

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

**Decision notice**

**Date:** 6 August 2024

**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 vacant properties on regeneration estates. The London Borough of Lambeth (“LBL”) provided some information within the scope of the requests. The complainant requested an internal review and explained why they considered that the information was incomplete. After internal review, LBL argued that it was not obliged to respond to their request on the grounds that it was manifestly unreasonable (EIR regulation 12(4)(b)).
2. The Commissioner’s decision is that LBL is not entitled to rely on regulation 12(4)(b) as its basis for refusing to comply with the request.
3. The Commissioner requires LBL to take the following steps to ensure compliance with the legislation.
  - Provide the information or explain to the complainant in a refusal notice why it is not obliged to do so for reasons other than regulation 12(4)(b).
4. The public authority must take these steps within 30 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 the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 20 March 2023 the complainant wrote to LBL and requested information of the following description:

“Under the freedom of information legislation, I would like the following information regarding the use of vacant properties on regeneration estates that would be used as temporary accommodation since 2020.

1. How many properties on regeneration estates were fully refurbished to a livable standard under the plans approved on 6th April 2020? Please split these out by estate if possible.
  2. What is the total budget that was spent refurbishing those properties to a livable standard? If possible, please break this down by property.
  3. What governance procedures were in place to ensure that each property was refurbished to the required standard and who was responsible for signing off the properties as they were finished?
  4. How many of the refurbish properties were actually used to house homeless persons as intended during the pandemic?
  5. How many of the properties are still occupied by the individuals placed there during the pandemic?
  6. How many properties were refurbished, but never used to house any homeless residents and remain vacant in a refurbished state?
  7. What does Lambeth intend to do with these properties from now onwards?”
6. On 13 April 2023, LBL provided a response with answers to all parts of the request. It identified the request as being for environmental information and therefore caught by EIR.

7. The complainant requested an internal review on 18 May 2023. They explained that the data was incomplete. They said:

“The reason I am requesting this review is that I live in one of the properties that this request relates to, as confirmed by the Temp Accommodation Allocations Team at the beginning of my tenancy, but my postcode is not on the list you provided. Furthermore, there is another property just a couple of doors down from my property which was converted under the same scheme but not included on your list.

I therefore consider the data you released to be incomplete - a view backed up by the original proposal document which was signed off by

the former Leader of the Council and Chief Exec which detailed and budgeted for the following:

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a). To let as temporary accommodation to homeless households during the COVID-19 crisis 45 vacant properties that have been purchased from homeowners, and to facilitate this, to: i. keep the units in council control and to let them at a Social Rent level for a two-yea period ii. provide a budget of £185,000 to bring 37 of these properties to a basic habitable level. At the end of a two-year period to revert to letting the properties on Assured Shorthold Tenancies.

b). To delegate to the Director of Legal and Governance in consultation with the Strategic Director of Resident's Services the authority to enter into and/or vary any necessary contracts to enable the homes to be refurbished and let.

c). To note that the management of these units will be subject to further review as part of the wider review of the approach to management of leasehold and freehold buy-backs on estate regeneration estates (as signalled in the HFL Corporate and Delivery plan 31 March 2020), as part of this, consideration will be given to whether it will be feasible to transfer management of the properties to HFL or another provider and to let them on a Local Housing Allowance (LHA) basis, either during the two year period or at the end of it, given that the difference in income levels between AST and LHA is in many cases small.

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Therefore, there either should have been up to 38 more properties included in this scheme or the scheme was abandoned by the Council without authorisation, so the remainder of the budgeted £185,000 should still be available to undertake these works unless otherwise allocated without proper scrutiny and procedures being followed."

8. LBL sent the complainant the outcome of its internal review on 12 December 2023. It revised its position and argued that it was not obliged to respond to their request on the grounds that it was manifestly unreasonable on the grounds of cost (EIR regulation 12(4)(b)).

