

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

Date: 16 December 2015

Public Authority: Leeds City Council
Address: Civic Hall
Calverley Street
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant has requested information regarding services provided to certain streets in Leeds. The Commissioner's decision is that Leeds City Council has correctly applied the exception for manifestly unreasonable requests at Regulation 12(4)(b) of the EIR.

Request and response

2. On 4 November 2014, the complainant wrote to Leeds City Council ('the council') and requested information in the following terms:

"This is a request made under the Data Protection Act 1998, to request a copy of any records and information your organisation holds about us and our property, and this area of Hollin Park West; within the timeframe of 1st March 2009 to 31st October 2014 inclusive.

Hence any information internal and external correspondence and records that is likely to be held e.g. The Director and Strategic Landlord in Neighbourhoods and Environment, Leeds East North East Homes, Bellway Homes PLC, The Chief Executive and council's legal advisers.

We request copies of any records of information you keep, with emphasis also shown towards the interaction communication and instructions between your various departments and contractors e.g.

Contractual service providers (Private and Public) any that provides a service to us i.e. Grass cutting contractors; Street and access paths sweeping/cleaning contractors; Weed repellent spraying contractors; Litter picking waste removal contractors, Dustbin and waste disposal contractors; Building contractors; Roofing contractors; Road contractors; any that may have used or referred to this area for whatever reason; Street light contractors; Service providers e.g Gas company and their contractors; Electric company and their contractors; Telephone companies B.T. and Cable and their contractors; communications between your organisation and the Ombudsman.

Please consider that this request is also made under the Freedom of Information Act, and any other applicable laws of access, so please provide any additional information about us and this area that is available under these laws.

We would like to receive the information in hard copy, and thank you for your consideration of this request.”

3. The council wrote to the complainant on 21 November 2014 requesting additional detail in order to assist in locating the information. It also said that it does not hold any information with regards to BT or the complainant's electrical or gas supplier and that he would need to contact the organisations directly for any information relating to him.
4. The complainant responded on 26 November 2014 stating that he does not have to name any particular issues or items as the onus is on the department to supply and provide the requested information. He also reiterated that what was requested is any copies held of communications or instructions between the council's various departments and companies supplying a service.
5. On the 11 December 2014 the council provided its response. It said that it does not hold information on behalf of water and sewage supply companies, telephone supply companies, electrical supply companies or gas supply companies and their contractors and that in order to obtain any information relating to his water, gas and electricity suppliers he would need to contact them direct. It said it was able to provide the information relating to 'Dustbin and waste disposal contractors' and 'communication between your organisation and the ombudsman' and enclosed a contact log.
6. The complainant then wrote to the council on 22 December 2014 stating that he did not ask for anything held by the council on behalf of service providers or their subcontractors and reiterated that what was requested was copies held by the council of correspondence and information that

may be of interest to him as specified in the request of 4 November 2014.

7. On 16 January 2015 the complainant specifically requested an internal review.
8. Following the intervention of the Commissioner (case reference FS50581393), the council wrote to the complainant on 11 June 2015 stating that the request is manifestly unreasonable due to the time it would take to provide the requested information and is therefore exempt from disclosure under regulation 12(4)(b) of the EIR. The council said that it would be happy to reconsider the request if the complainant significantly refined it to a single matter of interest. The council also wrote to the Commissioner on the same day providing reasons as to why it deemed the request manifestly unreasonable.
9. The Commissioner wrote to the complainant on 24 June 2015 providing his preliminary view that the exception for manifestly unreasonable requests at regulation 12(4)(b) of the EIR would be likely to apply due to the unreasonable costs that would be incurred by the council in locating the information from a wide variety of services across the council for a 5½ year period. He informed the complainant that where possible he prefers complaints to be resolved by informal means and requested that, in light of this, together with the assessment that the information is likely to be exempt from disclosure under regulation 12(4)(b) of the EIR, and the council's offer to reconsider the request if significantly refined, the complainant withdraws his complaint.
10. On 29 June 2015 the complainant wrote to the council refining the request. The refined request is contained within the annex to this decision notice.
11. The Commissioner wrote to the complainant on 2 July 2015. He informed him that because he has refined his request, reducing the scope of the information being sought, this should now be dealt with as a new request by the council.
12. The council responded on 22 July 2015. It quoted the refined request as follows:

"Any information the council holds relating to services provided in Hollin Park West area specifically Montague Ave, Amberton Terrace, Amberton Close, Oakwood Lane, including copies of correspondence between the council's administration team and the varied council departments involved, inclusive of correspondence between contractors and sub-contractors about us and the said area within the timeframe of 1st March 2009 to 31st December 2009."

