

## Environmental Information Regulations 2004 (EIR)

### Decision notice

**Date:** 16 February 2017

**Public Authority:** The London Borough of Hackney

**Address:** Maurice Bishop House  
17 Reading Lane  
London. E8 1HH

### Decision (including any steps ordered)

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1. The complainant requested information from the London Borough of Hackney in relation to its decision to apply for planning permission to build a temporary school at Audrey Street Park Depot E2 8QH. The London Borough of Hackney withheld the information under Regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that the London Borough of Hackney has correctly applied Regulation 12(4)(b) of the EIR.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

### Request and response

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4. On 9 June 2016 the complainant narrowed down and refined his various earlier requests and wrote to the London Borough of Hackney (the Council) in the following terms:

*"1. What activities did Hackney property dept and Education property dept carry out between 19 March 2012 and May 30<sup>th</sup> 2015 in relation to preparing either to house a temporary school on Audrey St yard or use it for some other purpose than parkland?"*

*2. What other sites were/are being considered for the temporary school in Audrey St yard?"*

*3. In March 2007 a planning application for a temporary school in Audrey St yard was approved by Hackney Planning subcommittee. The*

*application included a Section 106 provision that the land be put back to parkland after the school was demounted'.*

5. The Council responded on 6 July 2016. It stated that it was withholding the requested information under Regulation 12(4)(b) of the EIR.
6. On 11 July 2016 the complainant requested an internal review in respect to the Council's response to question 1 of his request only, namely the activities carried out in relation to Audrey St Yard.
7. Following an internal review the Council wrote to the complainant on 15 August 2016. It stated that it was upholding its original decision that the request was manifestly unreasonable under Regulation 12(4)(b) of the EIR.
8. The complainant responded on 17 August 2016 disputing the Council's application of Regulation 12(4)(b). The Council replied on 22 August stating it was maintaining its position.

### **Scope of the case**

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9. The complainant contacted the Commissioner in August 2016 to complain about the way his request for information had been handled. In particular, its application of Regulation 12(4)(b) of the EIR.

### **Chronology**

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10. The Commissioner discussed the matter with the complainant over the telephone on 1 September 2016 when he explained some of the background to his request and why he was unhappy with the Council's decision to refuse it under Regulation 12(4)(b) of the EIR. However, as a possible compromise, the complainant indicated that he would be prepared to refine his request further to limit it to any discussion by the Council's head of Education Property between March 2012 and May 2015 as to any plans to use the Audrey Street plot for a temporary school or any other purpose.
11. On 30 September 2016 the Commissioner contacted the Council and put the complainant's compromise proposal to them.
12. The Council responded on 7 October 2016 stating it did not believe consideration of a further refined request would satisfy the complainant. It said it was satisfied that the search criteria it had applied to his earlier request was appropriate and adequate and accordingly said it was maintaining its position that the request was manifestly unreasonable.

This was due to the unreasonable financial costs and the significant diversion of public resources involved in dealing with it and the disproportionate or unjustified level of disruption, irritation or distress and administrative burden to the Council.

## Background

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13. In 2016 the Council submitted a planning application<sup>1</sup> to use the Audrey Street Depot plot for a temporary school while it built two brand new secondary schools to help meet the needs for more local school places.
14. The site, in Audrey Street, was historically used as a depot by the Council's parks team, and was used as temporary accommodation for Bridge Academy in 2007, while its permanent site was built. After that the land was returned to its original use in or about 2008.
15. The proposals are restricted to the hard-standing area within the existing fence line, which comprises 2.33% of the total park site. They do not include the nearby BMX track or the orchard area to the south of the depot site. Arrangements have been discussed with existing interim users of the depot site to relocate them elsewhere within the park.
16. The temporary site would initially provide accommodation for the school proposed for the Britannia Leisure site. It would open in 2017 and move into its permanent site in 2020, at which point pupils starting at the second secondary school would move in, until the proposed Benthall site opens in 2022.
17. The site sits in Hackney Road Conservation Area and is a designated site of importance for nature conservation.
18. The Council recommended that planning permission be granted for this development at its Planning Sub-Committee meeting on 9 November 2016.<sup>2</sup>

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<http://idox.hackney.gov.uk/WAM/showCaseFile.do;jsessionid=8E9914F19A2611983203C8E59ADBB433?action=show&appType=Planning&appNumber=2016/2600>

<sup>2</sup> <http://mginternet.hackney.gov.uk/documents/s51790/Report.pdf>

## Reasons for decision

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### **The Environmental Information Regulations 2004 – The relevant law**

19. The Council has dealt with the complainant's request under the EIR on the basis that the information requested is environmental.

