

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 June 2016

Public Authority: Wigan Metropolitan Borough Council

Address: Town Hall
Library Street
Wigan
WN1 1YN

Decision (including any steps ordered)

1. The complainant has requested a copy of the original bid submitted to Wigan Metropolitan Borough Council ("the Council") by 8th Wonder for the sale of three civic halls. The Council refused the request on the basis that it was manifestly unreasonable by virtue of regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that the Council has correctly applied regulation 12(4)(b) to refuse the request. He requires no steps to be taken.

Request and response

3. On 19 November 2015, the complainant wrote to the Council and requested information in the following terms:

"A copy of the original bid submitted by 8th wonder/rose leisure to WMBC in 2011 that was accepted by Wigan Council to secure the sale of the 3 civic halls included below:

Lowton civic hall.

Formby hall Atherton.

Hindley Monaco ballroom."

4. The Council responded on 18 December 2015 to this request and a number of other requests it had subsequently received. It stated that it considered all of the requests to be manifestly unreasonable as they

appeared to be part of a series of requests from a campaign group and responding would be a burden on the Council's resources.

5. Following an internal review the Council wrote to the complainant on 23 January 2016. It stated that it upheld the decision to refuse all of the requests as manifestly unreasonable.

Scope of the case

6. The complainant contacted the Commissioner on 25 February 2016 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of his investigation to be to determine if the Council has correctly applied the provisions of regulation 12(4)(b) of the EIR in refusing the requests as manifestly unreasonable.

Background

8. In 2010 an annual subsidy paid to support five civic venues in the borough was withdrawn. An expression of interest process was then arranged to allow alternative operators of the civic halls to be identified. At the same time the Council received a petition opposing the closure of Formby Hall.
9. The bids from alternative operators were evaluated and on 17 March 2011 the transfer of civic venues to new operators was approved. As part of this Formby Hall was transferred to 8th Wonder Properties Limited.
10. There followed a period where the properties were transferred to 8th Wonder on licence before the actual sale was agreed in June 2014. The final sale was for three of the civic venues, not the original four agreed. The transfer to 8th Wonder contained covenants providing for Formby Hall to continue to be used for 'community purposes' and for the owner to require the Council to release/vary the covenants if they obtain planning permission for development of the site for an alternative use.
11. There have been concerns raised with the Council about its ability to dispose of Formby Hall as the Hall had been 'gifted' to the 'people of Atherton' on 9 May 1917. However the Council did not consider that there were restrictions on its ability to dispose of the property in the future and the sale to 8th Wonder was therefore lawful.

12. At the time of the request, the current owners of Formby Hall had made a 'prior notification' application to the Council to demolish Formby Hall.

Reasons for decision

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

13. Regulation 12(4)(b) says that a public authority may refuse to disclose environmental information if the request is 'manifestly unreasonable'.
14. The Commissioner considers that the regulation will typically apply in two sets of circumstances: firstly, where a request is vexatious; or secondly, where compliance meant a public authority would incur an unreasonable level of costs, or an unreasonable diversion of resources. In this case, the Council has argued that responding to the request would place an unreasonable burden on resources. The Council also argues the request is vexatious.
15. Unlike the FOIA and specifically section 12, the EIR does not contain a provision that exclusively covers the time and cost implications of compliance. The considerations associated with the application of regulation 12(4)(b) of the EIR are, instead, broader than with section 12 of the FOIA. In particular the Commissioner recognises that there may be other important factors that should be taken into account before a judgement can be made that environmental information can be withheld under the exception:
 - Under the EIR, there is no statutory equivalent to the "appropriate limit" – the cost limit beyond which a public authority is not obliged to comply with a request – described at section 12 of the FOIA;
 - The proportionality of the burden on the public authority's workload, taking into consideration the size of the public authority;
 - The requirement, under regulation 12(1) of the EIR, to consider the public interest test;
 - The EIR's express presumption in favour of disclosure; and
 - The individual circumstances of the case.
16. When a request is refused as vexatious or manifestly unreasonable there is often a long and difficult background to the requests. In this case the Commissioner notes that the future of Formby Hall has been in

question for some time and there are a number of concerned residents who have been seeking information on this matter.

