Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: **9 April 2019**

Public Authority: **London Borough of Camden**
Address: **Judd Street**
London
WC1H 9JE

Decision (including any steps ordered)

1. The complainant has requested information on the sale of ice-cream from vans in particular streets in the London Borough of Camden.

2. The Commissioner's decision is that the London Borough of Camden ("the Council") has appropriately relied on regulation 12(4)(b) – manifestly unreasonable requests, to refuse to respond to the request.

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

Request and response

4. The complainant wrote to the Council on 13 April 2018 and requested information in the following terms:

"I wish to make a formal FOIA request in relation to the following. I apologise in advance for asking what I believe should be obvious questions. However, those obvious ones are in the form of YES/NO and therefore should not take too long to deal with. Furthermore, they are necessary to ascertain where there is a gap in our logic and understanding and it saves responding with multiple requests. References to "the Council" means the collective knowledge of those Councillors and officers who have responsibility for parking, environment and street-trading (as appropriate).

1. Does the Council know that Camden has banned the sale of ice-cream from vans in (inter alia) Albert Terrace, Chalk Farm Road, Gloucester Gate, Prince Albert Road (where within the Camden Borough boundaries)?

2. Is it correct that this ban is meant to discourage and prohibit the sale of ice-cream by any vendor?

3. Is it correct that this ban is meant to be enforced equally against all vendors flouting the ban?

4. Does the Council know that the ban is regularly being flouted (on weekends and school holidays) for generally 7 hours a day?

5. Does the Council know that the vehicles flouting the ban are therefore leaving their engines running for generally 7 hours a day whilst remaining stationary?

6. Does the Council know that these vehicles have diesel engines?

7. Does the Council know that these engines are major contributors to pollution?

8. Does the Council know that this pollution is dangerous to human health?

9. Is it contrary to Council policy for these vehicles to sale ice-cream from vans in those streets?

10. Have instructions been given to NSL or other parking enforcement authorities to take steps against these vehicles?

11. If so, what steps are currently in force and when were those steps taken?

12. Does the Council have other proposals to take action against these vehicles?

13. If so, please provide details."

5. The Council sought clarification of the request which was received on 11 May 2018. The Council responded on 5 June 2018. It stated that it had aggregated the request of 11 May 2018 with three other requests received on 29 May and 3 June 2018 and was relying on regulation 12(4)(b) to refuse to respond.

6. Following an internal review the Council wrote to the complainant on 7 July 2018. It stated that it upheld its initial response and provided a full reasoning for so doing.

Scope of the case

7. The complainant contacted the Commissioner on 27 August 2018 to complain about the way her request for information had been handled. She explained in detail the background to her concerns which has led to her requests to the Council. The complainant is a member of a pressure group "Stop Polluting Camden" which is a group attempting to highlight its concerns about ice-cream vans within Camden which include health risks, road safety, noise and obstruction. She considers that the Group has been forced to make requests for information in an attempt to engage with the Council as their letters to councillors, MPs and others have not resulted in a satisfactory response.

8. The Commissioner considers the scope of her investigation is whether the Council is entitled to apply regulation 12(4)(b) to refuse to respond to the requests.

Reasons for decision

The applicable access-regime – FOIA or the EIR?

9. The Commissioner is satisfied that the information in the scope of the request in this case comprises environmental information[1] falling within regulation 2(1)(b).

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

10. 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.

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

[1] https://ico.org.uk/media/for-organisations/documents/1146/eir_what_is_environmental_information.pdf

12. 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.

13. There is no definition of the term "vexatious" in the FOIA or the EIR., 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."

14. 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.

15. 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

16. The Council explained that the request of 11 May 2018 followed a series of requests regarding ice cream vans. It explained that due to the nature of the requests, and the Council's service area concerned, a small number of staff have been required to handle the requests alongside their usual workload. The information was not recorded in an easily searchable format which in itself created a burden on the affected staff. Therefore the Council considers that a disproportionate amount of time was spent away from core tasks of these staff members.

17. Similarly the Council's Information and Records Management Team comprises a small team of three officers handling around 2000 requests per annum. The Council considers that responding to:

"disproportionate requests means officers have less time to handle other requests effectively which has a negative knock on effect both on request quality and on speed of response to others,"

18. The Council considers that the requests are part of an ongoing course of complaints and requests to the Council which it considers had a serious purpose at the outset of the campaign but considers that this is no longer the case. The Council has concluded that the disruption to Council business is out of proportion when compared to the value of the request.

19. The Council also explained its view that responding to the request will result in further requests repeatedly returning to similar issues where little purpose is attached to the information requested. It advised the Commissioner that the campaign group 'Stop Polluting Camden' campaigns on a single issue relating to air pollution from vehicles and engines idling. The Council believes that the there is no evidence that the group represents the wider public.

20. The Council acknowledged that pollution in London generally, and Camden specifically is a significant issue. However, it considers that the group is focussed on a very small part of the overall issue of pollution, that being the enforcement of regulations around ice-cream vans.