20. Under Regulation 2(1) of the EIR environmental information is defined as;

*'any information in written, visual, aural, electronic or any other material form on: (a) the state of the elements of the environment such as ....land, landscape and natural sites including wetlands...biological diversity...(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements'.*

21. The requested information relates to the potential planning development on a piece of land known as Audrey Street Yard in Hackney, namely the erection of a building to accommodate a school for a temporary period.

22. The Commissioner is satisfied that this information is environmental as it is a measure likely to affect the state of the elements of the environment, namely land and landscape and is also a measure designed to protect those elements. The Commission has therefore concluded that the EIR is the relevant law in this case.

### **Regulation 12(2) - Presumption in favour of disclosure**

23. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure.

### **The Exceptions**

24. The Council has applied the exception under Regulation 12(4)(b) to withhold the requested information.

### **Regulation 12(4)(b) of the EIR – manifestly unreasonable**

25. Regulation 12(4)(b) of the EIR states that;

*'a public authority may refuse to disclose information to the extent that-*

*(b) the request for information is manifestly unreasonable'*

26. 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 an obvious or tangible quality to the unreasonableness of complying with the request.
27. The exception will typically apply in one of two sets of circumstances; either where a request is vexatious or where a compliance with a request meant a public authority would incur an unreasonable level of costs, or an unreasonable diversion of resources.
28. Unlike the Freedom of Information Act 2000 (FOIA) and specifically section 12, the EIR does not contain a provision that exclusively covers the cost and time 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 FOIA. This means that there are other considerations that should be taken into account when deciding whether the exception applies to environmental information. These include the following:
  - 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 FOIA.
  - The proportionality of the burden that compliance would place on the public authority's workload, bearing in mind the size of the public authority and its ability to allocate resources to dealing with an information request.
  - The importance of the requested information, and the underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue.
29. The Commissioner considers that public authorities may be required to accept a greater burden in providing environmental information than other information. Unlike section 12 of FOIA, regulation 12(4)(b) of the EIR is also subject to the public interest test.
30. In this case the Council has argued that disclosing the requested information would be manifestly unreasonable in view of the time, cost and effort required to identify, locate, retrieve and extract it.

31. The Council has also argued that disclosing the requested information would be manifestly unreasonable because the request itself is vexatious.
32. The Commissioner will now deal with each aspect of manifestly unreasonable in turn.

### **Manifestly unreasonable in terms of costs and diversion of resources**

33. The Council has referred to the cost limit set out under the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as a starting point to assess the reasonableness of this request. Whilst these Regulations do not apply under EIR, the Commissioner has recognised in her Guidance that "...we take these regulations to give a clear indication of what Parliament considered to be a reasonable charge for staff time."
34. The regulations stipulate that a cost estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request - 24 hours work for central government departments; 18 hours work for all other public authorities.
35. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
  - (a) determine whether it holds the information
  - (b) locate the information, or a document which may contain the information
  - (c) retrieve the information, or a document which may contain the information, and
  - (d) extract the information from a document containing it.
36. The Council estimated that it would take 243 hours and 35 minutes of staff time at a financial cost of £6,088.75 based on an hourly rate of £25 to identify, locate, retrieve and extract the requested information. It therefore believes that the burden in terms of the cost and the significant disproportionate diversion of resources to comply with the request would outweigh any benefit of disclosure to the public.
37. The Council arrived at its estimate by carrying out searches which it believed were appropriate and adequate. Specifically, it used two search terms as it wanted to be as definite as possible. The first one was

'Audrey' and 'Audrey Street'. The second was 'drawings', 'drawing', 'plans' and 'feasibility'. The results are shown in the table below.

| Search term 1 | Search term 2 | Returned files  |
|---------------|---------------|---|
| Audrey        | drawings      | 4,729   |
| Audrey        | drawing       | 4,781   |
| Audrey Street | drawings      | 4,765   |
| Audrey        | plans         | Full text search limit exceeded – please refine your search and try again |
| Audrey Street | plans         | Full text search limit exceeded – please refine your search and try again |
| Audrey        | feasibility   | 4,665   |
| <b>TOTAL</b>  |               | <b>18,940</b>   |