### **Scope of the case**

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9. The complainant contacted the Commissioner on 23 January 2024 to complain about the way their request for information had been handled.

10. The Commissioner considers that the scope of his investigation is to determine whether LBL is entitled to rely on regulation 12(4)(b) as its basis for refusing to comply with the request.
11. The Commissioner wrote to LBL on 23 May 2024 asking for its full and final response to a series of questions. These questions were based on the Commissioner's published sample questions<sup>1</sup>. It did not respond to the Commissioner's letter. The Commissioner wrote again to LBL on 2 July 2024 asking again for its full and final response. The Commissioner explained that if it did not do so, he would make his decision based on the documentation provided by the complainant. The Commissioner also provided some of his views on the case based on that. It did not respond to the Commissioner's letter.
12. The Commissioner has therefore considered whether LBL is entitled to rely on regulation 12(4)(b) as its basis for responding to the complainant's requests based on the complainant's submissions. These include a copy of LBL's internal review where it set out why it believed it was entitled to rely on this exception.

## Reasons for decision

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### Would the requested information be environmental?

13. 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
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<sup>1</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/key-questions-for-public-authorities-eir-2004/#12-4-b>

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);

14. Although he has not seen the requested information, as it is information essentially relating to changes or developments to housing policy, particularly with respect to regeneration sites - and given the type of regeneration the request describes - the Commissioner accepts that this request can be considered under the EIR. Specifically, he considers that it likely constitutes a request covering information on measures likely to affect the elements of the environment.
15. For the above reasons, he has therefore assessed this case under the EIR.

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

16. 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 the request for information is manifestly unreasonable".
17. The EIR do not offer a definition of what is considered manifestly unreasonable. Guidance 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.”<sup>2</sup>

18. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the “Fees Regulations”).
19. The appropriate limit is set in the Regulations at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities.
20. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours in respect of the £450 threshold.
21. 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 is not manifestly unreasonable.

### **The complainant’s position**

22. In their complaint to the Commissioner, the complainant said:

“The authority claims that it has spent more than 18 hours to provide the incomplete response that gave rise to the review request<sup>3</sup>, and considers this review request to be manifestly unreasonable and without any public interest in the information. I disagree entirely with this notion as there is potentially £185,000 of public money unaccounted for and there appears to be a concerted effort to prevent the full detail of this from reaching the public”.

23. They added:

“When considered logically, it simply does not make sense for such a request to take as long as the authority is claiming. If the 37 properties

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<sup>2</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-4-b-environmental-information-regulations-manifestly-unreasonable-requests/>

<sup>3</sup> As set out later in this notice, LBL actually said it had taken 20 hours to provide the response it had provided and would take at least another 18 hours were it to provide a full response.

in question were identified in order for the proposal to be put together then there should exist a list of them within the council's system. It cannot take more than a few minutes to check whether that property was in fact converted for use as temporary accommodation (simply searching their own TA database would give a result either way). If it was converted for use, then the question of how much was spent on the conversion becomes applicable, but if not then it wouldn't be. If only 10 were converted as the Council claims, then even at an hour each and 20 minutes to search their own internal TA database once for each of the other earmarked properties of which there were 37 total, that would equate to only 9 hours (equivalent to a full working day) to search an internal list just 27 times... that cannot be considered manifestly unreasonable when all that is required is to input an address and hit 'search'. If there was a suspicion that those addresses were occupied but not paying council tax, one would imagine the council to be able to perform those searches in a blink, rather than taking 9 hours to search just 27 addresses”.

### **LBL's position**

24. As noted above, LBL did not respond to the Commissioner's questions. Had it felt that its arguments set out for the complainant were sufficient the Commissioner would have expected a brief response to that effect.
25. In its letter of internal review to the complainant, LBL said:

“We consider that this Regulation applies due to the amount of time it would take us to collate information to respond to the request and the burden the request places on our authority.