17. The Council has argued that the volume of requests in relation to this matter from the complainant and others who the Council believes are acting as part of a campaign group has reached disproportionate volumes and responding would place an unreasonable burden on the Council.
18. The Commissioner therefore considers it is important to consider the history and background to this request. The Council has explained the first request it received on this subject matter was in October 2012 but the number and frequency of requests has increased with 27 requests between June and December 2015, 18 of these just in December. The Council has stated that these requests were submitted by six different individuals. The Council believes there is an obvious campaign within the borough using both FOI/EIR and social media to validate their campaign.
19. As a result of the many enquiries and FOIA/EIR requests from this group, including the complainant, the Council has disclosed significant amounts of correspondence including: committee reports and minutes of meetings relating to the sale; expression of interest and tender evaluation documents; Heads of Terms for the sale of the Hall; Land Registry transfer documents; financial information relating to the operation of the Hall; land and buildings asset data; and correspondence by officers in relation to the sale.
20. Where the Council has not provided information in response to the requests or enquiries it has been where the information engaged specific exemptions relating to personal data (section 40(2)) or legal advice (section 42).
21. The Council has explained it became aware that the complainant and a number of other individuals also submitting requests to the Council were part of a campaign group associated with a local residents association. It therefore considered the requests were part of a campaign and this factored into its decision to refuse this request and the requests received in the following days as manifestly unreasonable.
22. To support its position that the request is part of a campaign involving a number of individuals, the Council has provided the Commissioner with examples of some emails exchanged between the complainant and the Chief Executive of the Council in December 2015, prior to the decision from the Council to refuse the requests was communicated to the complainant. In these emails the complainant refers to *"information requested by [name redacted] this morning"* suggesting he is at the

very least aware of requests submitted by other individuals on the same subject.

23. The response from the Chief Executive states that *"My team are being inundated with requests from you and your supporters"* to which the complainant responded *"please don't insult our intelligence"*. The Commissioner suggests this strengthens the Council's view that the request that is the subject of this decision is one of several submitted as part of a campaign. The Chief Executive refers to requests from "you and your supporters" and the response from the complainant using the word "our" does not seek to deny the Chief Executive's allegation but instead reaffirms it.
24. When determining if the complainants can be seen as acting in concert as part of a campaign for the purposes of determining if the request is vexatious, the Commissioner defers to his guidance on this¹. His guidance suggests there must be some tangible evidence to substantiate the claim of a link between requests, for example that the requests are similar, the requesters copy each other into requests or mention each other in requests, the pattern of requests is unusual or frequent, or the group has a website which references a campaign against the public authority.
25. The Commissioner has considered this point very carefully as he is conscious of the fact that accepting that requesters are acting in concert will add much greater validity to the claims that the request in this case is manifestly unreasonable. The Commissioner has seen that some of the requests from the complainant are copied into the local residents association. There is often overlap between the requests and they are often very frequent, sometimes sent on the same day or a few days apart. The subject matter of the requests is always the same – for information on the sale of Formby Hall.
26. Taking this into account the Commissioner has determined that there is sufficient evidence to link the requesters together and to accept they are acting in concert. The Commissioner has gone on to consider whether the requesters are acting in concert to obtain information about a genuine underlying issue or to engage in a campaign of disruption under the headings below. He has focused on whether the aggregated impact of dealing with the requests would cause a disproportionate and unjustified level of disruption, irritation or distress.

¹ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

27. The Council has provided details of the requests and correspondence it has received. It has stated it has received 32 requests on this issue, 27 of these in the last six months and 18 in the month prior to the refusal notice. Of these the Commissioner has identified a number of requests from the complainant.
28. The Council argues that the requests are often overlapping with one request submitted before earlier requests have been answered. As well as this the requests can at times be repeated requests for information already provided in response to earlier requests.
29. The Commissioner accepts that when considered in the context of the Council's previous contact with the complainant and the other requesters, the request could impose a burden in terms of time and resources, distracting the Council from its main functions. The Council has been able to demonstrate the number of requests that have been made, some of which were made before previous requests had been answered. As such, the Commissioner is of the view that complying with this request, when considered in context, would place an unreasonable burden on the Council as it is not likely to end the matter and could lead to the complainant making further requests for information.
30. In addition to this the Council has highlighted other communications it has received outside of the FOIA/EIR requests concerning the civic hall and the planned demolition to demonstrate the volume and persistence of the campaign. The Commissioner notes that in one email to the Chief Executive there is reference to "*malpractice, nepotism, dishonesty and deception*" which is emotive language and adds to the argument that responding further to requests is unlikely to draw an end to the campaign.
31. The Council has acknowledged that the complainant is, to some extent, trying to obtain information he believes will assist in pursuing this matter but that since June 2015 the scope of the information being requested has broadened. The Council states that the initial requests were focused solely on Formby Hall but have more recently been extended to include the other civic halls. In addition to this, the Council has pointed out that the requests seem to be more of a 'fishing exercise' now as shown by the fact the provision of information in response to any request will result in more questions and requests with even wider scopes.
32. The Commissioner does not agree that the widening of the scope of the requests and the fact that providing information leads to more questions will always be an indicator that the motive of the requests has changed from a genuine desire to seek information to one intended to cause disruption to the public authority. However, in this case there are

additional factors which in conjunction with the above do point to an intention to cause disruption.

