



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2018/0025

**Heard at
On 29th June 2018**

Before

**JUDGE
FIONA HENDERSON**

**TRIBUNAL MEMBERS
STEVE SHAW**

**And
ANDREW WHETNALL**

Between

NICK ROSEN

Appellant

- and -

THE INFORMATION COMMISSIONER

First Respondent

- and -

LONDON BOROUGH OF HACKNEY

Second Respondent

Representation:

Mr Rosen – represented himself

ICO – Chose not to be represented at the oral hearing

LBH - Mr Knight (Counsel)

DECISION AND REASONS

Introduction

1. This is an appeal against the Commissioner’s decision notice FS50683394 dated 5th February 2018 which held that the London Borough of Hackney (LBH) had correctly applied regulation 12(4)(b) of the EIRs.

Background

2. Audrey Street Depot is an area within Haggerston Park, Hackney. It is the Appellant's case that the Council has been eroding the land set aside for parkland and putting it to other uses for logistical and commercial reasons. In 2007 the depot was used as a temporary school. When planning was applied for, a s106 condition was drafted that the site be returned to parkland after one year. This planning application was submitted by the Academy running the school but despite the site being used as a temporary school planning permission was never granted and the s106 condition never became valid. Although the school was closed in accordance with expectation, the site remained fenced and did not revert to Parkland but was used as a BMX store and a community garden.

3. The Appellant owns neighbouring property and made various enquiries of the Council between 2012 and 2015 to establish what their intentions were for the site and received assurances that it was not intended to develop it. In early 2016 the Council announced that the site was to be used as a temporary school, citing extraordinary/unforeseen circumstances¹. Planning permission was granted (following a public consultation and planning process) and a unilateral undertaking was given by the Council as a condition of permission that the land would be returned to publicly accessible park use in 2022.

4. The Appellant told the Tribunal that he has been "*informed by [an unnamed] relative of [an unnamed] council employee who wishes to remain unidentified, that the Head of Education Property had been looking into this matter between 2012 and 2015*²." The Council dispute that this is accurate but it remains the Appellant's belief that the site had been identified for overflow school provision at a much earlier date and the Council was not open about their intentions.

Information Request

5. On 26th April 2017 the Appellant asked the LBH to provide:

¹ In September 2015, the Dept of Education pulled out of a scheme to set up a free school and local opposition to the closure of a primary school upon which it had been intended to set up an Academy meant that a new site had to be found urgently in Autumn 2015.

² P47 bundle

“Any two notes or pieces of correspondence between Jan 2012 and May 2015 showing the head of Hackney Council Education Property Department³ was considering usage of the site known as Audrey St Depot for educational purposes”

The LBH refused the request on 9th June 2017 relying upon reg 12(4)(b) EIRs (manifestly unreasonable by comparison with the cost limit provided under The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the costs regulations). The decision was upheld for the same reasons upon internal review dated 4th July 2017. They referred the Appellant back to the Council’s reasoning that he had been provided with in respect of an earlier request on the same topic made on 9 June 2016.

Complaint to the Commissioner

6. The Appellant complained to the Commissioner on 26th July 2017 arguing that:
 - i. This request is separate from previous requests referred to
 - ii. LBH had a responsibility to use reasonable care to narrow down the search term together with him. He asked them to use the name of the relevant HEPD amongst other ways.

The Commissioner confined her consideration to r12(4)(b) of EIRs and upheld the refusal.

Appeal

7. The Appellant appealed on 8th February 2018 on the grounds that:
 - i) In EA/2017/0047 the Tribunal had applied ICO and Devon County Council v Dransfield GIA/3037/2011 to a similar question⁴ and held that the request was not manifestly unreasonable. Therefore the refusal in this case was a serious impropriety.
 - ii) LBH had never attempted to work with him to find a simple practical solution such as appropriate search terms.
 - iii) He argues that LBH have demonstrably failed to narrow down the searches to look for relevant emails.
 - iv) The FOIA cost regulations do not apply and exceeding them does not indicate that the request is manifestly unreasonable.