We note the Commissioner's position, as explained by the East Devon District Council case at paragraph 17:-

‘The EIR differ from the FOIA in that no specific limit is set on the amount of work required by an authority to respond to a request as provided by section 12 of the FOIA. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations) which apply in relation to section 12 of the FOIA are not directly relevant to the EIR - the cost limit and hourly rate set by the fees regulations do not apply in relation to environmental information. However, the Commissioner accepts that the fees regulations provide a useful starting point where the reason for citing regulation 12(4)(b) is

the time and cost of a request but they are not a determining factor in assessing whether the exception applies'.<sup>4</sup>

The Fees Regulations used by FOIA explains that the Council can refuse to comply with a request if the cost of compliance will exceed the Appropriate Limit under section 12. The limit is currently set at £450 which is the equivalent to 18 hours at £25 per hour.

We can also consider the time it would take our team to review the information and apply any relevant exceptions. In providing the response to your initial request, officers spent more than 20 hours to locate the requested information.

It is estimated that to retrieve the information for this request would take at least 18 hours.

26. LBL acknowledged that regulation 12(4)(b) was subject to a public interest test. It set out the following factors for the public interest in disclosure:

"We note that Regulation 12 (2) has a presumption of disclosure.

We also note that this matter is likely to be of interest to the local community".

27. It set out the following factors for the public interest in maintaining the exception:

"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.

We consider overall that the public interest in maintaining the exception outweighs the public interest in disclosure.

We would ask that you redefine your request specifying the desired information and resubmit another request for us to consider if we can respond".

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<sup>4</sup> [https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1623932/fer\\_0608238-and-fer\\_0608239.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1623932/fer_0608238-and-fer_0608239.pdf)



## **The Commissioner's decision**

28. As noted above, the Commissioner gave LBL two opportunities to explain in detail how it had calculated the time it would take to respond to the requests. The Commissioner also asked LBL to explain why it had been able to provide an initial (albeit apparently incomplete) response. The Commissioner also asked LBL to explain what public interest factors it had considered for and against maintaining the exception.
29. Finally, the Commissioner asked LBL to clarify what advice and assistance it had provided to the complainant to help them narrow their request if, in its current form, it would be too costly to respond.
30. The Commissioner notes that LBL did ask the complainant to contact it again at the end of its letter of internal review with a redefined request. He entirely understands the complainant's scepticism given that it did not attempt to engage with them on the apparent cost of compliance at an earlier stage.
31. In the absence of anything more than the explanation from LBL set out above that providing a response would be costly and noting that LBL did not appear to engage fully with the complainant's request in the first instance, the Commissioner is unable to agree with LBL's position on costs.
32. The Commissioner would also note that even if LBL assessment of costs is accurate and/or sufficiently reasonable such that – in all the circumstances – the request engages regulation 12(4)(b), its consideration of the public interest in disclosure is thin. There is a strong public interest in informing the public debate on public spending where it relates to housing and homelessness. This is particularly the case when LBL's response to homelessness during the Covid-19 pandemic and its aftermath is under consideration.
33. The Commissioner is not clear why LBL did not provide an initial response relying on regulation 12(4)(b) if, by its calculation, it would take around 40 hours of work to provide a proper response. The Commissioner is unclear why LBL did not include the complainant's postcode area in its response. It may, for example, have not considered that this area fell within the scope of the request. The parties may also have been at cross purposes for some other reason. By failing to engage with either the complainant or the Commissioner to explain this, LBL has not assisted in either's understanding of its position.

## **Conclusion**

34. In light of the above, that is, in taking into account the explanations of the parties and his assessment of LBL's position as set out to the

complainant, the Commissioner is unable to conclude that LBL is entitled to rely on regulation 12(4)(b) as its basis for refusal.

35. The Commissioner requires LBL to either provide the complainant with the requested information or to set out why it is not obliged to do so for reasons other than regulation 12(4)(b).

## **Right of appeal**

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36. 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)

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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