

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

Date: 17 July 2017

Public Authority: Manchester City Council
Address: Town Hall
Albert Square
Manchester
M60 2LA

Decision (including any steps ordered)

1. The complainant has requested information regarding restrictions put in place during an event in Manchester.
2. The Commissioner's decision is that, on a balance of probabilities, Manchester City Council has provided all the information it holds in scope of the request.
3. The Commissioner does not require Manchester City Council to take any steps.

Request and response

4. On 11 September 2017 the complainant wrote to Manchester City Council ('the council') and requested information in the following terms:

"During the recent 2017 Pride Festival a number of streets in the Gay Village had public access restricted by the erection of barriers across what I believe to be public rights of way. Could you please provide the following information:-

[1]. What enforcement action was taken by the council to prevent, to remove, or cause to be removed, such barriers, and copies of any relevant reports or correspondence.

If no enforcement action was taken, please say whether legal advice was received by the council that such non-enforcement was within the power of the council although it is contrary to the principle of law identified by Mr Justice Cranston in Mr B Herrick and Mrs D Herrick v Peter Kidner and Somerset County Council [2010] EWCH (Admin) 269 case Nos CO/9368/2009 and CO/9411/2009.

Could you also provide copies of the following:-

[2]. Any relevant Traffic Regulation Order and

[3]. The City Council's Controlled Parking Zone Order No.20 2003 and

[4]. Copies of any correspondence between the council and Street Cars, Manchester Cars, or Uber in relation to the 2017 Pride Festival.

Affixed to a post on Waterloo Street was a notice bearing the information that parking was temporarily restricted in "all Pay and Display bays plus electric vehicle bays TEMPORARY TAXI RANK Manchester Pride Events Area." A similar notice was on display in the cul de sac section of Bloom Street.

[5]. Please provide the authority for such a parking restriction on both Waterloo Street, Bloom Street, and Auburn Street, and

[6]. Please say, and provide copies of related communication, whether a taxi rank was located on any of these three streets and also the class of vehicle to which the parking restriction did not apply and the signage that such vehicles were required to show.

[7]. Please say whether Licensing compliance officers reported any prima facie evidence of plying for hire contrary to section 45 of the Town Police Clauses Act, 1847 at any other location in or near the Gay Village, and provide copies (redacted if necessary) of all relevant reports, notes, and correspondence."

5. The council notified the complainant on 9 October 2017 that it needed to extend the 20 working day time limit for responding due to the complexity of the request.
6. A response was provided on 6 November 2017. In answer to each question the council:

[1] stated that no enforcement action was taken as it had authorised the use of barriers. It provided a copy of the council's authorising report for the erection of temporary fences;

[2] provided a copy of the temporary traffic order named "*CITY OF MANCHESTER (MANCHESTER PRIDE EVENT 2017)*";

[3] provided the requested information;

[4] provided copies of correspondence with two taxi firms and confirmed that no information was held with regard to the third;

[5] advised that "*Article 12 of the Pride Order 2017 sets out the authority to suspend parking*";

[6] stated no information held "*There is no related communication in respect of taxi ranks on these three streets. Please see response to question 5 above*";

[7] withheld information on the basis of regulation 12(5)(b) EIR – the course of justice and inquiries exception;

7. On 26 November 2017 the complainant requested an internal review, in summary raising the following:

[1] the response didn't answer the question of whether the council obtained legal advice to confirm that "*such non-enforcement was within the power of the council*";

[5] "*Last year (2016) I was told that a sign placed on Auburn Street bearing the words "taxi rank" was an error. This year (2017) a similar sign was placed on Waterloo Street and Bloom Street; this was also an error and it could have had the effect of leading members of the public to believe that a taxi rank had been established there. That such an error should be repeated raises concerns about the quality of managerial oversight in the council... the Pride Order 2017 does not cover any of the relevant streets on which such signs were placed. Please re-examine this matter and provide the correct answer.*"

Furthermore the complainant requested the council to provide a definition of the EIR that justified its use in relation to his request.

8. Following an internal review the council wrote to the complainant on 18 December 2017. In summary the council:

[1] provided further explanation, with reference to the previously disclosed information, that the council "*had the lawful authority to*

erect temporary fences in the area of the event for safety reasons and in order to facilitate the event”;

[5] provided explanation for the incorrect signage. However it also stated that *“The Pride TTRO (Temporary Traffic Regulation Order) authorises the Council to suspend any existing restrictions for the purposes of facilitating the Pride Event 2017”*

Additionally the council gave explanation for the use of the EIR in relation to this request.

