

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 August 2017

Public Authority: London Borough of Lambeth
Address: Olive Morris House
18 Brixton Hill
Lambeth, SW2 1RL

Decision (including any steps ordered)

1. The complainant has requested information about a roofing contractor from London Borough of Lambeth ("the Council"). The Council refused to comply with the request under regulation 12(4)(b) of the Environmental Information Regulations ("the EIR").
2. The Commissioner's decision is that the Council has correctly applied regulation 12(4)(b), and has complied with the requirement of regulation 9(1) to provide advice and assistance. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 22 July 2016 the complainant made the following request for information under the FOIA:

'Please provide all documentation and communications either with Fahey Roofing or mentions Fahey Roofing for the past 3 years, including but not exhaustively:

- * *Contracts*
- * *Emails*
- * *Complaints*
- * *Work orders'*

4. On 31 August 2016 the Council responded. It refused to provide the requested information citing Section 12 of FOIA as it estimated that the cost of determining whether it held the information would exceed the cost threshold of £450. The Council suggested it may be able to comply with a new request for a narrower category of information. It confirmed

'that Lambeth Housing Management do not hold a contract with Fahey Roofing and as such do not raise works orders to them, though I understand they are a sub-contractor which sometimes carry out works on behalf of our contractors - Mears.

I can also confirm that whilst we hold the information requested, we do not keep an easily accessible record of complaints and emails that mention the names of sub-contractors. To provide the information you have requested will require us to filter through the wordings of every roofing complaint and each and every email inbox of members of staff, which we consider a task that is not only unreasonable but will exceed the cost limit.'

5. On 6 September 2016 the complainant expressed her dissatisfaction and requested:

'I personally have made numerous complaints about Fahey Roofing and their poor quality of repairs, that in cases has actually caused more damage rather than actually fix the issues. What I specifically want to see:

1. Communication to and from Lambeth officers regarding the performance of Fahey Roofing

2. Communication and documentation about the replacement of metal roofs with asphalt felt roofing without planning/building permission by Fahey Roofing, as Lambeth officers must have either requested this or signed off. If Lambeth officers have not requested such replacements or signed off such actions, then Fahey Roofing and/or the main contractor have been acting unlawful and in breach of the contracts.

3. Copy of all complaints involving roof repairs/renewals where Fahey Roofing is involved.

To make your life easier, feel free to send me all communication and documentation relating to roof repairs and renewals and I will sort through for Fahey Roofing specific documentation. To extract roof related repairs & complaints should be super easy by simple database enquiries.'

6. On 1 March 2017 the complainant chased for a response.
7. The Council sent the outcome of its internal review on 2 March 2017. It considered that the Environmental Information Regulations (EIR) is the correct legislation and refused the request as manifestly unreasonable in accordance with Regulation 12 (4) (b) EIR.

'We consider that this Regulation applies due to the amount of time it would take us to collate information to respond to the request and the burden the request places on our authority.'

Scope of the case

8. On 2 March 2017, the complainant contacted the Information Commissioner to complain about the way the request for information had been handled. She argued that

'I would like to see how Lambeth council has dealt with performance issues and complaints carried out by Fahey Roofing, who is one of the sub-contractors used by Mears, a primary contractor for the Lambeth housing department. Lambeth is stating that it would take too much time to find this information. I don't believe this to be the case because

(i) There are specific employees within Lambeth housing department that deal with contract works carried by such subcontractors as Fahey Roofing, as well as managing the contracts and monitoring performance of the primary contractors. These individuals should know if there are reports or communications regarding the performance of Fahey Roofing. One such officer is called [name redacted], with whom I have had email communication in the past on the topic of Fahey Roofing's performance.

(ii) Complaints received by Lambeth housing are logged in a database, as we are all given complaint reference numbers. Any such database is searchable via queries. Thus it is quite unbelievable that they cannot either search directly for "Fahey" or download the complaints connected with roofs and then do a simple search via Excel for the word.'

9. The Commissioner therefore considers the scope of this case to be the determination of whether regulation 12(4)(b) has been correctly applied by the Council to the withheld information.

