traffic Neighbourhoods in the borough received by certain individuals and traffic department staff. The Council responded by stating that it did not hold the requested information. During the course of the Commissioner's investigation the Council amended its position and sought instead to rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR.
2. The complainant challenged its reliance on that exception and argued that the Council had failed to provide him with any advice and assistance to allow him to submit a refined request in line with regulation 9 of the EIR.
3. The Commissioner has concluded that the Council is entitled to rely on regulation 12(4)(b) to refuse the request and that in the circumstances of this request it was not under any obligation to provide any advice and assistance. However, the Commissioner has concluded that the Council breached regulations 5(2) and 14(1) of the EIR by failing to respond to the request within 20 working days and by failing, within the same time period, to inform the complainant that it was seeking to rely on regulation 12(4)(b).
4. No steps are required.

## Request and response

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5. The complainant submitted the following request to the Council on 6 November 2020:

'I hereby request the following information under the Environmental Information Regulations:

How many objections to the Low Traffic Neighbourhoods in the London Borough of Lewisham (including "Healthy Neighbourhood" schemes, road closures, modal filters and bus gates enforced by cameras), or negative comments or complaints thereon, have been received by each of the following since the start of the current calendar year: 1) Mayor Damien Egan; 2) Councillor Sophie McGeevor; 3) Lee Green Ward councillors; 4) Louise McBride or other Traffic Department staff.

If exact numbers cannot be provided please give your best estimate of the numbers (i.e. specific number estimates rather than general descriptions).

If this request is not clear in any way, or you consider it would require excessive resources to respond fully, please contact me on the above phone number. I am keen not to impose unnecessary work on the council, but this request arises because of a failure to provide specific information in response to a question submitted by Mr Richardson to the Council Meeting on the 21st October (question 13).'

6. The Council responded on 8 January 2021 as follows:

'Unfortunately, it is not possible to calculate the exact number of objections and the Council does not hold a definitive list of objections, negative comments or complaints received in relation to the Low Traffic Neighbourhood (LTN). Therefore, this is not information that is held by the Council.

All residents who contact the Council about LTNs are encouraged to provide feedback and comments via our Commonplace platform (<https://lewishamcovidresidentialstreets.commonplace.is/>). To date, there have been nearly 8,000 comments.

It is noted that your request states that if exact numbers cannot be provided, then a best estimate of the numbers should be provided. It is not possible to provide estimated numbers, as the information is not recorded in this way. Further it is considered that someone writing to express dissatisfaction with the scheme is not the same, as stating an objection to the scheme and it is possible that once a response had been received to the issue(s) raised that person's view of the scheme

may change and so it could be inaccurate to record it as an objection or negative comment.'

7. The complainant contacted the Council on 11 January 2021 and asked it to conduct an internal review of this response. He disputed the Council's position that it did not hold any information falling within the scope of his request and noted that he had specifically worded the request to seek the estimated number of objections if exact figures were not available.
8. The Council informed the complainant of the outcome of the internal review on 9 February 2021. The Council upheld its original position that it did not hold the requested information. In support of this position the Council explained that:

'When responding to requests for recorded information, we cannot provide estimates as these may be inaccurate and misleading. As stated in our original response to you, we will be undertaking a full public consultation on the LTN as part of a review, to be undertaken in Spring 2021, and the responses to this public consultation will be when the level of support and objection can be quantified accurately.

We do not record comments on Commonplace as objections and we have not analysed it in this way. Respondents can select on a sliding scale whether they feel negatively, neutral or positively about the scheme they are commenting on, however this could be for a variety of reasons and not necessarily mean they are objecting to the scheme.

These reasons have included:

- it genuinely isn't working
- of unsubstantiated observations (e.g. they've witnessed things like traffic jams, or emergency services in congestion and blame the LTN – which may or may not be true, but we would need to confirm or reject based on empirical evidence from traffic counts)
- the scheme doesn't go far enough (e.g. they live in a neighbouring area and want an LTN there)
- there is a small aspect that isn't working for them (e.g. filter would be better 100 yards down the road) but not necessarily anti-scheme
- they have a protected characteristic that the scheme inadvertently affects.

Additionally, Commonplace allows users to comment multiple times – so although there are over 9200 comments currently on <http://lewishamcovidresidentialstreets.commonplace.is> – these have been submitted by only 3490 respondents.'