13. The Commissioner notes that the request also referred to 23 'issues of concern' which are contained in the annex to this decision notice.
14. The council provided some information, said that some information is not held, and applied regulation 12(4)(b). The information provided was all inspections of the roads in question, details of customer contacts received regarding them, and information from the council's Waste Management and Ground Maintenance teams. The council also said that specific requests for the complainant's own personal information have been excluded from the response in accordance with Regulation 5(3) of the EIR and that any information held in respect of such matters was provided in the response to his previous Subject Access Request reference 629.
15. The complainant sent a letter stating his dissatisfaction with the response to the refined request on 10 August 2015.
16. The council provided an internal review of the refined request on 28 August 2015. It responded to the individual points in the complainant's review request and concluded that any further information requests on these matters would be classed as manifestly unreasonable under Reg 12(4)(b).
17. On 16 and 21 September 2015, the complainant wrote to the Commissioner providing reasons why he is not satisfied with the response to his refined request.
18. The Commissioner is aware that there has been numerous items of correspondence between the council and the complainant. However, for clarity, only correspondence which is most relevant to this particular complaint is detailed above.

Scope of the case

19. The complainant initially contacted the Commissioner on 12 March 2015 to complain about the way his request for information had been handled.
20. The Commissioner carried out an assessment as to whether the council had correctly handed the subject access element of the request made on 4 November 2014 and informed the council on 27 April 2015 that it appears that it has complied with its obligations under the Data Protection Act 1998 (case reference RFA0575172). The complainant was not satisfied with this response and therefore the Commissioner commenced an investigation to consider the non-personal data aspect of

his request (case reference FS50581393). That case was closed after the complainant refined his request on 29 June 2015.

21. As described above, this case was created following correspondence from the complainant stating that he is not satisfied with the response to the refined request.
22. On 1 October 2015 the Commissioner spoke to the council to clarify which parts of the new request the council wish to apply the exception at regulation 12(4)(b) to as this was not clear from the response and internal review. The council confirmed that it is applying regulation 12(4)(b) to the entirety of the refined request.
23. Therefore, the Commissioner has considered the council's application of Regulation 12(4)(b) to the entirety of the refined request made on 29 June 2015.
24. On 5 October 2015, the complainant informed the Commissioner that the personal data supplied in response to his subject access request ref 629 relates to the timeframe of 1 May 2008 to 28 February 2009 and therefore the personal data he requested as part of the refined request made on 29 June 2015, for data within the timeframe of 1 March 2009 to 31 December 2009, could not have been supplied. The Commissioner considers that some of the information requested as part of the refined request may be the personal data of the complainant. For clarity, any of the complainant's personal data is not considered in this decision notice. However, the Commissioner notes that such information has already been considered by him in case reference RFA0575172 (as referred to in paragraph 20), in which the council confirmed that all of the complainant's personal data for the period of 1 March 2009 to 31 October 2014 has been supplied to him, and the Commissioner found that it did not appear that the council had breached the Data Protection Act.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

25. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
26. The council said that the request in this case is manifestly unreasonable due to both the length of time needed to comply with the request and because of its generally vexatious nature.

27. The Commissioner deems it appropriate in this case to consider the length of time needed to comply with the request as part of the burden imposed by the request when considering whether the request is vexatious.
28. The Commissioner recognises that, in practice, there is no material difference between a request that is vexatious under section 14(1) of the FOIA and a request that is manifestly unreasonable on vexatious grounds under the EIR. The Commissioner has therefore considered the extent to which the request could be considered as vexatious.
29. The term 'vexatious' is not defined in the legislation. In *Information Commissioner vs Devon County Council & Dransfield*¹, the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
30. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"
(paragraph 45).
31. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.