Reasons for decision

Is the information environmental?

10. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA. Under regulation 2(1)(c), any information on measures affecting or likely to affect factors of the environment listed in regulation 2(1)(b) will be

environmental information. The information requested relates to the performance of a roofing contractor. The Commissioner therefore considers that the request should be dealt with under the EIR.

Regulation 12(4)(b) – requests that are manifestly unreasonable

11. Regulation 12(4)(b) provides:

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that-

(b) the request for information is manifestly unreasonable...

12. The Commissioner has issued public guidance¹ on the application of regulation 12(4)(b). This guidance contains the Commissioner's definition of the regulation, which is taken to apply in circumstances where either the request is 1) vexatious, or 2) where the cost of compliance with the request would be too great. In this case the Council considers that circumstance 2) is applicable.
13. The EIR does not contain a limit at which the cost of compliance with a request is considered to be too great. However, the Commissioner's guidance suggests that public authorities may use The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004² ("the Regulations") as an indication of what Parliament considers to be a reasonable charge for staff time. The Regulations specify that £450 is the appropriate limit for local government authorities, and that the cost of complying with a request should be calculated at £25 per hour; this applies a time limit of 18 hours.
14. For the purposes of the EIR, a public authority may use this hourly charge in determining the cost of compliance. However, the public authority is then expected to consider the proportionality of the cost against the public value of the request before concluding whether the request is manifestly unreasonable.

Is the exception engaged?

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

² <http://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

The Council's position

15. The Council has provided the Commissioner with a detailed assessment of the time estimated to respond to the original request (*all documentation and communications either with Fahey Roofing or mentions Fahey Roofing for the past 3 years*). This is summarised below.
16. Contracts. The Council confirmed that it did not hold a contract with Fahey Roofing as it is a subcontractor.
17. Emails. The Council stated that to search emails of all staff involved in communications concerning works would include repairs staff (46), Customer Service staff (57) and complaint review staff (6). The Council estimated that to search the email archives of 109 staff at 20 minutes per inbox would be 36.3 hours.
18. Complaints. Complaints can be saved to a spreadsheet with a searchable summary of the complaint. The summary contains information such as a paste of the originating complaint letter or email, or staff summary of the complaint, as well as third party personal data such as personal information about the complainants as well as their contact details.
19. Of the 9036 complaints received in the 3 year timeframe, 15 mentioned 'Fahey' in the complaint text and 724 mentioned 'roof' in the complaint text.
20. The Council explained that each complaint would need to be examined to determine if the information met the terms of the request as complaints mentioning 'Fahey' in the complaint text may mention them as part of the chronology rather than the focus of the complaint. The Council would also need to review whether 'Fahey' had any involvement in the 724 complaints with 'roof' in the complaint text. The Council estimated that, at 5 minutes per complaint, this would take 60 hours.
21. The Council stated that if reporting only formal complaints then there are 2 with 'Fahey' in the complaint text and 258 with 'roof' in the complaint text. The Council estimated that, at 5 minutes per complaint, this would take 21.5 hours.
22. The Council explained that the use of 'Fahey' in the complaint text does not necessarily mean the complaint is solely about 'Fahey' and the Council could not consider that the complaints mentioning 'Fahey' would represent a comprehensive list of all relevant complaints.
23. Work Orders. There are 9 spreadsheets containing work orders for 2014, 2015 and 2016 for the periods April-July, July-November and December-March.

24. In one period (April to July 2016), 25,689 repairs were costed: 32 mention Fahey in the works description and 1,190 are related to roof repairs. However not all works with 'Fahey' involved will be mentioned in the works description and the 1,190 'roof' works orders would require further review to determine any 'Fahey' involvement. The works description often contains third party personal data such as their contact details.
25. The Council estimated that, at 1 minute per work order in one of the 9 spreadsheets, this would take 19.8 hours and for all 9 spreadsheets 170 hours.
26. The Council estimated that it would take a total of over 200 hours to fully comply with the request for all documentation and communications either with Fahey Roofing or mentioning Fahey Roofing for the past 3 years.
27. The complainant was advised to consider refining the request in August 2016 and she provided a further request for communication, documentation and complaints in September (see Paragraph 5 above). The Council did *'not consider that this would be a useful revision of the request as it would still require a significant amount of time for us to provide all of the information'*.