## Scope of the case

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9. The complainant initially contacted the Commissioner on 21 December 2020 in order to complain about the Council's failure to respond to his request. Following the Council's response, and the completion of the internal review, the complainant contacted the Commissioner again on 12 February 2021. He explained that in his view the Council was likely to hold information falling within the scope of his request and even if it did not hold exact numbers then it could provide estimates.
10. During the course of the Commissioner's investigation the Council revised its position to this request. It now accepted that it held information falling within the scope of the request but that it was seeking to refuse to comply with the request on the basis of regulation 12(4)(b) (manifestly unreasonable) of the EIR given the cost of compiling the information in scope. The Council explained to the Commissioner that it had considered whether it could provide any advice and assistance but concluded that in the circumstances of this case it could not do so.
11. Following the Council's revision of its position the complainant disputed the Council's reliance on regulation 12(4)(b) and also its failure to provide him with any advice and assistance in line with regulation 9 of the EIR. This decision notice therefore considers these two matters.

## Reasons for decision

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### Regulation 12(4)(b) – manifestly unreasonable

12. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose environmental information if the request for information is manifestly unreasonable. There is no definition of 'manifestly unreasonable' under the EIR, but in the Commissioner's opinion manifestly unreasonable implies that a request should be obviously or clearly unreasonable. One such way a request could be manifestly unreasonable is if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable.
13. As the Commissioner's guidance on regulation 12(4)(b)<sup>1</sup> explains, whilst the section 12 cost provisions in FOIA are a useful starting point in

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

determining whether the time and cost of complying with the request is obviously unreasonable, they are not determinative. Under the section 12 cost provisions the appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the Council. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours.

14. However, as noted the section 12 provisions are not determinative in deciding whether a request is also manifestly unreasonable. Furthermore, in assessing whether the cost or burden of dealing with a request is 'too great' under the EIR, public authorities will need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable.
15. 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.

#### The Council's position

16. In its submissions to the Commissioner the Council explained that any information held in relation to this specific request would not be held on a database. Rather a manual search would need to be carried out on the Outlook accounts of the individuals/teams named in the original request.
17. The Council explained that given the large passage of time between the original request being submitted in November 2020, the response to that request being issued in January 2021, the internal review response of February 2021 and the Commissioner beginning substantive work on this complaint in November 2021, several members of staff involved in this project no longer work for the Council. Therefore, the Council explained that it was unable to clarify if any recorded information would have been held by these individual officers.

18. As a result, for the purposes of conducting a sampling exercise in order to determine the resources needed to answer the request, the Council explained that it had limited its search to the email account of Louise McBride.
19. The Council suggested that if a member of the public had written directly to the above account to provide comments, whether negative or positive, the title of the subject line could be framed in many ways, for example, but not limited to:
  - Complaint
  - Complaint about the LTN
  - LTN
  - Low traffic neighbourhood
  - Lee Green
  - Lewisham and Lee Green LTN
  - Modal filter complaint
  - Modal filter
  - Objection to Low traffic neighbourhood
  - Objection to LTN
  - Ennersdale Road LTN
  - Dermody Road restrictions
20. However, for the purposes of the sampling exercise, the Council explained that it carried out a search using the following search terms from the above list:
  - LTN
  - Low Traffic neighbourhood
  - Lewisham and Lee Green LTN
21. The Council explained that a search using these three terms for the period 1 January 2020 to 6 November 2020 (ie the date range of the request) yielded a total of 1040 emails.
22. The Council explained that these emails would need to be manually reviewed to identify any objections, negative comments or complaints, and if the correspondence directly relates to the scheme. The Council estimated this would take approximately 3 minutes per email which would exceed the time/cost limit<sup>2</sup> and, therefore, it considered that the exception is engaged as completing this task would place a disproportionate burden on services.

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<sup>2</sup> 3 minutes x 1040 emails = 3120 minutes or 52 hours.

23. In further support its position, the Council argued that consideration should be given to the fact that these searches were undertaken using only three search terms which it considered would be the most appropriate; this search methodology does not take into account of other ways in which a complaint, negative comment or objection could be titled.

#### The complainant's position

24. The complainant argued that the Council's estimate of 3 minutes to review each email to determine whether they contained an objection or not was a totally unrealistic number. He argued that most emails received would have been very short and a glance at the wording would have enabled classification. In light of this he argued that a more realistic figure would be 15 seconds per email.

