

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

**Date:** 12 October 2022

**Public Authority:** London Borough of Lambeth  
**Address:** Lambeth Town Hall  
Brixton Hill  
London  
SW2 1RW

**Decision (including any steps ordered)**

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1. The complainant has requested information about a roofing contractor from the London Borough of Lambeth (the Council). The Council initially refused the request stating that the information was not held, however, during the course of the investigation the Council revised their position and refused the request under regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that the Council has correctly applied regulation 12(4)(b). The Council has now provided the complainant with a fresh response reflecting their change in position and offering advice and assistance on how they may refine their request, thereby meeting its duties at regulation 9(1).
3. The Commissioner does not require any steps to be taken.

**Request and response**

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4. On 30 April 2021, the complainant wrote to the Council and requested information in the following terms:

"Dear Lambeth Borough Council,

Please provide all documentation and communications either with [business name redacted] or mentions [business name redacted] for the past 3 years, including but not exhaustively:

\*Contracts

- \*Emails
- \*Complaints
- \*Work orders

Yours faithfully

[name redacted]"

5. The Council responded on 27 May 2021. It stated that the information was not held. The Council explained that it did not have a formal contract with the roofing company nor had it spent any money with the roofing company in the past three years.
6. Following an internal review the Council wrote to the complainant on 25 June 2021. It upheld its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 12 July 2021 to complain about the way their request for information had been handled. They stated that:

"In 2016, I requested all complaint details relating to [business name redacted], a subcontractor of Lambeth council, who does a lot of work on the [specified address]. The issue was sent to the ICO, who issued the Decision Notice FER0670477<sup>1</sup> on 14 Aug 2017. Lambeth was allowed to not fulfil the request as they were incapable of pulling out the information in a timely manner. However, at the end of the Decision Notice it was stated at para 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." 4 years later, I have made the same request as there are still ongoing problems with [business name redacted], their workmanship now the subject of at least 2 legal disrepair cases. Lambeth have responded that they don't hold the information at all. Which appears to be an even worse situation of record keeping than 4 years ago when they had the information but couldn't retrieve it."

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014689/fer0670477.pdf> issued 14 August 2017

8. During the course of the investigation the Council amended its position in light of the previous decision notice issued in 2017 in which the request forming the basis of the complaint was identical to that discussed in the present decision notice, and stated that it was now seeking to refuse the request on the basis of regulation 12(4)(b).
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 refuse the request.

## **Reasons for decision**

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### **Is the information environmental?**

10. Regulation 2(1) of the EIR defines environmental information as being information on:
  - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
  - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
  - (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)...as well as measures or activities designed to protect those elements;
  - (d) reports on the implementation of environmental legislation;
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

11. The Commissioner has not seen the requested information but, as it is information relating to the work of a roofing contractor, he believes that it is likely to be information about measures and activities likely to affect the elements of the environment as described at 2(1)(a). For procedural reasons, he has therefore assessed this case under the EIR.

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

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

“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”

13. In contrast with section 12 of FOIA, the EIR do not offer a definition of what is considered manifestly unreasonable. Guidance<sup>2</sup> published by the Commissioner explains that:

“In assessing whether the cost or burden of dealing with a request is “too great”, public authorities will need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable.”

and;

“In assessing whether the cost, or the amount of staff time involved in responding to a request, is sufficient to render a request manifestly unreasonable the FOIA fees regulations may be a useful starting point.”

14. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>3</sup> 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.
15. Where a public authority claims that regulation 12(4)(b) is engaged it should, where possible, provide advice and assistance to help the requester refine their request so that it may be dealt with under the appropriate limit.

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

<sup>3</sup> <https://www.legislation.gov.uk/uksi/2004/3244/regulation/3/made>

## **The complainant's position**

16. The complainant's position, following the Council's initial response to their information request of 30 April 2021 that the information was not held, is that the Council is required to keep information of this type in order to manage the performance of its subcontractors.
17. In their complaint to the Commissioner the complainant stated that the information should be easily retrievable by performing a database search of information obtained from the contractor:

"Request the work reference numbers of jobs undertaken by [business name redacted] from the main contractor and then do a "AND" SQL query on their own database, ie all [business name redacted] jobs "AND" jobs subject to a complaint or early stage resolution or legal disrepair"

## **The Council's position**

18. The Commissioner wrote to the Council with a series of targeted questions in respect of their initial response that the information was not held. The Council responded to say that the roofing company were contracted to carry out works on behalf of a contractor, and that Lambeth would not have had any direct correspondence with the roofing company as all works orders went through the contractor. The Council did not address any of the Commissioner's targeted questions.
19. The Commissioner wrote to the Council again with a refined series of questions and advising the Council of his powers under section 51<sup>4</sup> of FOIA, which details that the Commissioner may issue an Information Notice requiring a public authority to provide him with the information needed to investigate a complaint. The Commissioner required the Council to respond within 10 working days.
20. On 22 July 2022 the Commissioner issued an Information Notice to the Council requiring it to provide a response to the questions contained in his earlier letter.
21. The Council responded notifying the Commissioner that they had reviewed the request and, in consideration of the previous decision notice, had amended their position and were now refusing the request under regulation 12(4)(b). The Council provided an assessment of time and staff involvement required to collate the information, as follows:

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<sup>4</sup> <https://www.legislation.gov.uk/ukpga/2000/36/section/51>

"Searching emails of all staff involved in communications concerning works would include repairs staff (34), Customer Service staff (77) and complaint review staff (11). The Council estimated that to search the email archives of 122 staff at 20 minutes per inbox would be 40.7 hours.