¹ UKUT 440 (AAC) (28 January 2013)

32. The Commissioner has identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
33. The council said that the following factors exist in this case:
- Unreasonable persistence
 - Burden on the authority
 - Intransigence
 - Deliberate intention to cause annoyance
 - Disproportionate effort
 - Futile requests
 - No obvious intent to obtain information
34. In order to provide evidence of the above, it said that the complainant has had considerable correspondence with the council regarding this area across the previous six years (both through the FOI/EIR as well as through other correspondence) and that it is clearly apparent that his latest requests have only been submitted with the sole aim of continuing personal complaints he has with the authority. It explained that the complainant has been through the council’s own complaints process on a number of times with regard to his concerns as follows:
- In December 2011 the council investigated and responded to a complaint on these matters through stage 1 and 2 of its complaints process. Following this, its Environment & Housing Directorate continued to correspond with the complainant via e-mail, investigating any new issues where identified but the issues raised by the complainant were regarding matters the council had previously investigated and addressed.
 - In 2012, the pattern of repeat correspondence continued with the complainant e-mailing with regard to previous complaints, in particular issues relating to access paths, litter/rubbish, phone lines, and perimeter fencing. The complainant e-mailed repeatedly, notably on 5 March, 20 March, 28 March, 23 May, 1 June, 19 June,

² <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

22 June, 11 July and 19 July. Whilst the council continued to highlight the appropriate routes for making a complaint, detailing who to contact and how, the complainant continued to persistently e-mail the Director of Environment & Housing regarding issues he considered unresolved.

- In 2013, the complainant e-mailed on the 3 January, 8 February, 9, 15, and 26 April and the issues he continued to raise were previous complaints that had been responded to in full, and as a result the council reiterated that the next course of action would be to go to the Local Government Ombudsman.
 - In 2014, the council reviewed all contact and correspondence received from the complainant and checked through all on-going correspondence from the period June 2013 to March 2014. In doing so it was apparent that, in spite of the council's letter in June 2013 advising of the appropriate route for complaints and providing a single point of contact, the complainant was continuing to send a high volume of emails to the Director of Environment & Housing (notably on 1, 8, 23 July, 28 August, 24 September, 9, 15, 28 October, 12 November 2013, 10 February 2014, 3 and 20 March 2014). Once again these e-mails continued to refer to previous issues that had been investigated and responded to.
35. The council informed the Commissioner that the volume of emails to the authority meant that, in 2014, it was deemed necessary to consider the complainant as a "persistent or vexatious complainant" (in line with its complaint procedures) and that his e-mails were, consequently, blocked for a nine month period which ended in November of that year. It said that whilst this ban has now been removed, and it has since answered further information requests and complaints, it simply cannot continue to expend its limited resources repeatedly addressing the same matters.
36. The council also explained that the complainant has had his complaints on these issues considered by the Local Government Ombudsman on four separate occasions. It said that the Ombudsman did not find evidence of maladministration in respect of any of these complaints and that the latest decision stated:
- "The Ombudsman will not investigate [complainant's] complaints that he has had to contact the Council many times since February 2015 about the same issues. The individual issues about which [complainant] complains do not cause a significant enough personal injustice to him to warrant an investigation".
37. In order to further evidence the persistent and vexatious behaviour, the council noted that, in writing to the Ombudsman this September, the

complainant himself stated that he had exchanged 52 pieces of correspondence with the council on the above matter since February 2015 alone.