#### The Commissioner's position

25. The Commissioner is satisfied that that the Council is entitled to rely on regulation 12(4)(b) to refuse to comply with this request. He has reached this conclusion for the following reasons.
26. Firstly, given the scope of the request the Commissioner is satisfied that the three search terms used by the Council to interrogate Ms McBride's Outlook account were logical ones to use as part of the sampling exercise.
27. Secondly, the Commissioner appreciates that the complainant considers the Council's estimate of 3 minutes to assess, categorise and log whether an email falls within the scope of the request is a grossly excessive one. The Commissioner acknowledges that some emails returned by the search are likely to be relatively short ones and may not take a particularly notable length of time to review and assess. However, some emails will, based on the Council's sampling exercise, presumably take longer. Furthermore, the Commissioner is conscious that the request seeks any emails which constitute 'objections...negative comments or complaints' of the LTNs and some emails require more detailed consideration and analysis of them in order to determine if they are in scope, eg if there was some ambiguity in the nature of the comments expressed. Furthermore, for all emails returned by the search there will be time involved in managing the administration of reviewing them, ie opening up each email and then logging/recording whether it is in scope or not, and then collating all of the emails which are in scope. This process will take time, regardless as to the length of each email. Therefore, and given that the figure of three minutes is based on a sampling exercise by the Council, the Commissioner is prepared to accept this figure as an overall average one. However, for the reasons



discussed below even if that figure was reduced by a third to two minutes, he is still satisfied that the exception would be engaged.

28. Thirdly, based on the figure of 3 minutes per email and the 1040 emails located by the Council as part of its sample exercise, this equates to in excess of 50 hours to review these emails alone (ie  $1040 \times 3 = 3120$  minutes;  $3120 / 60 = 52$  hours). If, as suggested above, it took 2 minutes for each email then it would still take nearly 35 hours to review the emails returned by the sample exercise (ie  $1040 \times 2 = 2080$ ;  $2080 / 60 = 34.67$ ). In the Commissioner's opinion both figures, especially the former, would place a significant burden on the Council in responding to the request.
29. Fourthly, and the Commissioner considers this a key point, it is important to remember that the 1040 emails located as potentially being in scope are in no way the only emails that would need to be reviewed by the Council if it were to process this request. As the Council has argued there is no guarantee that simply using the three terms it did would capture all potential emails. The Commissioner accepts that there is a strong case for arguing that additional terms, such as some of those listed above at paragraph 19, may well need to be included in order to locate all relevant emails. Moreover, and more fundamentally, the figure of 1040 only represents the emails found in Ms McBrides's inbox. In addition to emails received by her, the request also sought correspondence received by two other named individuals, ie Mayor Damien Egan and Councillor Sophie McGeevor, the inboxes of three councillors from Lee Green Ward as well as 'other Traffic Department staff'. Therefore, any emails retrieved by the same three word searches of these email inboxes for these various individuals would also need to be examined thus pushing the time incurred by the Council in fulfilling this request even higher.
30. As noted above, the FOI cost limit is not determinative with regard to whether a request is manifestly unreasonable, albeit it can provide a useful starting point. In the circumstances of this case the Commissioner notes that the estimated time it would take to fulfil the request would be nearly twice the time limit for section 12(1) of FOIA if it took two minutes to review the emails returned by searching Ms McBride's inbox. However, this figure would be even higher given the additional searches needed of other inboxes, and potentially, the different searches needed of all inboxes using additional search terms. On this basis the Commissioner is prepared to accept that complying with the request would place a significant burden on the Council.
31. With regard to the factors set out above at paragraph 15, the Commissioner accepts that the complainant - and potentially others - want a greater understanding of the feedback the Council had received about the LTN. Indeed, the complainant argued that the requested



information requested was essential for the public to gain a view on the support for the road closures and other measures referenced in the request. The complainant argued that it is also important for local Councillors to have a view of that information and that the information would also be relevant to any legal challenge which may be brought against the measures.

32. With regard to the importance of the issue, the Commissioner recognises the impact that local traffic measures can have on the day-to-day lives of residents within communities and he recognises that the introduction of such schemes has proved to be controversial. Disclosure of the requested information would provide some insight into the number of objections, negative comments and complaints the Council had received about the LTN at the point of the request.
33. However, the Commissioner is mindful that a balance needs to be struck between the burden placed on the Council and the benefits of processing such a request for information. As demonstrated by the above analysis, the Commissioner is satisfied that even locating some of the information which would fall within the scope of the request would involve a significant amount of the Council's resources. In his view, despite such an interest in this issue, such a burden is difficult to justify and therefore the Commissioner is satisfied that the request is manifestly unreasonable.