7886 roofing jobs have been raised since 1 April 2019; we would need to review each to determine whether [business name redacted] was involved."

22. The Council also sought to rely on previous representations made to the Commissioner with regards to the time needed to collate or respond to the request, which are detailed in the aforementioned decision notice FER0670477 at paragraphs 15 to 27.

### **The Commissioner's position**

23. The Commissioner has considered the Council's submissions in respect of the present complaint, and notes that the sampling assessment provided is not as detailed when compared with that provided to the Commissioner during the course of his previous investigation under FER0670477.
24. In the previous case the Council explained that relevant information would be held in emails, complaints information and in work orders. It provided an estimate of the time taken to search for relevant information in each of these three locations. These were as follows: emails – 36.3 hours; complaints information - between 21.5 and 60 hours; and work orders - 170 hours. The total time taken to fulfil the request therefore being over 200 hours.
25. In this case the Council has only provided an estimate of the time taken to locate the emails and explained that in addition information about 7886 roofing jobs would also need to be examined. Nevertheless, despite this less detailed estimate the Commissioner is satisfied that the Council have demonstrated that the time required in order to review emails alone is more than double the appropriate limit ( $122/3 = 40.7$  hours). Reducing the time spent on each inbox by half would still exceed the appropriate limit by over two hours ( $122/6 = 20.3$  hours).
26. Furthermore, as the information request that forms the basis of the present complaint is identical to the refined request made previously, the Commissioner considers it reasonable to expect that the process of collating and responding to the present information request would also be identical. That is to say, in addition to searching the email inboxes the Council would also have to search information located in other locations, ie complaints information and work orders in order to locate any information relevant to the request. As a result, the Commissioner believes it would not be an effective use of time and resource to pursue

the Council for a more detailed itemised breakdown of costs incurred in complying with the request.

27. The Commissioner is satisfied that the time required to obtain the information to comply with the entire request would greatly exceed 18 hours, therefore regulation 12(4)(b) is engaged.

**Public interest test – regulation 12(1)(b)**

28. Regulation 12(1)(b) states that:

“12 – (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.”

29. Regulation 12(2) applies a presumption in favour of disclosure such that a public authority may only rely on an exception if the public interest in maintaining the exception exceeds the public interest in disclosure.

30. The Council states that:

“We consider that compiling a response to this request 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. It is not in the public interest to divert officer’s attention from their core work in order that we respond to a request made by one individual which may have limited wider public interest.”

31. The Commissioner acknowledges the complainant’s concerns about transparency surrounding the Council’s handling of its contractors and subcontractors, however does not consider there to be sufficient public interest to justify the allocation of Council resources to complying with the request in its entirety, considering the time estimates provided above.

32. The Commissioner is also aware that this is the second time the complainant has contacted him regarding the Council’s handling of this request however does not consider the volume of requests from an individual to be reflective of the wider public appetite for the information.

33. The Commissioner considers that, in light of the evidence provided, the public interest in maintaining the exception outweighs the public interest in disclosure.

**Regulation 9 – advice and assistance**

34. Regulation 9(1) states 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.”

35. 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.
36. The Commissioner recognises that the Council did not initially provide any advice or assistance to the complainant with regards to refining their request so that it may fall under the appropriate limit. The Commissioner also notes that the Council did not inform the complainant that it had changed its position and was withholding the information under regulation 12(4)(b) until the Commissioner requested it to do so, which caused further delays to all parties.
37. The Commissioner notes that, at the date of this decision notice, the Council has provided the complainant with a fresh refusal notice aligning with its current position and offering the complainant advice and assistance on how they may refine their request.
38. The Commissioner does not require the Council to take any steps.



## Other matters

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39. The complainant states that the Council have an obligation to retain the information in order to manage the performance of the subcontractors. The Commissioner is not positioned to adjudicate on whether the Council have met their responsibilities with regards to record keeping of this nature.
40. However the Commissioner acknowledges that in his previous decision he suggested that the Council review its records management in accordance with the section 46 code of practice<sup>5</sup>. The Commissioner is disappointed to learn that the Council does not appear to have taken his advice on board and would refer the Council to his previous comments on the matter.
41. The Commissioner also wishes to highlight his disappointment with the Council's low level of engagement with his investigation. The Commissioner has found the quality of the responses provided to be poor and significantly delayed, which has prolonged the investigation beyond a reasonable timeframe for completion.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1010395/Freedom\\_Information\\_Code\\_Practice\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1010395/Freedom_Information_Code_Practice_Web_Accessible.pdf)

## Right of appeal

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42. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

43. 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.
44. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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