

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

**Date:** 11 November 2022

**Public Authority:** London Borough of Haringey  
**Address:** 7<sup>th</sup> Floor, River Park House  
225 High Road  
Wood Green  
London  
N22 8HQ

**Decision (including any steps ordered)**

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1. The complainant has requested copies of tree and biodiversity surveys commissioned, produced or held by the London Borough of Haringey (the Council) in respect of a planned local authority development.
2. The Commissioner's decision is that the Council has is not entitled to withhold the information under regulation 12(4)(b) – manifestly unreasonable.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Issue a fresh response to the request that does not rely on regulation 12(4)(b) of the EIR
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 21 September 2021, the complainant wrote to Council and requested information in the following terms:

"Hello

I would like any tree or biodiversity or survey of that nature that covered the trees on [addresses redacted] commissioned or produced or held by the council.

Further I believe my email to [redacted] on 6<sup>th</sup> August 2021 would be covered by FOI requests, you are not required to state the words freedom of information request to be covered by the legislation so I would appreciate it if this request was expedited as this has been delayed over six weeks by the [sic] stage"

6. The Council responded on 15 October 2021. It stated:

"In terms of the information our response is:

- a. The Council is undertaking tree surveying work as part of its proposals for new council rent homes at [address redacted].
- b. Tree surveys and other related development documents relating to a future planning application are subject to commercial confidentiality during the period at which the development is under consideration.

It should be noted that any planning application will require a finalised tree survey to be published for consideration by the independent planning authority and residents."

7. Following an internal review the Council wrote to the complainant on 12 November 2021. It stated that it had changed its position and was refusing the request under regulation 12(4)(b) on the following basis:

"I am of the opinion that dealing with this request would create unreasonable costs or an unreasonable diversion of resources as the survey(s) will form part of the planning application which will be made public if the site is considered suitable for development. A decision on if the site will be developed on is yet to be made."

## Scope of the case

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8. The complainant contacted the Commissioner on 15 November 2021 to complain about the way his request for information had been handled.

9. The Commissioner considers the scope of the investigation to be whether the Council has correctly applied regulation 12(4)(b) to the request.

## **Reasons for decision**

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### **The Council's position**

10. The Council provided the Commissioner with rationale behind their application of regulation 12(4)(b). The Council explained that they considered the request to be 'manifestly unreasonable due to the vexatious nature, considering the information will be released in its final version once a planning application is made. The service have not reached that stage yet with a planning application.'
11. The Council stated that 'it would therefore be an unreasonable diversion of resources to release surveys that would form part of a planning application on a site that is still being considered for development and would be published in due course.'
12. The Council confirmed that it did hold draft versions of information within the scope of the request.
13. The Council considered that there was not an apparent objective public interest in the information sought at this stage as the information would be released for public consultation at a later date.

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

14. The Commissioner's position is that the Council have not adequately explained how regulation 12(4)(b) is engaged on the grounds of vexatiousness and are therefore not entitled to rely on this exception to refuse the request.
15. The Commissioner's guidance<sup>1</sup> on deciding whether a request is vexatious under the EIR states that public authorities should refer to section 14(1)<sup>2</sup> of FOIA.
16. The four broad themes to be considered when deciding whether a request is vexatious under section 14(1), as identified by the Upper

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

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2000/36/section/14>

Tribunal in *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")<sup>3</sup>, are: the burden on the public authority, the motive of the requester, the value or serious purpose of the request and any harassment or distress to staff likely to be incurred by responding to the request. While a useful starting point, these four themes are not exhaustive.

17. The Commissioner considers that the Council has not sufficiently proven that the request would meet the threshold for being considered vexatious as outlined at paragraph 16 above. The Commissioner understands that the Council does not want to release draft versions of documents or incomplete preparatory work that will later form part of a finalised planning application that is currently at the early stages of consideration. However the Council has not explained in what way this would present an unreasonable diversion of resources.
18. The Council has explained that it does not see any serious purpose in the request, as final versions of the information that is currently in draft stage would be made available as part of a public consultation under the planning rules, should the Council decide to make an application. The Commissioner acknowledges this position. However, in his view the fact that a final version of the surveys may be published in the future does not mean the request has no serious purpose. For example, it could be the case that a planning application is not submitted, in which case there is arguably an interest in details of the survey work undertaken to date being disclosed. Furthermore, the Council has not demonstrated how complying with the request would cause distress or harm to staff. As such, the reasoning provided does not engage regulation 12(4)(b) on the grounds that the request is manifestly unreasonable due to vexatiousness.
19. As per paragraph 3 above the Council is now required to issue a fresh response to the complainant that does not rely on regulation 12(4)(b).

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<sup>3</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

## Right of appeal

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20. 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)

21. 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.
22. 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**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**