21. The Commissioner notes that in total seven requests comprising 16 questions were sent to the Council during May to the end of November 2017. There followed a break until 1 May 2018 when requests commenced again with the request of 11 May deemed to be vexatious and subsequently three further requests.

The complainant's view

22. The complainant made detailed representations to the Commissioner in support of her complaint. The Commissioner notes that the complainant, on behalf of the campaign group, is very concerned by the actions and practices of the Council which she considers:

"provides further evidence of dubious practices within Camden so far as the proliferation of ice-cream vans is concerned."

23. The complainant explained that the group had contacted Councillors and Council officials without success and decided to "find out why Camden is not taking action……. Our information requests are trying to ascertain why Camden is content with the status quo."

24. The complainant explained the group's concerns about "ice-cream wars" and the violence resulting from the associated rivalry. She further explained their research undertaken regarding ice cream vans trading and the licensing required. She explained that given the propensity of the vendors to violence, the members of the group are reluctant to

identify themselves save under the "Stop Polluting Camden" group name.

25. The complainant explained her view that other London Boroughs, for example Westminster, do not have the same difficulties with ice-cream vans because other Councils have a different attitude towards the vendors, taking action against possible breaches of street trading laws.

26. The complainant advised that her FOI requests followed on from many attempts to engage with the Council by other means:

"During the course of 2017, we made a number of FOIA requests to understand better Camden's position. It was not possible for us to identify all the requests in one go because information learned (or provided) identified where further questions might prove relevant…. Our use of the FOIA was simply because we were not getting any response from the Council from our attempts to work collaboratively and the problem was continuing on a daily basis until the cold weather kicked in during about October."

27. The complainant rejects the vexatious determination and explained:

"We accept that we are getting frustrated by the seeming lack of action. We have tried to maintain a polite dialogue. We have tried to keep our questions clear and to the point. Where Camden has cited an exemption(e.g. time) we have tried to accommodate Camden by restricting our request or dropping the issue so as not to waste anyone's time further….. Nevertheless, we do not feel that Camden are telling us the whole story."

The Commissioner's view

28. The Commissioner understands that the complainant, and the group she represents, are frustrated by their contact with the Council over a prolonged period. She accepts that the complainant has, to some extent, turned to FOI requests as a result of becoming disenchanted by the responses provided by Councillors and others.

29. As detailed in paragraph 14 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.

30. The Commissioner has considered the request in respect of the four points set out above in paragraph 14.

31. The Commissioner has considered the burden created by the complainant's request in the circumstances of the case. She accepts that the Council has been burdened by responding to the requests for the reasons it gave. The Commissioner notes that the complainant is not responsible for the under-resourcing of Council departments but nevertheless the Council must provide a service to the whole Borough and must apportion its resource as it sees fit.

32. Although the Commissioner accepts the rationale for the requests as explained by the complainant, she equally accepts the Council's view that the response to one request will likely be followed by another with the complainant being unlikely to be satisfied. The complainant has argued that the Council is not providing the answers she requires or the answers raise further questions. However, this is how the burden is created. The Commissioner has already served a decision notice[2] with respect to another member of this campaign group, who personally requested similar information regarding ice-cream vendors. The Commissioner is therefore aware of an overall burden placed on the Council on an under-resourced department.

33. The Commissioner considers that the complainant has a serious, public spirited motive for her requests. She understands that the complainant is passionate about pollution in the Borough. Although the Council suggests that there is no evidence for wider public concern regarding pollution and ice-cream vans, it does accept the clear concern for pollution in general. The Commissioner notes that air pollution from motor vehicles is currently attracting a very high profile in the national news. As an environmental and public interest issue, air pollution ranks very highly. The Commissioner is therefore cognisant of the broad concern in the media and in particular news reporting of the negative impact of pollution on the health of the population of Europe[3]; she considers that the ice-cream van pollution forms one part of this issue and is therefore of general concern.

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[2] https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259635/fs50709088.pdf

[3] https://www.theguardian.com/environment/2018/nov/27/health-effects-of-diesel-cost-european-taxpayers-billions

34. The Commissioner notes that the EIR (or the FOIA) do not place a duty upon a public authority to justify or explain their actions or inactions. The EIR is a useful access regime for environmental information which may help inform the public and promote public understanding of a particular environmental issue. It is not designed for allowing individual members of the public (or campaign groups) to interrogate a public authority in the way that the complainant is doing in her request. The request does not seek to obtain further substantive environmental information into the public domain, the questions are in many cases rhetorical and clearly aimed at furthering a chain of correspondence between the campaign group and the Council in an adversarial way.

35. Although the Commissioner recognises value in the broad topic of the complainant's requests, the request of 11 May 2018 has little value and appears to have little purpose other than to irritate the Council. The Commissioner recognises the very real public interest issue that underlies the complainant's request, but asking confirmatory or interrogatory questions in the manner posed is not an appropriate or productive use of the EIR.

36. The Commissioner considers that experienced officers should be able to handle requests from persistent complainants who may make unsubstantiated allegations, with minimal amount of irritation or distress. However, she recognises that spending the limited time available dealing with requests for information on the same topic can cause an unjustified level of irritation or distress.