### **Public interest test**

34. Regulation 12(4)(b) is subject to the public interest test. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019), 'If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure...' and 'the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations' (paragraph 19).
35. The Council explained that it was always keen to promote transparency and accountability. Furthermore it acknowledged that greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation in environmental decision making, all ultimately contribute to a better environment.
36. The Council also acknowledged that the Lewisham and Lee Green LTN has been a high profile and important issue to some of its residents. As part of its submissions to the Commissioner the Council explained that

in regard to this, the decision report in respect of the scheme and supporting information would be available on its website in the near future.<sup>3</sup>

37. For the reasons set out above at paragraph 31, the complainant considers there to be a significant public interest in the disclosure of the requested information.
38. With regard to the public interest in maintaining the exception, the Council emphasised that the public interest in maintaining regulation 12(4)(b) lies in protecting public authorities from exposure to disproportionate burden or to an unjustified level of distress, disruption or irritation in handling information requests. In this case, it considered that complying with the request would place an unnecessary and disproportionate burden on the authority which would direct officer resource away from completing other key tasks in relation to this scheme and more generally.
39. As the Commissioner's guidance on this exception explains, 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. For the reasons set out above, the Commissioner accepts that there is arguably some value in the Council fulfilling the request because it would provide the public with an indication of the number of objections from the public to the LTN at the time of the request. Moreover, the Commissioner acknowledges that the provision of such information would be more detailed than the information that was contained in the forthcoming report subsequently published in January 2022. However, following on from the reasons set out above, in the Commissioner's view the public interest in the disclosure of this information is outweighed by the public interest in maintaining the exception, even taking into account the presumption in favour of disclosure, given the significant burden complying with the request would place on the Council.
40. In light of the above the Commissioner is satisfied that the Council can rely on regulation 12(4)(d) to refuse to comply with the request.
41. In his submissions to the Commissioner the complainant argued that if the Council considered the cost of complying with the request to be excessive, it could have asked him to cover the cost of complying with it

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<sup>3</sup> The decision report was published in January 2022  
<https://councilmeetings.lewisham.gov.uk/mgAi.aspx?ID=31225#mgDocuments>

under regulation 8 of the EIR. Whilst this provision does allow public authorities to ask requesters to cover the costs of complying with requests as the complainant suggests, there is no obligation on the Council to do so. Therefore, the Commissioner cannot compel the Council to process the request even if the complainant were willing to pay the costs of complying with it.

#### Regulation 9 – advice and assistance

42. Regulation 9(1) of the EIR states that:
43. 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.'
44. In its submissions to the Commissioner the Council acknowledged its obligations under regulation 9 of the EIR but argued that in the circumstances of this case it was difficult to advise how to modify the request given the complexities of identifying appropriate search terms as set out above.
45. The complainant argued that despite regulation 9, in reality the Council took no steps at all to try to satisfy his request even though he stated in his original request that it should contact him if it considered that his request 'would require excessive resources to respond fully'. The complainant argued that the lack of any communication with the Council was completely unreasonable and he did not accept that it would have been impossible to refine his request to reduce the effort required in providing the information requested.
46. The Commissioner acknowledges that neither the Council's initial response nor its internal review response considered the complainant's (reasonable) suggestion included in his request that it contact him should complying with it require excessive resources. However, in these responses the Council's position was that it did not hold the requested information rather than the position it later adopted during the Commissioner's investigation that although it held the information, it would involve excessive resources to fulfil the request.
47. Having determined that complying with the request would involve excessive resources, the Commissioner has considered whether the Council was obliged to provide the complainant with advice and assistance. In doing so, the Commissioner is mindful of the fact that its obligations under regulation 9(1) only extend to what is reasonable.
48. In the circumstances of this case the Commissioner agrees with the Council that there does not appear to be an obvious or easy way in which this request could be modified in order to make it less burdensome. In terms of the search terms used, it does not appear that

these could be further refined because to do so would risk missing emails that could potentially be relevant. One alternative potential way to refine the request could arguably be to reduce the timeframe or number of individuals named in the request. However, given that the sampling of Ms McBride's account alone would be particularly burdensome, in the Commissioner's view it is reasonable to conclude that any such refinement would have to be so significant, eg one individual's email account for a much shorter period of time, that the information captured would not be nearly as meaningful as the information sought by the original request. In light of this the Commissioner is satisfied that there is no advice and assistance that the Council could reasonably provide to assist in refining this request.

### **Regulation 14 - Refusal to disclose information**

49. Regulation 5(1) of the EIR states that, subject to any exceptions, environmental information must be made available on request. Regulation 5(2) requires that the information be made available promptly, and in any event no later than 20 working days after the date of receipt of the request. Where no information is held, Regulation 14(2) requires a refusal notice to be issued within that time.
50. Regulation 14 of the EIR requires that where a public authority refuses to disclose information under an exception, this is stated in writing within 20 working days.
51. The complainant submitted his request to the Council on 6 November 2020 but it did not provide a substantive response to his request, stating that no information was held, until 8 February 2021. This delay represents a breach of regulation 5(2).
52. Furthermore, as the Council amended its position during the Commissioner's investigation of this complaint from its initial position that it did not hold the information to its reliance on regulation 12(4)(b), it also failed to comply with the obligations of regulation 14.

## Right of appeal

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

54. 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.
55. 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**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**