³ Henceforth referred to as HEPD

8. The Commissioner opposed the appeal as did the LBH who were joined by the Registrar on 1.5.18 following their application. They relied upon the Decision notice and their account in the internal review. The case was considered at an oral hearing on 29th June 2018 when evidence was heard from Mr Michael Copeland the strategic head of education property since March 2016⁵. The Appellant and LBH both made oral submissions and the Tribunal also had regard to the bundle comprising some 231 pages.

EA/2017/0047

9. An earlier request to LBH by the Appellant dated 16.2.17 was made in the following terms:

“What activities did Hackney property dept. and Education property dept. carry out between 19 March 2012 and May 30th 2015 in relation to preparing either to house a temporary school on Audrey St Yard or use it for some other purpose than parkland?”

This has been appealed to a differently constituted panel of the First Tier Tribunal. At the date of this appeal, EA/2017/0047 is part heard. The panel in that case having determined that the request was not manifestly unreasonable in a *Dransfield* sense adjourned the question of whether it was manifestly unreasonable due to the cost of compliance under reg 12(4)(b) EIRs. For that reason the Appellant’s first ground must fail.

10. It has not been possible to list this appeal in front of that panel (which now comprises a Judge and a single Lay member) as set out in the Registrar’s ruling of 4.4.18. The LBH did not apply for the Registrar’s decision to be reconsidered by a Judge but asked that this case should be adjourned until after the conclusion of EA/2017/0047 in order to avoid duplication. The Registrar refused that application in her ruling dated 1.6.18 for the reasons set out therein. The application was not renewed at the oral hearing.

Reg 12(4)(b) Environmental Information Regulations

11. There is no dispute that this case falls to be considered under the EIRs. Regulation 12 provides that:

⁴ See paragraph 9 below

⁵ For the sake of clarity it is emphasised that Mr Copeland was NOT HEPD during the time frame caught by the information request.

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

(a) an exception to disclosure applies under paragraphs (4) or (5); and

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

(2) A public authority shall apply a presumption in favour of disclosure.

...

(4) 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;

12. Section 12 FOIA provides an absolute exemption from complying with a request for information if “the authority estimates that the cost of complying with the request would exceed the appropriate limit” The appropriate limit is prescribed as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. These provide at s3 that the appropriate limit for a local authority is £450 which equates to 18 hours at a chargeable rate of £25 per hour⁶. The provisions for estimating time are set out in s 4:

—(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

...

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably⁷ expects to incur in relation to the request in—

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

⁶ S4(4) Appropriate Limit and Fees regulations

(d) extracting the information from a document containing it.

13. The Appellant drew the Tribunal's attention to the fact that the EIRs do not specify an exemption in reliance upon the Fees regulations and the EIRs are not explicitly listed within them. However, there is no definition set out in EIRs of what is meant by "manifestly excessive" and we take into consideration that in *Craven v Information Commissioner & DECC [2012] UKUT 442 (AAC)*; the Upper Tribunal confirmed that it could properly be used in response to a one-off burdensome request.⁸ Holding that "it must be right that a public authority is entitled to refuse a single extremely burdensome request under regulation 12(4)(b) as "manifestly unreasonable", purely on the basis that the cost of compliance would be too great." The Commissioner's approach, as set out in her decision notice was that the cost limit applicable under FOIA is a useful guideline for reliance on regulation 12(4)(b) as it gives a clear indication of the level of burden which Parliament considers to be disproportionate to impose on public authorities. Neither the LBH nor the Commissioner suggest that it is an absolute line in the EIR context, and we remind ourselves that unlike FOIA, EIRs are prefaced with an explicit presumption in favour of disclosure⁹ and that they are subject to the public interest test¹⁰.
14. The Upper Tribunal has considered the process to be followed when a public authority rely upon the cost limit to refuse a request in *Kirkham v Information Commissioner [2018] 126 AAC*. This provides that a pre-requisite for relying upon the cost limit is that the Public Authority must make an estimate.
15. We accept that the estimate has to be considered in respect of the request actually made, and not some other form of the request. Despite this Mr Coleman did not carry out a sample search focused upon this specific request but relied upon earlier sample runs conducted in consideration of differently worded requests. As set out below we are not satisfied that therefore that the LBH cost estimate related to THIS request.
16. Nevertheless, we take into account that the Council have purported to provide a cost estimate in reliance upon the searches undertaken relating to a request that is differently framed and have gone on to consider that estimate. This brings into play the second step as set out in *Kirkham* namely whether the estimate "included any costs