37. The Commissioner notes that the complainant's correspondence has been generally polite. She has demonstrated a desire to engage with the Council. Nevertheless there appears to be a campaign against the Council regarding its management of ice-cream vans in a variety of respects. As referenced above, the Commissioner notes the tone of the request deemed vexatious is rhetorical, derisory and appears to attempt to ridicule the Council. For example:

    "Does the Council know that these vehicles have diesel engines?

    Does the Council know that these engines are major contributors to pollution?"

38. The Commissioner acknowledges the importance of public authorities being accountable to the public. She notes the complainant's view that the Council is indifferent to her concerns and "does not want to solve the problem". She summarises:

    "It has been somewhat of a surprise to see such resistance to our efforts to work with the Council. Of course, this leads to the question as to whether the Council feels conflicted in some way. We could speculate as to all sorts of scenarios.

However, rather than speculate and accuse, we think it better to ask questions so that we can better understand the Council's perspective. As they won't engage with us on any collaborate basis, we are forced to resort to legal measures such as the FOIA."

39. The Commissioner considers that the complainant and the group's dissatisfaction with the Council's approach to the ice-cream vendors has many facets. She considers that the complainant is in effect attempting to investigate the issue by way of requests for information and therefore to satisfy herself is likely to require many requests for information. The Commissioner has already suggested to the complainant that her concerns may be more appropriately addressed by the Local Government Ombudsman. Consequently, the Commissioner does not consider that compliance with the complainant's requests is a necessary or proportionate means of demonstrating the Council's accountability.

40. The Commissioner considers that it is clear, from both the complainant's past and subsequent requests, that answering the request of 11 May 2018 will simply lead to further requests and will increase the unreasonable persistence and the resulting burden. 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 Commissioner's decision is that the burden created is disproportionate for the resources available at the Council. Consequently, the Commissioner has decided that regulation 12(4)(b) is engaged in respect of the request of 11 May 2018.

41. 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

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

- The public interest in transparency of a public authority
- The presumption in favour of disclosure stated in regulation 12(2)

43. The complainant argues that the Council has repeatedly taken steps to avoid answering questions, demonstrating a lack of transparency which she has tried to address by the requests for information. She explains:

"If and only if Camden actually addressed the issue (or showed that it was trying to address the issue) then we would not need to ask these questions."

Public interest arguments in favour of upholding the exception.

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

    - Protecting the Council and its finite resources from a disproportionate burden.
    - No wider public concern over this issue
    - The requester is pursuing a campaign against the Council and there is no wider public interest.
    - It would create a strain on resources to provide all the documentation.

45. The complainant explained that her request of 11 May 2018 was mainly seeking 'yes' and 'no' answers and was intended:

    ".. to understand where there was a break in our logic, where we would normally expect a council to take firm action against illegal traders who were regularly in situ and causing unnecessary diesel fume pollution…. Any burden is clearly of the Council's own making."

46. The complainant stated that there is a wider public concern over:

    - Unlawful trading in their neighbourhoods
    - Pollution in their neighbourhoods
    - Possible misfeasance in public office

    She added:

    "There is no exemption to allow what is increasingly looking like a cover up or at best is gross incompetence."

47. The complainant stated that the group does not have a campaign against the Council, other than to ensure it serves the public "and not the criminals who are polluting our streets". She explained:

    "If there is council collusion then to that extent we are campaigning against that. But such a campaign is in the public interest. As we have said, you are public servants paid to serve your constituents."

48. In regard to the volume of documentation referenced by the Council, the complainant advised:

    "It would be no strain to provide a handful of documents. What you really mean is that you cannot be bothered or the information would

prove embarrassing to someone within the Council. That is not a valid reason to refuse to disclose."

Balance of the public interest

49. 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.

50. 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 the suspicion of wrongdoing must amount to more than an allegation.

51. 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. The outcome of an Ombudsman's independent investigation would be indicative of whether there is substance in an allegation of wrongdoing.

52. In this case the Commissioner does not consider there to be particular evidence of wrongdoing and therefore she cannot attribute any weight to the public interest in disclosure on this point.

53. The Commissioner considers that there is always an inherent value in authorities which spend public money being open, transparent and accountable for their actions and the way in which public money is spent.

54. However, weighed against that is the strong public interest in protecting public authorities from an ongoing burden of answering requests on the same topic where previous requests have failed to resolve matters. In addition 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 continue until there is a conclusion or resolution she/he considers favourable.

55. The Commissioner notes that many of the issues relevant to the public interest test have already been considered when determining whether the exception at regulation 12(4)(b) is engaged. In this case she is satisfied that the Council has provided sufficient evidence to support why it deemed the request of 11 May 2018 manifestly unreasonable. Notwithstanding the bullet points in paragraph 46, the Commissioner does not consider that the public will be disadvantaged by the Council not responding to the request as the concerns listed by the complainant are not addressed by the request to enable the public to be better informed.

56. 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

57. 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

58. 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.

59. 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
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