

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

**Date:** 13 February 2023

**Public Authority:** Homes for Lambeth  
**Address:** Lambeth Town Hall  
Brixton Hill  
London SW2 1RW

**Decision**

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1. Homes for Lambeth (HfL) is entitled to refuse the complainant's request as manifestly unreasonable under regulation 12(4)(b) of the EIR, because of the disproportionate burden complying with it would cause to HfL. HfL indicated that the request might be refined and, as such, there was no breach of regulation 9(1) which concerns advice and assistance. It is not necessary for HfL to take any steps.

**Request and response**

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2. The complainant made the following information request to HfL, using HfL's email address, on 12 July 2022:  
  
"Can you please provide me with the following information in relation to the tenders which were submitted for the project on Roman Rise, which was awarded to Myco Ltd:  
  
1. The procurement strategies.  
2. The tenders submitted by all tenderers. I am happy to receive these with commercially confidential information redacted.  
3. The dates on which all tenders were submitted.

4. The tender opening pro-forma. Can you please indicate who from Homes for Lambeth witnessed the opening of the tenders.
  5. Any tender clarification correspondence or queries between Homes for Lambeth and the tenderers.
  6. The tender report recommending the appointment of Myco Ltd.”
3. Although the complainant had addressed their complaint to HfL, Lambeth London Borough Council ('the Council') responded to the request. The response presented the Council's position (that the request was manifestly unreasonable); the Council did not explain that it was responding on behalf of HfL. The Council's provided an internal review decision upholding the response.

### **Reasons for decision**

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4. HfL is a housing delivery company owned by the Council. However, for the purposes of the EIR, the Council and HfL are two separate legal entities. The Commissioner understands that HfL usually relies on the Council's Information Governance team to process incoming requests for information that HfL receives.
5. The complainant submitted their request to HfL, but the Council responded to it. As noted, the Council did not advise that it was responding on behalf of HfL. The Council's response suggested that it held the information and that it considered the request to be manifestly unreasonable.
6. Given the nature of the requested information, the Commissioner asked the Council to confirm whether the Council actually holds the requested information, or whether it is in fact held by HfL. The Council's response indicated that it had now discussed the matter with HfL, and it confirmed that HfL holds the information.
7. The Commissioner has taken a pragmatic approach. He will assume that, although it did not clearly explain as such, the Council provided a response to the request on behalf of HfL and that, therefore, HfL provided the response. The Commissioner considers it acceptable for the Council – as a separate but associated body – to have carried out the internal review.
8. The reasoning in this notice will consider HfL's reliance on regulation 12(4)(b) of the EIR and whether it had a duty to offer the complainant advice and assistance under regulation 9(1).

9. Under regulation 12(4)(b) a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable.
10. A request may be manifestly unreasonable because it is vexatious or, as in this case, because of the burden complying with the request would impose on the authority – in terms of cost or time.
11. 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 or 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.
12. Although there is no equivalent limit within the EIR, the Commissioner considers that public authorities may use FOIA cost limits as an indication of what Parliament considers to be a reasonable burden in terms of responding to an EIR request. However, the public authority must then balance the cost/time estimates involved in responding to the request against the value of the information which would be disclosed before concluding whether the exception is applicable.
13. In its correspondence to the complainant HfL said that in excess of 1,185 pages were caught by the request. It said it would need to review each page and redact information as necessary and that if it took four minutes to review and redact each page, it would take approximately 79 hours to comply with the request.
14. In their request for a review, which they sent to the Council, the complainant noted that this request is “identical” to three others they had submitted. They said that the Council had refused those too, but the Commissioner had subsequently ordered it to provide the information in those cases.
15. In its internal review the Council said that even if it only took two minutes to review and react information from each page, it would still take 40 hours to comply with the request which it confirmed remained an unreasonable burden.
16. In their complaint to him the complainant has discussed section 12 of FOIA and what activities can and cannot be taken account of in relation to that exemption. However, this request is covered by the EIR and not FOIA. HfL has applied regulation 12(4)(b) of the EIR to the request and its terms are not exactly the same as section 12 of FOIA.
17. The complainant has provided references number for their previous complaints to the Commissioner. However, those cases do not consider

HfL's (or the Council's) application of regulation 12(4)(b) as in this case. The Commissioner has not been able to identify any previous complaints from the complainant in which he considered HfL's (or the Council's) application of regulation 12(4)(b) to requests associated with tender information. In any case, the Commissioner considers complaints on a case-by-case basis.