⁷ Emphasis added

⁸ Paragraphs 25-31

⁹ Reg 12(2)

that were either not reasonable or not related to the matters that may be taken into account. This arises under regulation 4(3) ...” .

17. The Appellant’s case in a nutshell is that in their efforts to ensure that all information that might be in scope was considered in any search, the Council cast the net too wide. We remind ourselves that the burden is on the Council to satisfy us that the request is manifestly unreasonable. In applying the cost regulations the Tribunal should have regard to the searches that might reasonably be required and to consider whether matters have been taken into account that are not permitted under r4(3).
18. In assessing the evidence and submissions relating to the likelihood of information being found in specified places the Tribunal does not suggest that the LBH should “cut corners” or do a partial search. Indeed *Kirkham*¹¹ is clear that this would be a breach of their obligation to provide all of the information requested (subject to the rest of the provisions of FOIA or EIR) and that it would be impermissible to “*interpret FOIA in a way that is guaranteed not to allow a public authority the chance to comply with its duty*”.
19. We are satisfied that a reasonable search is for information that might be held on a balance of probabilities. A public authority is not required to look for information in places where it is not likely that it would be held. *Kirkham* requires the Tribunal and ICO to “*take a sceptical approach and require the public authority to provide persuasive evidence of how they undertook the estimate, with follow up questions if necessary.*”¹² This was the Tribunal’s approach at the hearing when testing the reasonableness of the cost estimate.
20. A sample run is the exercise whereby the number of documents identified using specific search terms is quantified. These were performed on the Council’s Edocs system which is the Council’s central depository of files which can be searched electronically using parameters such as date, document number and key words. LBH’s case was that from sample search runs of Edocs the number of documents identified as search results when multiplied by 3 minutes per document to review the contents provided a time estimate that substantially exceeded the cost limit. They argued that this was only one type of search and that additionally there were

¹⁰ Re 12(1)(b)

¹¹ Paragraph 12

¹² Paragraph 34

other places it would need to search. No sample runs were done of the other places where information might be held in light of their contention that the cost limit had already been greatly exceeded.

Scope of the Request

21. The Appellant's case is that he has tried to narrow down the request. It is noted that the date range provided in this case is slightly longer than in the request in issue in EA/2017/0047 but nevertheless we are satisfied that this request is defined by its time span which is an operative term within the scope of the information sought.
22. The Appellant told the Tribunal that in referring to *any* two notes or pieces of correspondence he intended the search to stop once the first 2 relevant documents had been found. These could be in any combination of notes and/or pieces of correspondence. The Tribunal is satisfied that this is the objective construction of the request. Once any document has been assessed as showing that the *head of Hackney Council Education Property Department was considering usage of the site known as Audrey St Depot for educational purposes* it was in scope and disclosable, once 2 had been identified there is clearly no need to continue as the request has been answered and the duty fulfilled. This caveat was intended to reduce the length of the search; if (as the Appellant contends) there is information to be disclosed, this may well curtail the time taken as it will guillotine the search once 2 items have been found. However, LBH maintain that there is nothing to find and that as such this term will have no effect as all the material identified as potentially containing relevant information, will have to be searched. It is on this basis that they have compiled their estimate. We accept that this is a reasonable approach although as set out below we take issue with the LBH as to the reasonableness of the breadth of the search.
23. The Appellant also told the Tribunal that by *notes or pieces of correspondence* he meant word documents and emails; although he accepts that this is not the objective construction of the request. The Tribunal's jurisdiction is confined to the request as worded although it observes that it was plain that what was meant by "notes and pieces of correspondence" was open to interpretation and good practice would have been to clarify with the Appellant what he meant by this¹³. Mr Coleman's evidence was that in