38. The Council has stated that it only searched its eDOCS system and did not search email accounts or identify hard copy files. It has also stated that the search results in the above table might include overlaps of files which would require checking.
39. For the purpose of its estimate the Council has used the highest search result from the above table of 4,781. The Council has assessed it will take 3 minutes to assess each search result which would result in approximately 243 hours and 33 minutes of staff time ( $4,781 \times 3 \div 60 = 243.55$  hours). Based on an hourly rate of £25 per hour the Council has calculated that the financial cost of staff time would be £6,088.75 ( $243.55 \times £25$ ).
40. Having considered the financial cost and the significant diversion of resources required to comply with the request, the Council has concluded that it is manifestly unreasonable under Regulation 12(4)(b) of the EIR.
41. Having satisfied itself that Regulation 12(4)(b) was engaged, the Council went on to consider the public interest test under Regulation 12(1)(b).

42. The Council accepts there is a public interest in the disclosure of environmental information because it supports the right of everyone to live in an adequate environment and ultimately contribute to a better one. The Council also acknowledges there is a public interest in the disclosure of the requested information as it relates to a particular planning application which is somewhat controversial<sup>34</sup>.
43. However, the Council believes that any arguments in favour of disclosure are outweighed by the financial cost and significant diversion of resources necessary to deal with the request. The Council has pointed out that this diversion of resources would involve a number of officers from its Education Property Team being taken away from their core duties for an extended length of time.
44. The complainant has disputed the time taken to identify, locate, retrieve and extract the requested information. The advice he received from his IT manager was that the average search time per file would be 45 seconds. He has also disputed the number of files to be searched and suggested that the search criteria should have been limited to 'Audrey Street Depot or the 'old Audrey Street Depot' which is how the site is referred to by the Council internally.
45. He also made the point that given the volume of digital files it was highly improbable that there were no physical files. He therefore suggested to the Council that it would be quicker to search the physical files. The complainant also questioned the appropriateness of the Council's searches and suggested that it was highly unlikely that a full search of all potentially relevant electronic files would be required to answer his request.

### **The Commissioner's findings on whether the exception applies**

46. The Commissioner accepts that the time and cost of considering if the information requested is excepted from disclosure can be a contributory factor when deciding if Regulation 12(4)(b) of the EIR applies. This is also the case with Section 14(1) of FOIA, which covers vexatious

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<sup>3</sup> <http://www.standard.co.uk/news/london/hold-for-weekend-campaigners-warn-all-london-parks-under-threat-by-plans-to-build-new-school-in-a3313051.html>

<sup>4</sup>

[http://www.hackneygazette.co.uk/news/education/ire\\_over\\_hackney\\_council\\_s\\_school\\_in\\_park\\_bid\\_1\\_4573303](http://www.hackneygazette.co.uk/news/education/ire_over_hackney_council_s_school_in_park_bid_1_4573303)



requests, but not Section 12 because this limits the activities that can be considered as part of a costs estimate. Broadly speaking, the Commissioner's approach to the inclusion of redactions costs in Regulation 12(4)(b) and Section 14 will be the same.

47. At paragraph 70 of the Commissioner's guidance<sup>5</sup> on dealing with vexatious requests, she explains that section 14(1) may apply where a public authority is able to make a case that the amount of time required to review and prepare the requested information for disclosure would impose a grossly oppressive burden on the organisation.
48. The Commissioner considers that the term 'grossly oppressive' has the same connotation as 'unreasonable' in the sense of complying with a request.
49. In view of the fact that the complainant's request is couched in general terms and seeks information over a fairly lengthy period time, the Commissioner considers that the Council's search parameters are appropriate and adequate. She also considers that the Council's estimates of time and cost are reasonable. The Commissioner has noted that the Council's searches did not include the physical paper files which would obviously add to the time and expense to be incurred.
50. The Commissioner notes the complainant's view that the number of files identified by the Council to be searched is too high and that the time estimated to review them is too long. The complainant's view of the number of files to be reviewed is speculative and there is no evidence to suggest that using his suggested search criteria would reduce the number of files to be reviewed. Furthermore, even if the complainant is correct that the time taken to review each file would be 45 seconds rather than 3 minutes, this would still entail just over 60 hours of staff time.
51. The Commissioner's conclusion is that it would be manifestly unreasonable under Regulation 12(4)(b) of the EIR for the Council to deal with the complainant's request in view of the cost and diversion of resources required to identify, locate, retrieve and extract the information. The Commissioner has gone onto consider the public interest under Regulation 12(1)(b).