The Commissioner's conclusion

28. The Commissioner has considered the Council's submissions and recognises that a significant volume of recorded information is held that would fall within the parameters of both the complainant's original and refined request. It is therefore reasonable for the Commissioner to consider that compliance with the request would consume significant public resources and place a substantial burden on the Council.
29. On this basis the Commissioner accepts that the request is manifestly unreasonable within the meaning of regulation 12(4)(b).

The public interest test

30. Regulation 12(4)(b) is subject to the public interest test set out in regulation 12(1)(b). This specifies that a public authority may only rely on an exception if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Public interest arguments for maintaining the exception

31. The Council considers that compiling a response to this request (all communication and documentation on the Fahey subcontractor) would

be a significant diversion of resources which would not be in the public interest as it may disrupt other decision-making or other workloads. Compliance would *'involve an officer working on the request for approximately 8 weeks...and would seriously and significantly affect the efficiency of the wider team'*.

32. The Council recognises that the complainant has a particular interest in this subject but *'would like to add that the public interest in disclosure should relate to the wider public; not one individual's personal interest in an issue'*.

Public interest arguments for disclosure

33. The complainant has stated her concern over the performance of a subcontractor and explained how the Council should be able to readily access such information.

Balance of the public interest test

34. The Commissioner recognises the inherent importance of accountability and transparency in decision-making within public authorities, and the necessity of a public authority bearing some costs when complying with a request for information. However, in considering the public interest test for this matter, the Commissioner must assess whether the cost of compliance is disproportionate to the value of the request.
35. The Commissioner notes that searches for the name of the subcontractor found 15 out of 9036 complaints in the 3 year period and 32 out of 25,689 costed repairs in one 4-month period of work orders. The Commissioner accepts that there may be further mentions of the name 'Fahey' within the searches for 'roof' complaints (724) and work orders (1190).
36. Although the Commissioner accepts that the complainant has a concern about the performance of the subcontractor, this would not appear, from the Commissioner's preliminary view of the numbers (and small percentage) of complaints and work orders found in the search for 'Fahey', to be of wider public interest.
37. Whilst the Commissioner has noted the complainant's public interest arguments, the evidence available to the Commissioner suggests that the large volume of records held would clearly require significant public resources to be applied in fully complying with the request. As such, there is no clear evidence available to the Commissioner that indicates that the decision making process has been inappropriate.

38. Having considered the relevant factors in this matter, the Commissioner has concluded that the public interest favours the maintenance of the exception.

Regulation 9 – Advice and assistance

39. Regulation 9(1) provides that:

A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

40. This regulation places a duty on a public authority to provide advice and assistance to someone making a request. The Commissioner considers that this includes assisting an applicant to refine a request if it is deemed that answering a request would otherwise incur an unreasonable cost.
41. The Commissioner recognises that the Council invited the complainant to refine her request in August 2016: *'If you are able to specify the actual information you seek with regards to emails and complaints, I will be happy to assist you further'*.
42. On this basis the Commissioner considers that the Council has complied with regulation 9(1).

Other Matters

43. Although they do not form part of this decision notice, the Commissioner notes that the Council was not able to readily retrieve the information requested in this case.
44. The [section 46 code of practice](#) covers good records management practice and the obligations of public authorities under the Public Records Acts to maintain their records in an ordered and managed way, so that they can readily retrieve information when it is needed.
45. These codes of practice are not directly legally binding but failure to follow them is likely to lead to breaches of the Act.
46. Therefore, the Commissioner expects the Council to consider making improvements in the availability of the contents of their record keeping in the future so that they are able to readily retrieve requested information and be able to monitor the performance of contractors and their subcontractors.

Right of appeal

47. 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

48. 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.
49. 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

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