Scope of the case

9. The complainant contacted the Commissioner on 11 January 2018 to complain about the way his request for information had been handled. Specifically in relation to questions:

[1] the Council hadn't answered the question correctly. The complainant stated his request related to barriers and not temporary fencing; and that the Council had not answered whether it had received legal advice, eg *“professional advice provided by a lawyer”;*

[5-6] *“the Council failed to answer questions 5 & 6, in that it did not provide the authority to restrict parking for the purpose of a taxi rank.”*

10. The remainder of the complaint is concerned with whether the council have provided accurate information. The Commissioner advised the complainant that the FOIA/EIR is solely concerned with access to information, and not the accuracy of any information published or provided in response to a request for information. A public authority will have complied with their obligations under the FOIA/EIR where they have provided the recorded information that they hold in relation to a request irrespective of whether this information is accurate or not. Therefore the Commissioner cannot assess the accuracy of information disclosed in response to a request. Nor can she look into accusations of maladministration.
11. Thus the Commissioner agreed with the complainant that she considers the scope of the case to be whether the council has disclosed all the information it holds in relation to questions [1], [5] and [6].

Reasons for decision

Regulation 5(1) – duty to make environmental information available on request

12. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.
13. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.
14. In the circumstances of this case the Commissioner will determine whether, on the balance of probabilities, the Council has complied with the requests by disclosing all relevant held information.

The complainant's position

15. The complainant's position is set out in paragraph 9.

The council's position

16. The Commissioner notes that some of the information requests were worded as questions. Although the EIR does not require an authority to answer direct questions rather than requests for recorded information, the Tribunal has decided that if recorded information is held which can respond to a question then that information should be considered for disclosure to the requestor.
17. Consequently the Commissioner asked the council a number of questions to establish whether it had disclosed all the information held in relation to questions [1], [5] and [6].

Question [1]

18. The Commissioner asked the council:
 - if it had requested or received any legal advice in relation [1] and advise why it is certain of its response to this question;
 - if the council did seek or receive legal advice then to provide explanation regarding why no information is held;
 - how the answers provided in the original and subsequent responses relate to barriers.

19. The council advised that it had not requested or received any legal advice in relation to question [1] and therefore no information is held. It explained *"the Council had powers under section 16A of the Road Traffic Act 1984 to place restrictions on roads in connection with certain events."* Furthermore it stated that the disclosed report *"Delegated Approval for Traffic Regulation Order/temporary fencing and closure of a park"* had *"detailed the legal position and requirements necessary when exercising powers under section 16A of the Road Traffic Regulation Act 1984. The Council had the lawful authority to erect temporary fences in the area of the event for safety reasons and in order to facilitate the event and therefore enforcement action was never at issue in the Council's mind"*.
20. The council stated *"It is acknowledged that the complainant referred to barriers in his request. The Council recognises such "barriers" as "temporary fences", being the terminology used in its delegated report authorising the restrictions on roads in connection with the event. The two terms are interchangeable."*

Questions [5] & [6]

21. The complainant maintains that the council did not have the authority to restrict parking for the purposes of a temporary taxi and rank and therefore it had not answered questions [5] and [6] correctly.
22. The Commissioner asked the council why it is certain that the responses provided are correct and therefore no further information is held.
23. The council reiterated that it had provided the complainant with details regarding the authority for parking restriction on the named roads. *"The Council had powers under section 16A of the Road Traffic Act 1984 to place restrictions on roads in connection with certain events."* It had explained to the complainant in the internal review response that *"Article 12 of the Pride Order 2017 sets out the authority to suspend parking. In accordance with Article 12: 'Any statutory provision referred to in subsections (10) and (11) of Section 16A of the Act currently in force which is affected by this Order shall take effect subject to this Order and shall, insofar as it is inconsistent with this Order be suspended for the duration of this Order, **including but not limited to**'. Therefore, the enclosed Order is not limited to those areas specified in the Pride 2017 Order and includes other areas in the location, including Waterloo Street, Bloom Street and Auburn Street. The Pride TTRO authorises the Council to suspend any existing restrictions for the purposes of facilitating the Pride Event 2017."*

24. The council stated that incorrect signage had been used by the council's contractor, incorrectly referring to the three sites as taxi ranks. The council explained this to the complainant in the review response and advised him of measures it will take to stop any reoccurrence.

The Commissioner's conclusion

25. As explained in paragraph 11 the Commissioner is solely concerned with access to information.
26. It is relevant to note that the complainant has not provided any specific basis on which he disputes the completeness of the council's disclosure. Instead the complainant's focus of concern is whether the council had acted lawfully and with authority in relation to the restriction of public access.
27. The Commissioner considers that the council has provided a rational explanation of what information is held that would fall within the parameters of the request. She finds there is no indication that further information is held.
28. For the above reasons, the Commissioner concludes that on the balance of probabilities all relevant held information has been disclosed. The Commissioner therefore finds that the council has complied with its obligations under regulation 5(1) of the EIR.

Right of appeal

29. 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

30. 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.
31. 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

Andrew White
Group Manager
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