33. The Council has provided the Commissioner with printouts from the Facebook pages to "Save Formby Hall" which appear to encourage followers to circulate objections to local councillors and the Chief Executive of the Council. The Commissioner notes the complainant has posted template letters for members to use to send to the Council objecting to the proposals for Formby Hall. The Council has highlighted posts in which statements such as "*OK – more obstruction to be done*" and "*now we need a dedicated (spoke in the wheel) strategy group*" are made.
34. As such the Commissioner accepts that the purpose of the requests may have gone beyond the point of simply obtaining information to understand and challenge the Council's decision (although the Commissioner is not disputing that the complainant is still trying to obtain information for this purpose as well) and there is an argument that the requests and correspondence now being sent are to further the complainant's dispute and to cause a degree of disruption.
35. The Commissioner accepts the complainant considers there is a serious purpose to his requests but the Council argues it has been transparent and has provided information in response to the majority of the requests and has provided all the information it can reasonably be required to.
36. The Commissioner acknowledges that the complainant's requests cover similar ground to previous requests and all relate to the sale of Formby Hall. However, despite this he has not seen any evidence that the complainant or the other requesters had made this specific request before so it is difficult to say there would be nothing to gain from disclosure of this information.
37. Having taken all the circumstances into account the Commissioner is minded to accept the request is vexatious when seen in the context of all of the previous correspondence with the public authority. The Commissioner recognises there is enough evidence to suggest the complainant is making requests in conjunction with other individuals and as part of a campaign that taken together with the frequency and nature of the correspondence would be likely to be categorised as vexatious.
38. As such he accepts that the request is 'manifestly unreasonable' under the provisions of regulation 12(4)(b).

Public interest test

39. All exceptions in the EIR are subject to the public interest test. Therefore, in deciding whether the information should be withheld the

Commissioner has had to balance the public interest in maintaining the exception against the public interest in disclosure.

40. As regards the public interest in disclosure the Commissioner has taken into account the general public interest in transparency and accountability. He is also mindful of the presumption in favour of disclosure and the need to read exceptions restrictively. However, balanced against this is the burden that would be imposed on the Council. There is also the wider public interest in protecting the integrity of the Environmental Information Regulations and ensuring that they are used responsibly.
41. The Commissioner notes that the original decision by the Council to sell the civic halls did generate local media attention and was largely not regarded favourably. However this decision was taken in 2011 (although the sale did not finalise until 2014). The more recent controversy has been over the decision to demolish Formby Hall and the Commissioner would consider that information relating to this would be more likely to attract a higher degree of public interest. The information requested in this case related back to the original bid submissions from 2011 so the public interest in this information, given the passage of time and the fact that things have moved on from the sale to the demolition, is likely to be less.
42. The Council is strongly of the opinion that responding to continued requests would impose an unreasonable burden and that disclosure of the specific information would not contribute to the effective running of the public sector but would in fact distract staff from carrying out their core duties.
43. The Council argues that the public interest in open, accountable and transparent decision making has been satisfied by the review the Council conducted of the decision in 2011 and the extent and degree of information the Council has since published in relation to the sale of the halls, particularly Formby Hall. It therefore considers that disclosure of the requested information would not add anything further to the debate.
44. On balance, the Commissioner finds that the public interest favours maintaining the exception as there is little wider value in the complainant's request. The Commissioner's view is that the request is asking for information which relates to an issue from 2011 and although the sale of the halls was still an active issue until it was completed in 2014 the current issue of concern appears to be the decision to demolish Formby Hall. Any interest in this issue would not be served by the disclosure of bid documents from 2011. The Commissioner considers that this request is a means of continuing the campaign against the Council for what is seen to be an unlawful decision to allow the Hall to

be demolished. It seems likely that responding to this request will encourage further requests and a continuation of the campaign against the Council.

45. In all the circumstances of the case the Commissioner finds that the public interest in maintaining the exception in regulation 12(4)(b) outweighs the public interest in disclosure.

Right of appeal

46. 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@hmcts.gsi.gov.uk

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

47. 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.
48. 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

Jill Hulley
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