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

Decision notice

Date: 19 February 2018

Public Authority: London Borough of Barnet
Address: North London Business Park
Oakleigh Road South
London N11 1NP

Decision (including any steps ordered)

1. The complainant has requested information about the sale of a particular piece of land. London Borough of Barnet ('the Council') refused to comply with the request under regulation 12(4)(b) of the EIR (manifestly unreasonable request).

2. The Commissioner's decision is that:

   - The request is manifestly unreasonable under regulation 12(4)(b), by reason of being a vexatious request, and the public interest favours maintaining the exception.

3. The Commissioner does not require the Council to take any steps to ensure compliance with the legislation.

Request and response

4. On 26 June 2017, the complainant wrote to the Council and requested information in the following terms:

"I request that LB Barnet provides all non-exempt information related to [Redacted] *from 01 Jan 2014 until the present time. I am specifically seeking information that provides evidence of:*

a. The LB Barnet land valuation process for this asset from 01 Jan 2015, both as input to: the land sales discussion to local residents and also lease/rental valuation to any interested party.

b. The decision by the authorised Council Officer not to proceed with the sale of the land to local residents, including the evaluation of alternative options.

c. A copies of contractual documentation that:

i. Confirms that Land Asset 9697 has now been leased to Middlesex University (as stated in the attached email from [Redacted]*) or any other lease arrangements.*

ii. Identifies any obligations to maintain the land and not allow the land to become a nuisance to neighbouring properties (as has been the case for the last 15 years)

iii. Identifies the financial consideration paid by the leaseholder to Barnet Council, for the benefit of having access to this currently unused land.

Note 1: I do not believe that this request should exceed the maximum effort for an FOI request. However, if for some reason you believe it does then I am happy to discuss an alternative wording to avoid this from happening (for example, by provision of the most recent information should earlier information from 2014 be archived and not readily available)."

5. The Council responded on 28 June 2017 (its reference 3732996). It said it had considered this request under the EIR, that it considered the request to be manifestly unreasonable under regulation 12(4)(a*)* [in fact, the relevant regulation is regulation 12(4)(b)] and that the public interest favoured maintaining this exception. The Council provided a review on 5 September 2017. It upheld its original position.

Scope of the case

6. The complainant contacted the Commissioner on 11 July 2017 to complain about the way his request for information had been handled.

7. The Commissioner's investigation has focussed on whether the complainant's request can be categorised as 'manifestly unreasonable' under regulation 12(4)(b) of the EIR, and the balance of the public interest.

Reasons for decision

Background

8. In its submission to the Commissioner the Council has provided a background to the request. It says that the complainant has submitted a series of information requests to the Council about land it owned at the rear of his property that he sought to purchase. It appears that the complainant and other residents were first given the opportunity to purchase this land in 1990 at a relatively low value. This opportunity was not taken up at that time.

9. From the information the Council has provided, it seems to the Commissioner that the complainant's correspondence with the Council about this land began in 2011 when he submitted an information request as he and a number of other residents were again interested in buying the land in question.

10. On 25 October 2016 the District Valuer Service valued the land in which the complainant was interested in accordance with Royal Institute of Chartered Surveyors Valuation Professional standards 2014 UK edition, commonly known as 'the red book'. The Commissioner understands that this valuation gave the land a considerably higher value than it had had in 1990. Not all eligible residents expressed an interest in buying the land at the price now offered and the Council was not able to sell the land as a single plot [to the residents], as had been its stated requirement.

11. On 25 January 2017 the Department for Communities and Local Government (DCLG) National Planning Casework Unit confirmed the outcome of its investigations to the Council, following representations the complainant made in early 2016, under the Right to Contest/ Public Request to Order Disposal process. DCLG did not uphold the complainant's appeal and has advised, in all circumstances, that the Secretary of State is not persuaded that a direction to dispose (of the land) would be appropriate in the wider public interest.

12. The Council has told the Commissioner that the complainant subsequently raised a corporate complaint about the Council's handing of matters associated with this piece of land which was investigated internally, and not upheld. The complainant also submitted a complaint

to the Local Government Ombudsman (LGO). On 25 April 2017 the LGO issued a formal decision confirming that it did not find fault in the way the Council dealt with the complainant's attempt to buy the disputed land.

13. The complainant also sought to appeal the District Valuer valuation decision but was unable to do so as there is no procedure to do this; in effect, the valuation is final.

