

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 5 May 2023

Public Authority: London Borough of Barnet
Address: Hendon Town Hall
The Burroughs
Hendon
London NW4 4BG

Decision (including any steps ordered)

1. The complainant has requested information held by the London Borough of Barnet (the council) relating to the installation of speed bumps.
2. The council initially refused the request under section 14(2) - repeat requests, of the Freedom of Information Act 2000 (FOIA). During the Commissioner's investigation the council revised its position, stating that it was now refusing the request under regulation 12(4)(b) - manifestly unreasonable, of the EIR.
3. The Commissioner's decision is that whilst the council was correct to reconsider the request under the EIR, it did not take an objective reading of the complainant's request.
4. Furthermore, the Commissioner has decided that the council has failed to demonstrate that regulation 12(4)(b) of the EIR is engaged and therefore it is not entitled to rely on this exception.

5. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant in response to part 2 of the request that does not rely on regulation 12(4)(b) of the EIR.
6. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

7. On 22 July 2022, the complainant made the following request for information (Request 2) about speed bumps that had been installed in a specific road:

“The reason I am not satisfied is that to date no one at the Council has been able to let me know who (if anyone) gave instructions to lower the bumps - neither Council nor officers.

Therefore, under the Freedom of Information Act may I ask who gave instructions.”
8. On 24 July 2022, the complainant then stated that they would like to add the following to their request:

“When instructing the road layer to place bumps what procedure is in place for the Council to instruct the road layer i.e. is it an instruction for a particular height or is it left to the engineer. Also what records are kept to demonstrate what instructions have been given.”
9. In the council’s initial response to the complainant, it advised that the Highways Officer who had installed the speed bumps at the relevant road no longer worked for the council, and therefore their name could not be provided.
10. The complainant requested an internal review, stating that they were no longer interested in “who made the decision or whether they work for Barnet,” and therefore did not require a response to part 1 of Request 2. They went on to say that they now only wanted to know “what steps are taken in order to instruct people as to how high the bumps should be.”

11. The council's internal review response advised that it was now refusing the request under section 14(2) of FOIA, on the basis that it had previously provided a response to a request for the same information.
12. The council made reference to another information request (Request 1) submitted by the complainant which was considered within decision notice [FS50736326](#), issued by the Commissioner on 13 September 2018, in support of its decision.

Scope of the case

13. The complainant has advised the Commissioner that the council has not previously provided the information they have asked for which is "what procedures Barnet has for deciding as to the height of bumps."
14. During the Commissioner's investigation, the council confirmed that it had now reconsidered the request under the EIR, and had decided that it should have refused the request under regulation 12(4)(b) of the EIR, on the basis that it was manifestly unreasonable.
15. The Commissioner is satisfied that the request is for environmental information for the same reasons set out within paragraphs 9 - 12 of decision notice FS50736326; he will therefore consider whether the council is entitled to rely on regulation 12(4)(b) of the EIR as its basis for refusing Request 2.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

16. 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.
17. The exception can be used:
 - When the request is vexatious; or,
 - When the cost of compliance would be too great.
18. The exception is subject to the public interest which also means that a public authority must demonstrate that the public interest in maintaining the exception outweighs the public interest in favour of

disclosure. Regulation 12(2) stipulates that a public authority shall apply a presumption in favour of disclosure.

The council's position

19. The council has said that it has previously given the complainant the information which would provide an answer to the first part of Request 2. It has referred to the details and explanations set out in decision notice FS50736326; in that case, the Commissioner upheld the council's decision to refuse Request 1 on the basis that the information was not held. The council has argued that it is clear that any response to any further request for the same information that was set out in Request 1 would be fixed and unchanged.
20. With regard to part 2 of Request 2, the council has said that it believes that it is clear when taking into account the full content and context of both Request 1, and Request 2, that the complainant's interest is solely related to the works on the specific speed bumps on a particular road, which took place a number of years ago, and that it is unlikely that they wanted information held about any procedures which may, or may not, have been introduced since those speedbumps were installed. The council has said that it therefore regards it to be the case that its response to Request 1 also provides an adequate response to part 2 of Request 2.
21. The council states that it has made it clear in previous correspondence sent to the complainant that the information that they are asking for about the installation of the speed bumps in the relevant road is not held. It has also said it has provided information about statutory requirements in relation to the installation of speed bumps, and has also provided explanations of the processes that are followed. The council states that the details set out within decision notice FS50736326 supports its claim that the matters relevant to Request 2 have been fully addressed previously.
22. The council has also said that whilst it accepts that a request for the information set out in Request 2 may be relatively simple to respond to, and may not impose a significant burden if considered in isolation, if it was required to revisit this matter each time a request was made for the same information, it would clearly lead to the same response, and this would be a manifestly unreasonable use of officer time and resources.