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<sup>5</sup> <https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf>

52. As explained in the introduction to the public interest in her guide to regulation 12(4)(b)<sup>6</sup>, the Commissioner expects that many of the relevant issues will have already been considered when deciding if the exception is engaged. This is because engaging the exception includes some consideration of the proportionality and value of the requests. Nevertheless, the public interest test must be applied and under regulation 12(2) the EIR provides for an express presumption in favour of disclosure.
53. In finding that the exception was engaged, the Commissioner recognised that there was a strong public interest in the information. Previous decisions of the Information Tribunal have emphasised the importance of public participation in, and engagement with, planning decisions and have stated that this is reliant on the public having access to the viability information being considered by a planning authority.
54. The Commissioner accepts that there is a public interest in disclosing environmental information regarding planning applications and accepts that the one in respect of the Audrey Street Yard is controversial. The controversy surrounds as to whether the site is the most suitable one for the temporary school, whether other alternative sites were given serious consideration, whether the school will be returned to public use in 2022 and finally for how long the Council had been considering the site for another temporary school in 2017.
55. The Commissioner accepts that there is a public interest in Council using its resources in a proportionate and cost effective manner. Furthermore, the Council has pointed out that the planning process for this particular application has allowed for public consultation and participation<sup>7</sup>.
56. On balance the Commissioner finds that the public interest in maintaining the exception outweighs the public interest in disclosing the information. Accordingly, the Commissioner upholds the Council's application of Regulation 12(4)(b) of the EIR on the basis that that the

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<sup>6</sup> <https://ico.org.uk/media/1615/manifestly-unreasonable-requests.pdf>

<sup>7</sup> Audrey-St-Exhibition-Boards-Final-14-06-16

<http://idox.hackney.gov.uk/WAM/doc/Other-507458.pdf?extension=.pdf&id=507458&location=VOLUME1&contentType=&pageCount=1>

request is manifestly unreasonable in terms of the cost and diversion of resources burden.

57. The Commissioner notes that when refusing a request for environmental information under regulation 12(4)(b) on the grounds of burden, a public authority will normally be expected to provide the applicant with appropriate advice and assistance. This will often take the form of advising the applicant how the request might be refined to make it more manageable.
58. In view of the complainant's previous requests about the same issue (which are referred to below) and the fact that he has already refined his request, the Council does not believe any reduction in the search criteria or the number of files to be reviewed would satisfy the complainant's complaint. As such, the Commissioner has found that for practical purposes the advice and assistance requirement has been disposed of in this case.

### **Manifestly unreasonable where a request is vexatious**

59. The Commissioner recognises that, on occasion, there can be 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 Regulation 12(4)(b) of the EIR. The Commissioner has therefore considered the extent to which the request could be considered as vexatious.
60. The Commissioner has published specific guidance on vexatious requests<sup>8</sup>. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.

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<sup>8</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

61. While section 14(1) of the FOIA effectively removes the duty to comply with a request, Regulation 12(4)(b) of the EIR only provides an exception. As such the EIR explicitly requires a public authority to apply a public interest test (in accordance with regulation 12(1)(b)) before deciding whether to maintain the exception. The Commissioner accepts that public interest factors, such as proportionality and the value of the request, will have already been considered by a public authority in deciding whether to engage the exception, and that a public authority is likely to be able to 'carry through' the relevant considerations into the public interest test.
62. However, Regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect, this means that the exception can only be maintained if the public interest in refusing the request outweighs the public interest in responding.
63. There is no definition of the term "vexatious" in the Freedom of Information Act 2000. However, the issue of vexatious requests has been considered by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield* (GIA/3037/2011). In the Dransfield case the Tribunal concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of formal procedure." The Tribunal identified four factors likely to be relevant in vexatious requests:
  - The burden imposed by the request on the public authority and its staff
  - The motive of the requestor
  - Harassment or distress caused to staff
  - The value or serious purpose of the request.
64. The Upper Tribunal's decision established the concepts of "proportionality" and "justification" as being central to any consideration of whether a request for information is vexatious.
65. The key to determining whether a request is vexatious is a consideration of whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear it is necessary to weigh the impact of the request on the public authority against the purpose and value of the request. To do this a public authority must be permitted to take into account wider factors associated with the request, such as its background and history.

66. The Council has prepared a schedule of the complainant's previous 12 enquiries in relation to Audrey Street Yard (sometimes referred to as the 'Hackney Park Depot') during the 4 month period from March to June 2016 to show the background and history of his enquiries and to put his current request into context. A summary of this schedule is shown below.

| No: | Date     | Information requested in relation to   | The Council's response   |
|-----|----------|--|--|
| 1   | 09/03/16 | The proposed development of the Haggerston Park Depot as a temporary school                        | Request rejected under Section 12 of the FOIA on the grounds of the costs exceeding £450.  |
| 2   | 21/03/16 | The planning application for Haggerston Park Depot   | Aggregated and Refused under regulation 12(4)(b) of the EIR.   |
| 3   | 04/04/16 | The report in 'Hackney Today' concerning the development of Audrey Street Depot                    | Aggregated and Refused under regulation 12(4)(b) of the EIR.   |
| 4   | 07/04/16 | The Hackney Parks management plan 2011-16 including the entire file on the old Depot Audrey Street | This was closed as it was processed under a subsequent request in which it was duplicated.   |
| 5   | 11/04/16 | The proposed development of the Haggerston Park Depot as a temporary school                        | Aggregated and Refused under regulation 12(4)(b) of the EIR.   |
| 6   | 12/04/16 | The Bethnall Road School Consultation Document 12/2015   | Aggregated and Refused under regulation 12(4)(b) of the EIR.   |
| 7   | 12/04/16 | The Council's decision to refuse a previous request under section 12 FOIA                          | This was a request for personal information and as such this was closed on the Council's FOI system and processed as a subject access request. |
| 8   | 18/04/16 | Land and Properties owned by the Council &   | Withdrawn by the complainant on the basis  |

|    |          |  |   |
|----|----------|--|---|
|    |          | associated organisations   | that the Council responded to his request dated 9 June 2016 which is the subject of this Decision Notice.     |
| 9  | 18/04/16 | The former Ann Tayler Children's Centre                              | Request rejected under Section 12 of the FOIA on the grounds of the costs exceeding £450.                     |
| 10 | 05/05/16 | Haggerston Park  | Responded to – no exemptions.   |
| 11 | 11/05/16 | Haggerston park and Audrey Street Yard as a temporary school         | Request rejected under Section 12 of the FOIA on the grounds of the costs exceeding £450.                     |
| 12 | 22/06/16 | The use and development of Audrey Street Yard for a temporary school | Request rejected under Regulation 12(4)(b) of the EIR on the basis of cost and diversion of resources burden. |

67. The Council has pointed out that requests numbered 1, 2, 3, 5, 7, 10, 11 and 12 above all relate to Audrey Street Yard. Furthermore, it stated that these requests do not simply seek one piece of information but frequently raise three to six matters to be responded to. The Council has added that request 1 above made 16 separate points.
68. The Council has stated that it is axiomatic that the number and nature of these request has placed a vast administrative burden on its resources. This is in addition to the email contact between the complainant and the Council's officers.
69. The Council does not believe that the complainant's continuous and related requests are entirely reasonable and considers that they have placed an unjustified level of disruption to its services and a significant burden on its officers, particularly, in its Education Property team.
70. The Council believes the complainant's motive in this case is to obtain evidence to support a legal action against it regarding its planning application in respect of Audrey Street Yard.
71. In view of all the circumstances of the case, the Council believes the request is manifestly unreasonable. Also, it has stated that the public

interest in disclosure is very limited and insufficient to outweigh the public interest in maintaining the exception in Regulation 12(4)(b) of the EIR.

72. The Commissioner will now consider each of the four factors identified by the Tribunal in the Dransfield case as being likely to be relevant in vexatious requests:

**The burden imposed by the request on the public authority and its staff**

73. The Council has provided an estimate (the full details of which are specified above) that it will take 243 hours and 35 minutes for its staff to identify, locate, retrieve and extract any information falling within the scope of the complainant's request at a financial cost to it of £6,088.75. The Council believes this would impose a significant burden on it in terms of the financial cost and a diversion of resources.
74. The complainant has disputed the Council's estimate regarding the number of files to be searched and also the time taken to review each one.
75. The complainant has also made the point that given the volume of digital files it was highly improbable that there were no physical files. He therefore suggested to the Council it would be quicker to search the physical files.
76. As stated above, Commissioner has concluded that the Council's search parameters were appropriate and adequate and its time and cost estimates were reasonable. She has therefore found that dealing with the complainant's request would place a significant burden on the Council in terms of the cost and diversion of resources in dealing with it.

**The motive of the requestor**

77. The complainant explained that his motive for making his request was to ascertain whether between March 2012 and May 2015 the Council had discussed or agreed any plans to build another temporary school on the Audrey Street Yard site. The complainant said had he been aware of any such plans he would not have proceeded to his purchase and development of a plot of land adjacent to the site.
78. The Council has stated its belief that the motive of the complainant's request is to obtain evidence to support a legal action against it in respect of the proposed Audrey Street Yard development.
79. The Commissioner accepts that the complainant has a genuine motive to request the information.

## **The value or serious purpose of the request**

80. By way of background information, the complainant explained to the Commissioner that after a number of years negotiating with the Council, he was granted planning permission to buy and develop a plot of land adjacent to the Audrey Street Yard site. When he submitted his planning application he was under the impression that the Audrey Street Yard site was to remain as parkland and not built upon. He is aware that after the site was used to house a temporary school in 2007/2008 the land was returned to parkland.
81. The complainant also believes that disclosure of the information he has requested will reveal whether the Council considered any or all of the alternative sites for the building of the alternative school.
82. It is apparent from information in the public domain that the Council's proposal is not universally popular. A number of local users of and residents near the site believe that it should not be used to house the temporary schools as there were a number of other suitable alternatives<sup>910</sup>.
83. The Commissioner accepts that the request has some value and purpose in demonstrating that the Council has been open and transparent in its decision to apply for planning permission.
84. However, the Commissioner also accepts that opportunity has been given for public participation in the Council's application through consultation and discussion in the planning process.
85. It is apparent from the above summary prepared by the Council that the complainant has submitted a number of requests for information which relate to its decision to apply for planning permission to build a temporary school on the Audrey Street Yard site. By making a number of related requests over a relatively short period of time the complainant has exhibited a degree of tenaciousness and persistence in his attempts to find fault with the Council's decision to apply for planning permission.

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<sup>9</sup> <http://www.standard.co.uk/news/london/hold-for-weekend-campaigners-warn-all-london-parks-under-threat-by-plans-to-build-new-school-in-a3313051.html>

<sup>10</sup>

[http://www.hackneygazette.co.uk/news/education/ire\\_over\\_hackney\\_council\\_s\\_school\\_in\\_park\\_bid\\_1\\_4573303](http://www.hackneygazette.co.uk/news/education/ire_over_hackney_council_s_school_in_park_bid_1_4573303)



### **Harassment or distress caused to staff**

86. The Council has not provided any specific evidence that dealing with the complainant's request would cause its staff any harassment or distress apart from the obvious distraction of dealing with matters outside their normal remit.

### **The public interest**

87. The Commissioner will now go on to consider whether the public interest is best served by the Council complying with the complainant's request or whether the public interest lies in maintaining the application of the exception under Regulation 12(4)(b) of the EIR.

### **Factors in favour of disclosing the requested information**

88. The Commissioner has taken into account the presumption of disclosure under Regulation 12(2) of the EIR. She has also given weight to the principle that compliance with complainant's request for information and the disclosure of information sought would potentially increase the public's understanding of the actions taken by the Council and of the processes by which it makes its decisions.

89. In relation to the Council's decision to apply for planning permission to build a temporary school, the Commissioner accepts that compliance with the complainant's requests and disclosure of information sought, might increase transparency in the Council's decision making procedures and thereby serve to promote greater accountability.

### **Factors in favour of maintaining the exception**

90. The Commissioner has taken into account that ample opportunity has been given through the planning process for public consultation and also the opportunity for comments about or objections to its planning application to be made.

91. The Commissioner is also mindful that the complainant is aware of his legal rights to challenge the Council's planning permission when granted by way of a Judicial Review.

92. The Commissioner has taken into account the fact that the complainant's current and previous requests have placed a significant burden on the Council and as a result caused disruption and unwarranted use of its increasingly limited resources.

### **Balance of the public interest**

93. The Commissioner considers that the factors in favour complying with the request are outweighed by those in favour of maintaining the exception. Accordingly, she finds that the Council is entitled to rely on Regulation 12(4)(b) in respect of the complainant's request on the basis that it is vexatious.

### Right of appeal

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94. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

95. 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.

96. 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 .....

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**