14. The complainant has also provided a background to his request. From his perspective, he has submitted his request (and another request, a complaint about which the Commissioner has considered under reference FS50690196) in order to obtain information that he considers has been withheld from local residents. This information relates to 'transparency of decision making' by the Council in respect of the disputed land. The complainant has confirmed that this land is owned by the Council but says that it is controlled by Middlesex University as it is included in a lease between the Council and the University. The complainant says that for the last 15 years the land has been the cause of many problems between the Council and six bordering properties. As owner of one of the properties, the complainant says he has taken the lead role in trying to resolve these problems over the last four years.

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

15. Regulation 12(4)(b) says that a public authority is not obliged to comply with a request if the request is 'manifestly unreasonable'. This exception can be used when a request is vexatious or when the cost of complying with a request would be too great. In this case, the Council considers the complainant's request to be a vexatious request (the equivalent of section 14(1) of the FOIA).

16. The Commissioner considers that the inclusion of 'manifestly' in regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under the exception, the information request must meet a more stringent test than simply being 'unreasonable'. 'Manifestly' means that there must be must be an obvious or tangible quality to the unreasonableness of complying with the request.

17. In line with her published guidance on vexatious requests, the Commissioner considers whether the request itself is manifestly unreasonable rather than the individual submitting it. Sometimes, it will be patently obvious that a request is manifestly unreasonable. In cases where it is not so clear cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and

weighing this against any evidence about the purpose and value of the request. Public authorities may also take into account the context and history of the request where relevant.

18. Where the exception is engaged it is subject to a public interest test under regulation 12(1)(b) to determine whether the information should be disclosed in spite of the exception applying.

19. In its submission to the Commissioner, the Council has referred throughout to its application of section 14(1) of the FOIA. It has subsequently confirmed that it is relying on regulation 12(4)(b) of the EIR. The Council has advised that in response to a separate Subject Access Request that the complainant submitted under the Data Protection Act it had identified information falling within the scope of some parts of the request and released this to him. Notwithstanding this, it is relying on regulation 12(4)(b) of the EIR to refuse the request that is the subject of this notice, as it considers it to be manifestly unreasonable.

20. The Council has said that it considers that the context and history of the request are relevant in this case. It considers that the volume and frequency of the complainant's requests, each one following on immediately from the previous one, demonstrates an obsessive pattern of behaviour that has added to the workload of a small team to an unreasonable extent, and taken the team away from other work.

21. The Council has referred to the Dransfield case[1] in which Judge Wikeley said that a common theme underpinning section 14(1) of the FOIA (and so regulation 12(4)(b) of the EIR) is a lack of proportionality. Taking account of the background to the request, the Council considers that a lack of proportionality is in evidence here.

Volume of requests and burden on the authority

22. The Council has referred to its response to the complainant, where it says it correctly noted that the complainant had sent the Council in excess of 40 emails in a period of six months; that each email was extremely long, with multiple attachments comprising documents, other emails and photographs; and that the complainant would copy in up to

[1] http://administrativeappeals.decisions.tribunals.gov.uk//judgmentfiles/j3680/%5B2015%5D%20AACR%2034ws.rtf

40 other people at a time, including the Council's Chief Executive and Leader, as well as multiple Councillors and officers.

23. Furthermore, the Council says that over a period of six years there has been considerable correspondence on the matter of the land in question between the complainant and the Council, which has included senior managers, DCLG, the LGO and the District Valuer. The Council estimates there have been between 150 and 200 separate communications. It argues that the amount of time spent to date – officer time and Council resources – has been completely disproportionate to the nature of the case and that the equivalent cost to the tax payer has been unjustifiable.

Distress to staff

24. The Council says that in the Dransfield case, Judge Wikeley had also noted that vexatiousness may be evidenced by obsessive conduct that harasses or distresses staff, uses intemperate language, makes unsubstantiated allegations of criminal behaviour or is in any other respects extremely offensive.

25. The Council has discussed of some of the complainant's correspondence to it during 2016 and early 2017, and provided quotes from this correspondence and from correspondence from it to the complainant.

26. The Council has explained that the complainant made threats and ordered the Council to respond to his correspondence by unreasonable deadlines. His use of terms like *"knocking heads together"*, his unnecessarily adversarial tone and approach, and the short deadlines he imposed made staff feel under pressure. Despite this the Council says it continued to accommodate the complainant's concerns and to help him where it could.