18. The Commissioner sees no reason to dispute that 1,185 pages of information are caught by the current request. He also considers that it would be necessary to redact certain information, such as personal data or commercially sensitive information (which the complainant has noted is likely to be contained in the information they have requested). The Commissioner does not consider the estimate of four minutes per page to be totally unrealistic so the estimate of two minutes per page is also credible.
19. The Commissioner therefore accepts that it would take a minimum of 39.5 and potentially 79 hours to comply with the request. He has next considered whether the value of the request warrants this level of resource.
20. HfL acknowledged in its response to the complainant that there is a presumption of disclosure inherent in the EIR and also noted that the matter of Roman Rise may be of interest to the local community.
21. The Commissioner has noted that there is local interest in Roman Rise. The complainant says there are concerns about HfL. They say that none of HfL's contract award decisions are made publicly available (as the Council's would be). The complainant also says there is "considerable concern" that HfL is not following due process in the way that it works.
22. The complainant has directed the Commissioner to a published report about HfL which they say shows that HfL has been found to be in breach of procurement processes on other occasions. The report is published on a website owned by the 'People's Audit.' The People's Audit is a "...volunteer-run network of people who believe local government spending should be open and accountable to local people." The complainant considers that HfL's unwillingness to release the information requested only heightens the concern about its lack of transparency.
23. The complainant says that there is a particular public interest in the Roman Rise tender as the existing buildings were demolished in February 2021 and the site has been left empty ever since. The complainant considers that there is a legitimate public interest in knowing what has happened with the tender process. They say that there has been a lot of concern about how HfL has been run, with

tenders being opened by only one person. Their point is not clear, but the complainant also suggests either that tenders were accepted even though they were received after the deadline, or that some tenders were submitted after others had been formally opened (ie tenders being held back until the contents of their rivals' tenders were known).

24. The complainant has also referred to a loan made in October 2022 and a review into housing in Lambeth, which discusses Roman Rise, and which was released in December 2022. However, although the Commissioner has noted these points, he must only consider the circumstances as they were at the time of the request in July 2022.
25. Whether this request can be categorised as manifestly unreasonable is a finely balanced matter. The Commissioner has noted the EIR's presumption in favour of disclosure. He has also taken account of the genuine, local concern about HfL's performance that existed at the time of the request ie the concern was wider than just the complainant's concern.
26. However, HfL's position, which the Commissioner has accepted, is that it would potentially take up to 80 hours to review and redact information from the material in scope of the request, and a minimum of approximately 40 hours. 80 hours is more than two full working weeks, and this is a significant amount of time and resource for HfL to have to spend on a task.
27. The Commissioner is not convinced that the request is so valuable as to justify an 80-hour burden, which is HfL's central estimate. The Commissioner understands that the development in question only involves 31 homes and so, even in an urban area it can hardly be said to have a major local impact. And, while the complainant (and others) may have concerns about HfL, they have not presented the Commissioner with compelling evidence to suggest that there was anything untoward about how HfL handled the tender for that specific development.
28. On balance therefore, the Commissioner has decided that HfL is entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request and to protect its resources. He has gone on to consider the associated public interest test.
29. In its correspondence to the complainant, HfL said that the significant diversion of its resources necessary to compile a response to the request would not be in the public interest as it may disrupt other decision-making or other workloads. HfL advised that it was not in the public interest to divert officers' attention from their core work in order to respond to a request made by one individual which may have limited wider public interest. The complainant did not raise specific public

interest arguments in their request for a review and the concerns they raised in their complaint to the Commissioner have been noted above.

30. The Commissioner has found that complying with the request would be a burden to HfL that is disproportionate to the request's value – its value to the complainant and to the wider public. To come to that decision he took account of the EIR's presumption of disclosure and the wider circumstances including those that the complainant has described. Because he has found that the value of the request is disproportionate to the burden involved in complying with it, it follows that the public interest must favour protecting HfL's resources and allowing HfL to direct its resources more appropriately. The Commissioner is satisfied that the general public interest in public authorities being open and transparent is met through the information HfL (and the Council) publishes about the development in question.

### **Regulation 9 – advice and assistance**

31. Under regulation 9(1) of the EIR 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.
32. In cases where an authority is relying on regulation 12(4)(b) because of the disproportionate burden associated with a request, the authority should consider whether it can help the applicant to refine their request to make it less burdensome.
33. The Commissioner has noted that in its response to the request HfL advised the complainant (through the Council) that if they wanted to submit a redefined or shortened request then it would consider if it could respond to such a request.
34. Having apparently liaised with HfL, in its correspondence to the Commissioner the Council also discussed parts 3 and 4 of the request. It advised that HfL had confirmed the tenders were opened on 16 April 2021 and that they were opened, via ADAM procure portal, by persons no longer working at the organisation. Finally, with regard to part 6, the Council confirmed that HfL had advised that if the complainant could narrow the scope of their request HfL could provide a copy of the report requested, with redactions as necessary for commercially sensitive information. This adds a little more detail to the advice offered in HfL's response to the request.
35. The Commissioner therefore considers that HfL offered the complainant adequate advice and assistance as to how their request might be refined, and so complied with regulation 9(1) of the EIR.

## **Other Matters**

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36. As has been noted, for the purposes of the EIR, HfL and the Council are two separate legal entities. However, the Commissioner understands that the Council manages HfL's FOIA and EIR administration function. That being the case, when an applicant submits a request to HfL – as in this case – if the Council responds to the request on behalf of HfL it should advise the applicant that that is what it is doing and it should also make it clear that it has liaised with HfL about the request. In this case the Council appeared to respond to the request on its own behalf. Furthermore, it is not clear that the Council liaised with HfL about the request until the Commissioner's query to it in January 2023. The Commissioner intends to write to the Council separately about the shortcomings in its handling of this request, which he has also recorded for monitoring purposes.

## **Right of appeal**

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37. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
LEICESTER  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [grc@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)

38. 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.
39. 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**

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**