38. In relation to the burden on the council in responding to the request, it said that, given the age of the information requested, it is difficult to estimate just how much it would still hold. However, it said that looking at the response provided in respect of the highways service alone, there are over 70 separate contact records and that each of these records would potentially have significant amounts of further information associated with them. It explained that this information would not be held centrally (for example, correspondence may be contained within a number of individual officer in-boxes), and it is clear that locating, retrieving and extracting this information alone, would take over the appropriate limit stipulated by the FOIA. To be more precise, it said that in relation to each of the contact records, it estimates that it would take a minimum of 20 minutes per record to determine whether any information within the timeframe is held, including manually searching for archived information, and then to retrieve and extract that information giving a total time of 23 hours in relation to highways records alone. The council also provided the example that reviewing the grounds maintenance work within Parks and Countryside, would include all grass cutting schedules, requests for action and maintenance of hedges and/or trees, queries relating to overhanging vegetation, requests for action relating to boundary issues and requests for action and maintenance to the local park.
39. In addition, it said that even if were able to locate all the information requested within the appropriate limit, it would still be required to interrogate it for potentially exempt information, and redact this, particularly in respect of the personal information of individuals, which would impose a further significant burden on the council.
40. As stated in paragraph 31, the Commissioner needs to consider whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request.
41. When considered in isolation, the request in this case could appear to have serious purpose and value, that being to establish if the council has acted appropriately in respect of services it provides. However, the Commissioner considers that the fact that the Local Government Ombudsman has already considered complaints on these issues is of significant relevance in this case is. He considers that the council can establish a case for saying that the request seeks to reopen a complaint which has already been adjudicated upon by the appropriate regulator which reduces the serious purpose and value of the request. The

Commissioner considers that the complainant has crossed over the line between persistence and obsessiveness by forcing the council to repeatedly visit a six year old issue that it has already considered; an issue that has been looked at by objective body.

42. When considered in the context and history of the case, including the fact that the complainant appears to be pursuing a private matter which has already been considered, the Commissioner does not consider that the purpose of the requests justifies the disproportionate effect on the authority. The request is for any information in relation to 23 issues and the council has provided estimates to demonstrate how compliance would cause an unjustified level of disruption. The Commissioner notes that when asked to refine his request, the complainant did reduce the timeframe but also detailed 23 issues of concern. Also, in the refined request, the complainant referred to four streets but then in his request for an internal review this was widened to seven streets. This suggests to the Commissioner that providing the requested information would not satisfy the complainant. He considers that compliance with the request would be likely to result in further correspondence and has seen no evidence to suggest that providing the requested information in this specific request would satisfy the complainant or bring an end to the issue. The Commissioner can understand how responding to this request, when coupled with previous dealings on the same matter, would cause a disproportionate burden on the council.
43. Returning to the findings of the Upper Tribunal in Dransfield, and its view that a holistic and broad approach should be taken in respect of vexatious requests, the Commissioner has decided that the council was correct to deem the request vexatious. He has balanced the purpose and value of the request against the detrimental effect on the council and is satisfied that the request reflects the complainant's desire to keep the dispute alive, rather than to access recorded information, which can be considered as an inappropriate use of information rights. The Commissioner finds no substantive justification for the request, and is satisfied that compliance would prolong correspondence and constitute an unfair burden on the council. Accordingly the Commissioner finds that regulation 12(4)(b) is engaged.

The public interest test

44. All exceptions in the EIR are subject to the public interest test. The test is whether in all the circumstances of the case the public interest in maintaining the exception overrides the public interest in disclosing the information. When considering his decision the Commissioner must also bear in mind the presumption in favour of disclosure provided by regulation 12 (2).