27. The correspondence on the same issue – the disputed land – therefore continued until early 2017 at which point the Council considered it could add nothing new or provide any further material of any substance. The Council referred the complainant to the LGO at this point. The complainant's response, sent immediately, alleged inappropriate behaviour by the Council and signed off: *"Enjoy the pictures"*. From the Council's description of the attached images it would appear to the Commissioner that, whilst seeming fairly tame, the motivation behind sending them was to insult or harass Council staff.

Serious purpose or value

28. The Council has acknowledged that the complainant is entitled to submit to it proportionate requests for information and to engage with the Council over the issues surrounding value for money in land valuation. It says its willingness to engage with the complainant is evidenced by its responses to earlier requests and by the fact that it met the complainant in 2016 to discuss his concerns. However, the Council says that the complainant has submitted such a volume of requests on one discrete and narrow topic that it represents an obsession. It considers his requests now lack any serious purpose or value and continuing to respond to them represents a disproportionate burden to the Council.

29. Having considered all the circumstances of this case the Commissioner considers that the complainant is demonstrating an unreasonable persistence regarding his concerns about this particular piece of land. At the point that the Council refused the request, she considers that the complainant's requests to the Council were demonstrating an obsessive quality in terms of the length of time he has been corresponding with it about this issue (approximately six years), the number of information requests sent, the number of people copied into the correspondence and the extreme length of some items of the correspondence. In addition, the Commissioner has seen examples of the complainant's correspondence in which his tone is somewhat hostile and to which, in at least one case, he has attached numerous images; sent, it would appear, with the intention to mock.

30. The Commissioner is therefore persuaded that the complainant's request can be categorised as vexatious and that the Council is entitled to rely on regulation 12(4)(b) to refuse to disclose the requested information. She has gone on to consider the public interest arguments.

Public interest test

Arguments in favour of disclosing the information

31. In its response to the complainant, the Council provided the following arguments in favour of disclosure:

- The presumption in favour of disclosure under regulation 12(2)
- Openness and transparency of the council
- Accountability for its actions and spending of public money

32. The complainant has not provided specific public interest arguments but it is apparent that he considers that the Council has not followed the correct process regarding its valuation and disposal of the disputed land.

From the complainant's correspondence with the Commissioner it appears that, in his view, disclosing the information he has requested might shed light on that process and any misconduct by Middlesex University and the Council.

Arguments in favour of maintaining the exception

30. In its response to the complainant, the Council provided the following arguments in favour of maintaining the exception:

- Allowing a public authority to undertaken routine business without disproportionate levels of disruption
- Level of disruption that has already been caused
- Further information will not progress the sum of knowledge about these issues
- The matter has already been extensively corresponded on by the council
- A ruling has been provided by the LGO on this issue
- Refusing the request will cause no actual detriment to the requester
- It is unlikely that answering this request will be an end to the matter taking into account past history and context of the requests

Balance of the public interest

31. The complainant has sent the Commissioner a wealth of material but none of it appears to provide evidence that supports his view that the Council, perhaps in league with Middlesex University, has deliberately mismanaged disposal of the land asset in question to his, and other residents' detriment. Such evidence would strengthen the argument that the information should be disclosed, despite the request being manifestly unreasonable.

32. The Commissioner notes that a complaint that the complainant submitted to the Council was not upheld and that, following its own separate investigation, DCLG did not uphold an appeal the complainant submitted. In addition, a further investigation by the LGO did not uphold the complaint's complaint about the way the Council had dealt with the complainant's attempt to buy the land.

33. The matter of the land behind the complainant's property is clearly of considerable interest to him, and perhaps to one or two of the other five residents whose properties this land backs on to. However, it seems to the Commissioner that the complainant's concerns have been thoroughly investigated and these investigations have satisfied any wider public interest considerations. The Council says it has been corresponding with the complainant on the matter of the disputed land for at least six years and that there is nothing new it can add to the debate or any useful information it can now provide. The Commissioner therefore agrees with the Council that, on balance, the public interest favours maintaining the exception because complying with this request would be a continuance of a burden that, in terms of this request's value, is now disproportionate.

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: 0300 1234504
    Fax: 0870 739 5836
    Email: GRC@hmcts.gsi.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 ……

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF