

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

**Decision notice**

**Date:** 22 March 2019

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

**Decision (including any steps ordered)**

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1. The complainant has requested information on a specific planning application with respect to the actions of a named officer.
2. The Commissioner's decision is that the London Borough of Barnet ('the Council') was entitled to rely on regulation 12(4)(b) – the request for information being manifestly unreasonable – to refuse to comply with the request.
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 6 April 2018 the complainant requested the following information:  
  
"This request relates to a fraudulent, retrospective planning application which slipped through rather easily. It relates to (a specified address), reference number H/03732/11. The case officer was (a named officer).  
  
1. Please can you confirm that this case was referred to The Monitoring Officer around mid-December 2017?  
  
2. Please can you confirm that the Monitoring Officer has thoroughly investigated this case, with particular reference to the conduct of the Senior Planning Officer, (named officer)?"

3. Please can you confirm the Monitoring Officer's conclusions about the conduct of (named officer) in this case?
  4. Please can you confirm that the Monitoring Officer will be producing, or has produced, a report about this case and the conduct of (named officer), for the Council?
  5. Please can you provide me with a copy of this report?
  6. Please can you confirm to whom, or to which committee of the council this report will be provided, and where and when?
  7. If the Monitoring Officer will not be producing, or has not produced, a report about this case and the conduct of (named officer), Please could you explain why not?"
5. The Council responded on 4 May 2018. It refused the request in reliance of regulation 12(4)(b).
  6. The complainant requested an internal review on 23 May 2018. Following an internal review the Council wrote to the complainant after 9 July 2018. It stated that it upheld its initial response.

## **Background**

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7. The wider context and history relates to a case that dates from 2011 and has already been through the Council's complaints procedure concerning an allegation that the Local Planning Authority did not follow due process during the determination of a planning application.
8. The grievance with the Council regarding this matter has been through the Council's corporate complaints procedure, Stage 1, Stage 2 and Stage 3 and the Local Government Ombudsman decided that no investigation was required as there was no evidence of maladministration.
9. The complainant argues that the investigations conducted do not provide a response regarding the named officer's conduct.
10. The Council has handled the request under the EIR as it relates to a planning matter. The Commissioner accepts this as the appropriate legislation in the circumstances of this case.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 30 July 2018 to complain about the way his request for information had been handled.
12. The Commissioner considers the scope of her investigation to determine whether the Council has appropriately applied regulation 12(4)(b) to the request.

## Reasons for decision

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### Regulation 12(4)(b) – manifestly unreasonable requests

13. 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.
14. 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.
15. A request may be manifestly unreasonable for two reasons; either where it is vexatious or where compliance with a request means a public authority would incur an unreasonable level of costs, or an unreasonable diversion of resources.
16. There is no definition of the term "vexatious" in the Freedom of Information Act, however, the nature 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."
17. The judgment proposed four broad issues that public authorities should regard when considering whether requests are vexatious:
  - (i) the burden of meeting the request;
  - (ii) the motive of the requester;
  - (iii) the value or serious purpose of requests; and
  - (iv) any harassment or distress caused.
18. The Commissioner's guidance on vexatious requests suggests that the key question a public authority must ask itself is whether the request is

likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. In addition, where relevant, public authorities also need to take into account wider factors such as the background and history of the request.

### **The Council's view**

19. The Council explained to the Commissioner that for it to respond further to the complainant in circumstances where a response has already been provided would represent a diversion of Council resources which it cannot justify.
20. It advised that the requests from the complainant are centred on the same issue, that being an allegation that the Local Planning Authority did not follow due process with a particular planning application. The Council stated that the complainant has not asked varied questions across the Council's range of responsibilities nor on a single, general issue but rather on an issue with which the complainant has a personal history and a vested interest. The Council referenced the Dransfield case and related the request here to that of an individual having an 'idée fixe'.
21. The Commissioner asked the Council to explain any relevant wider context or history to the request. The Council advised that the request relates to the case referenced above, dating from 2011. The grievance with the Council regarding this matter progressed through the Council's corporate complaints procedure, Stages 1, 2 and 3 and was referred to the Local Government Ombudsman ('LGO'). The LGO decided that no investigation was required as there was no evidence of maladministration. In 2016 the then Chief Executive of the Council asked a principal lawyer to review the complaint and the Council's Corporate Anti-Fraud Team have also considered the matter; both concluding that it would not be in the public interest to further pursue the issue.
22. The Council explained further that, in February 2017, in accordance with the Council's Unreasonably Persistent Complaints Policy, it decided that in the light of the complaint's repeated serious accusations made against officers it would no longer respond to any further correspondence on the same matter. The Council considered that it had responded to the complaints made, clarified its position and had nothing further to add.
23. The Council advised the Commissioner that it had given consideration to whether there is a serious purpose to this specific request which would persuade the Council to respond. The Council acknowledges that the issue here is clearly of importance to the complainant:

"it does not have a wider significance, particularly as the LGO has ruled there was no wrongdoing on the council's part in its handling of the matters to which the request relates. The council characterises this as pursuing a relatively trivial or highly personalised matter of little benefit to the wider public."

### **The complainant's view**

24. The complainant explained his position to the Commissioner and provided much material in support of his view. He explained that he has been pursuing:

"a planning fraud case with Barnet Council since 2015, when I discovered, and provided evidence, that a Senior Planning Officer had deliberately allowed a Retrospective Planning Application, which he knew to be fraudulent, to go through."

25. The complainant believes this to be "Misconduct in Public Office, Gross Misconduct and aiding and abetting fraud." He considers that the Corporate Complaints Procedure is a "sham".

26. The complainant advised the Commissioner that he had "pursued the matter rigorously". In so doing he believes he discovered issues with the wider planning system and the Council's senior management. The complainant states:

"They will cite the mass of correspondence, which would have been utterly unnecessary had they been honest and answered the above questions in the first place."

27. In challenging the Council's response to his request the complainant provided a detailed explanation of his dissatisfaction. In that correspondence he stated that his case was specifically about (a named individual) and complained that the Council had addressed matters in generalised terms not directly commenting on the named individual.

28. As an aside from the main consideration of this decision notice the Commissioner would comment that in responding to an FOI request she would not expect, in any event, the Council to discuss the conduct or investigation of one of its officers with the general public.

29. The complainant argues that the LGO was not:

"involved with the case against the officer and its evidence. They did, very early on, provide some incorrect, dishonest and irrelevant information, and refused to explain why they would not investigate and why they saw no maladministration where a fraudulent planning application, a retrospective one at that, came through the system easily, despite all the safeguards."

30. The complainant considers that he has received responses but no answers to his questions. He explained:

"I am entitled to the information as per the Complaints Procedure and how can I put the matter to bed when I am refused the Council's conclusions?"

**The Commissioner's view**

31. The Commissioner understands that the complainant is frustrated by his contact with the Council over many years, concerning the outcome of a planning application which affects him personally. This frustration has led to a significant volume of correspondence with the Council. The Commissioner has viewed some of this correspondence. She notes that the complainant has not made a significant number of specific FOI requests to the Council, notwithstanding that any request for information may be deemed an FOI request. However, she has considered the request deemed to be vexatious in the context of the whole episode regarding the matter of planning permission.
32. The Commissioner has considered the request in respect of the four points set out above in paragraph 17.
33. Firstly, she is satisfied that the volume of contact from the complainant has created a burden for the Council. She considers that the Council has made reasonable attempts to address the complainant's concerns over a prolonged period and in some detail.
34. Secondly, the Commissioner understands that the complainant considers that he is entitled to have his questions answered because he owns property which he considers has been adversely effected by the planning application. In terms of the motive for the request she does not see the request as having an altruistic motive. The complainant is concerned about his own interests, which the Commissioner understands, however, the complainant must accept that disclosure under FOI is disclosure to the world at large. The information requested here has limited importance to the general public.
35. Thirdly, in the beginning, she accepts that there was a serious purpose in the complainant's contact with the Council. However, the matter has gone on for such a long period of time the Commissioner accepts the Council's view that in making the request in this case the complainant's contact has become disproportionate. She considers that the complainant is unlikely to be satisfied by his requests for information. He has a fixed view of the circumstances and the outcome he considers would be 'correct' and is unlikely to accept that the matter has reached an end unless the Council supports his interpretation of events.

36. In respect of the fourth point, the Commissioner has seen little evidence of harassment except for the complainant's refusal to refrain from revisiting the same matters. The Commissioner considers that experienced officers should be able to handle requests with minimal amount of irritation or distress from persistent complainants who may level unsubstantiated allegations against them. She recognises however, that spending significant amounts of time dealing with correspondence by a complainant in relation to a specific subject matter can cause an unjustified level of irritation or distress.
37. The Commissioner notes that the complainant has persisted with his focus and has explained to the Commissioner that during her investigation he asked the Council to explain:
- "..why I had been branded an 'unreasonably' persistent complainer, just for asking for answers which are pledged in the Council's own Complaints Procedure.
- And I asked them to explain why they were not going to review my case in light of the truth, to set the record straight and establish the correct precedents, in the public interest."
38. The Council has reiterated that the case is closed. The complainant considers himself to be "stonewalled" stating:
- "This stonewalling is entirely to do with any issues related to the conduct of the individual officer. Barnet absolutely refuse to comment on him."
39. The Commissioner notes that the complainant appears to be unable to accept that the Council has made a determination on his request which the Commissioner is investigating and in such circumstances the Council appropriately did not respond to repeated questions.
40. As detailed in paragraph 17 above, in considering whether a request for information is vexatious, the key question in the Commissioner's view is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the public authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value of the request are enough to justify the impact on the public authority. Where relevant, this will involve the need to take into account wider factors such as the background and history of the requests.
41. The Commissioner considers that the complainant's correspondence has now passed the point where it has become unreasonable for the

Council to continue to respond. The Council has progressed the matter through its complaints procedure and the LGO has investigated and found no case to answer. Consequently, the Commissioner has decided that regulation 12(4)(b) is engaged in respect of the request of 6 April 2018.

42. Having determined that Regulation 12(4)(b) is engaged, the Commissioner has gone on to consider whether the balance of the public interest in maintaining the exception outweighs the public interest in responding to the request.

*Public interest arguments in favour of disclosure*

43. The Council listed the following factors in favour of disclosure:

- The presumption in favour of disclosure stated in regulation 12(2)
- Openness and transparency of the Council
- Accountability for the Council's actions and the spending of public money.

44. The Commissioner notes the complainant's view that it is:

"unacceptable and completely against the public interest for this kind of gross misconduct to go unchallenged and unchecked.... It destroys public trust in the Planning System."

45. The complainant constructs his points in favour of disclosure in the public interest, although the matter concerns his personal experience and conclusions drawn from that experience. He considers that the Council has not been open and transparent or accountable. He states:

"There is strong evidence of very serious wrongdoing and there has been no proper investigation, as far as we know, into how rife it is/was and how long it has been going on. .... We the residents have the perfect right to know why and to know what is being hidden."

*Public interest arguments in favour of upholding the exception.*

46. The Council listed the following as factors in favour of maintaining the exception:

- Allowing a public authority to undertake 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.
47. The complainant has rebuffed the points made by the Council, listed above. He considers that the information requested is already available and could be easily provided and would inform him regarding the specific questions he has in respect of the named officer. He also considers that there has been no correspondence in respect of the conduct of the named officer and that the LGO was not involved with the case against the named officer and provided "incorrect, dishonest and irrelevant information".

*Balance of the public interest*

48. The public interest can cover a wide range of values and principles relating to what is the public good, or what is in the best interests of society. There is also a public interest in transparency and accountability, to promote public understanding and to safeguard democratic processes. There is a public interest in good decision-making by public bodies and in upholding standards of integrity. However, these examples of the public interest do not in themselves automatically mean that information should be disclosed or withheld in any particular case. The public interest is not necessarily the same as what interests the public.
49. A potential public interest in transparency is where there is a suspicion of wrongdoing on the part of the public authority. A requester may, for instance, allege that a public authority has committed some form of wrongdoing, and that the information requested would shed light on this. For this to be considered as a factor in the public interest test, disclosure must serve the wider public interest and go beyond the requester's private interests and the suspicion of wrongdoing must amount to more than an allegation. The outcome of an Ombudsman's independent investigation is indicative of whether there is substance in an allegation of wrongdoing.
50. The Commissioner cannot assess whether there has been maladministration or other wrongdoing. In dealing with a complaint, she will consider whether the suspicion of wrongdoing creates a public interest in disclosure, she will not decide whether there has been wrongdoing.
51. In this case she acknowledges that the complainant wholeheartedly believes there to have been wrongdoing. However, the Commissioner is

not satisfied that the allegation of wrongdoing or any benefit to the wider public interest is sufficient to weigh significantly in favour of disclosure. She notes that the Council has undertaken further investigations even following the LGO's ruling that there was no evidence of maladministration.

52. The Commissioner considers that there is always an inherent value in organisations which spend public money being open, transparent and accountable for the way in which that money is spent. Therefore there should always be significant public interest reasons for withholding information.
53. However, weighed against that is the strong public interest in protecting public authorities from an ongoing burden of answering continuous correspondence on the same topic where previous requests have failed to resolve matters. Especially when the requests revolve around a core grievance which either cannot be resolved or has been looked at exhaustively.
54. There is a strong public interest in ensuring that resources are not disproportionately used to respond to requests for information from an applicant who is clearly dissatisfied about an issue and seeks to keep it alive until there is a conclusion or resolution he considers favourable. The freedom of information legislation was not designed to achieve this. Consequently, there is a strong public interest in ensuring that the EIR is not brought into disrepute from inappropriate or improper use.
55. The Commissioner therefore finds that on balance, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in complying with the complainant's request for information.

## **Right of appeal**

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56. 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)

57. 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.
58. 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** .....

**Susan Hughes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**