45. In considering the public interest test, the council said that it accepts that there is always a public interest in being transparent about how it goes about providing services and in demonstrating that it is doing so in an efficient and fair way. It also accepts that members of the public will take an interest in matters concerning their particular local area and its environment, including in relation to understanding and participating in, or commenting on decisions which affect the environment. However, it said that it does not see how it can be said that there is any, or any significant, public interest in the disclosure of correspondence which occurred six years ago and which relates to a range of services provided within a relatively small part of the council's area. It said that its experience is that the matters which generate real public interest are very much "live" issues focused in the present, or at least the more recent past and usually focus on a particular service or issue, and that this request seems to concern matters only of a private interest to the complainant, and even then it is very difficult to see what private interest these requests could reasonably serve.
46. The council said that, given that the request is being used simply as a means to continue the complainants dispute with the authority, coupled with the length of time that it would take to locate the information, and that there is only a minor public interest in disclosure, it is of the view that the public interest lies firmly in ensuring that officers are able to carry out their core functions without disruption. It said that whilst it is keen to assist requesters as much as possible, it does not believe that it is a good use of public resources to require officers of the council to repeatedly address persistent and futile requests on a matter which has already been subject to independent review by the Local Government Ombudsman.
47. The Commissioner has taken into account the general public interest in transparency and accountability. He is mindful of the presumption in favour of disclosure and the need to read exceptions restrictively. He has also taken into account the burden and distraction that would be imposed on the council and the wider public interest in protecting the integrity of the EIR and ensuring that they are used responsibly. He considers that there is little wider public interest in requiring the disclosure of this information because of the age of the information, the fact that it affects relatively few people, and the fact that the matter has been considered on numerous occasions by the Local Government Ombudsman. The Commissioner is strongly of the opinion that public authorities should be able to concentrate their resources on dealing with legitimate requests rather than being distracted by requests that have little merit and where the wider public interest would not be served by the disclosure of information.

48. On balance the Commissioner finds that the public interest favours maintaining the exception as the burden imposed on the council would be significant and the complainant's request would not fulfil any wider environmental issue.
49. Therefore, 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

50. 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

51. 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.
52. 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

Jon Manners

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Annex

"Firstly, I should point out it was not me but the council who initially defined this area as Hollin Park West i.e. many years ago the council forwarded some papers describing the varied kinds of houses flats apartments in Hollin Park, and stated Hollin Park West was the only place where 5 bedroomed council houses were located - in Amberton Close; therefore Hollin Park West realistically consists of Hollin Park parade of shops situated on Oakwood Lane/ Easterly Road, Montague Ave, Laurence Gardens, Amberton Terrace, Amberton Close, Montague Rise, Oakwood lane;

However as you rightly state I usually only refer to the immediate adjacent streets of Montague Ave, Amberton Terrace, Amberton Close, Oakwood Lane, I emphasize those streets/paths and surrounds are my only interest except where comparisons are made regarding equality of services etc. and this information has previously been stressed in past years. I have not ever requested information with regards to road inspections, grass cutting, hedge cutting etc except those already mentioned. I also stress there was no mention or requests about these issues in my initial request; therefore to help matters along; **I will reduce the time frame for information from 1st March 2009 to 31st December 2009 inclusive.** I trust these issues referring to 4 streets and reduced time frame should adequately accommodate the requested information.

I wish to emphasize this request was made under DPR/ FOIA regulations and thus responded to under these regulations; I am forwarding specific details of the issues of concern within this timeframe for your convenience.

You will be aware our services have/are consistently reneged on over the years; as a consequence of this, my request is also for copies of correspondence between the council's administration team and the varied council departments involved, inclusive of correspondence between contractors and sub-contractors about us and the said area.

List of issues of concern from within this timeframe: 1st March to 31st March 2009.

Issues: Council attempts to acquire our home.

Issue: Stopping up order for Amberton Terrace and Close

Issue: Correspondence with George Mudie MP

Issue: Vermin rat infestation.

Issue: Manhole covers missing.

Issue: Weed treatment missed.

Issue: Missed green bins

Issue: Missed black bins.

Issue: Street sign Missing.

Issue: Street light Missing.

Issue: Amberton Terrace and Close roads and paths bad state of disrepair.

Issue: Gravel installed in adjoining open garden.

Issue: Water leak in footpath.

Issue: BT line.

Issue: Dumping of spoil rubbish litter waste debris collection issue.

Issue: Green palisade security fencing.

Issue: Perimeter boundary barrier fence.

Issue: Access Paths edges not cut strimmed.

Issue: Green not cut strimmed.

Adjoining Property

Issue: Guttering Blocked and overgrown

Issue; Slates missing back front.

Issue; Overgrown open adjoining gardens.

Reference: FER0598659

Issue: Mound of spoil dumped and left in adjoining open garden by workmen"