The Commissioner's view

23. The purpose of the exception at regulation 12(4)(b) is to protect public authorities from a manifestly, unjustified, inappropriate, or improper use of the EIR. The key question is therefore whether Request 2 is likely to cause a disproportionate cost or burden, or an unjustified level of distress, disruption, or irritation.
24. The Commissioner has considered the council's argument that to deal with repeat requests which lead to the same responses being provided each time, would create an unreasonable burden to its staff and resources.
25. The Commissioner accepts that there may be occasions where it is permissible to consider a number of "substantially similar" EIR requests together when considering if they are manifestly unreasonable because of cost or burden. The Commissioner also accepts that it is not unreasonable for a public authority to present details of the broader issues behind its decision that a request is manifestly unreasonable, such as the history and context in which the request was made; this would include details of prior dealings with the requester about the matters to which the request relates.
26. The Commissioner is mindful that there may be additional factors (other than the receipt of the two requests about the same matter) at play which the council took into consideration when coming to its decision to refuse Request 2 on the grounds that it is manifestly unreasonable. Indeed, the council has indicated that it has responded to the complainant on a number of occasions about the information they have requested, and also about other matters relating to the installation and height of speed bumps in a particular road.
27. The Commissioner invited the council to provide details of any additional requests that it had received from the complainant in support of its claim that the current request is manifestly unreasonable. He also asked that the council provided details of the public interest factors it had considered when making its decision to apply regulation 12(4)(b) to the request. However, this information was not included within the council's subsequent submissions.
28. The Commissioner can only make a decision based on the information that is available to him. Having considered this, he accepts the council's claim that part 1 of Request 2 is similar to Request 1. However, with regard to part 2 of Request 2, the Commissioner regards it to be pertinent to note that the complainant

has asked "what procedure is in place" and "what records are kept" (the Commissioner has underlined the relevant terms).

29. Public authorities must avoid reading into the request any inferences that are not clear from the wording. If the request clearly specifies exactly what information or documents the requester wants, then there will only be one objective reading to the request. If the public authority considers that there is more than one interpretation of the request, it must seek clarification from the requestor as to which interpretation of the request is the correct one.
30. It is the Commissioner's view that the complainant is clearly asking for information held about the policies and procedures that were relevant to, and held, at the time of the request (which may, or may not have been the same as that at the time the speed bumps were installed at the relevant road). He is also satisfied that, in a time period of over four and a half years, there is the possibility that there have been changes in statute, policies and procedures; therefore, he accepts that there is a possibility that information relevant to Request 2 is now held by the council.
31. The Commissioner regards the passage of time to be a key consideration in this instance. A gap of over 4 and half years between the submission of Request 1, and Request 2 is, in his view, quite significant. The council has provided no evidence of requests for similar information being made in the intervening period.
32. Having considered the available information, it is the Commissioner's view that the council has failed to demonstrate that Request 2 is manifestly unreasonable, and therefore, his decision is that the exception provided by regulation 12(4)(b) of the EIR is not engaged.
33. The complainant has made it clear to all parties that they no longer require a response to part 1 of Request 2. Therefore, the Commissioner does not require the council to revisit this part of the request. However, he does require the council to provide a response to part 2 of the request that does not rely on regulation 12(4)(b) of the EIR.

Right of appeal

34. 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

35. 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.
36. 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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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