¹³ Regulation 9 EIRs

the absence of clarity of what was meant and to ensure that there was no possibility that documents which might contain relevant information were over-looked, he searched for all types of documents including jpegs, excel spreadsheets etc. Whilst we understand Mr Coleman's reasons for caution (some people make notes in an excel document and jpegs can be photographs of manuscript notes) it is not apparent to us whether he had asked HEPD or those within his department at that time what the practice was and whether therefore excel documents were likely to contain notes or pieces of correspondence.

24. In our judgment including certain types of documents and so many areas of search is likely to have inflated the time estimate both in terms of the number of documents to be considered and the length of time taken to consider the documents. On these grounds the tribunal explored whether the estimate included costs that were not reasonable in this regard.
25. The Tribunal is also satisfied that the scope of this request has as its nexus the contemplation (i.e.direct knowledge) of the then HEPD Any plans that the Council had which did not involve the Head of that Department in our judgment could not be in scope. As such unless she was recorded as present, participating, a sender, recipient or as having had sight of any document it could not fall within scope. In our view this significantly differentiates the scope of the request from that in EA/207/0047 which was not linked to this individual.

Location of the search

26. Mr Coleman's evidence was that his starting point was the Council's Edocs system. The only hard copies that are kept are documents that cannot be stored electronically either because they are too difficult to scan e.g. blueprints or because the original has to be kept e.g. contracts. From this we are satisfied that it is unlikely that any relevant material is held in the paper files and therefore unless an electronic document pointed specifically to an item in the paper files no search of them would be reasonable.
27. In response to the Appellant's concern that relevant documents would be deleted during the currency of his EIR appeals, Mr Coleman told the tribunal that it is not possible to delete documents from Edocs. It replaces hard copies of notes, minutes reports etc and it also contains some but not all emails. Emails which are stored in

Edocs have been uploaded specifically; individual email accounts are stored separately where the person concerned still works for the Council¹⁴. Mr Coleman's evidence was that:

- The same person was HEPD throughout the period encompassed within the request.
- Although she no longer worked in this role, she still worked for the Council in the same department.
- Her email account remained current.
- No emails were deleted from this system which represents the complete history of emails that were sent or received by an individual.
- The emails were archived but accessing them was not difficult.

28. The Tribunal considers it highly likely that if information is held by LBH its footprint would be visible from the HEPD's emails. It is reasonable that her email account be considered a likely source of information in scope. Mr Coleman's evidence was that he would not expect there to be many documents relating to Audrey Street in these emails because although there is a primary school in Audrey Street it is generally known as "Sebright" and not by its address (it is of course LBH's case that there were no plans to use the depot as a school at that time). No sample run had been done against any search terms in the emails in HEPD's account to enable this to be quantified.

29. The LBH argued that the search could not sensibly be restricted to the records of the Head of the Department, because information uploaded by others or created by others might reveal (a) the considerations of the Head, and (b) any consideration by the Department would properly have to be disclosed as the ultimate responsibility of the Head of that Department. The Tribunal disagrees. The search term requires the "consideration by" the head of department not consideration by the department of which she was head. It was argued by the Council that any reasonable search would also include the individual accounts of others in the department (including those who had left whose emails would then have to be retrieved) in case they had a copy of a document (e.g. a report of a conversation with HEPD which was not copied to her but sent to a third party). The Tribunal considers it unlikely that such a document would

¹⁴ It is understood that the emails of those who have left can be retrieved but this is likely to be more time consuming.

exist without there being some sort of footprint in the emails of HEPD herself such as arrangements for the meeting or follow up documents, as such we are not satisfied that a general search of other email accounts was required or reasonable (although the Tribunal recognises that specific emails might need to be retrieved if referred to in other documents).

Sample search runs

30. LBH relied upon earlier sample searches conducted in response to a different information request in responding to this request. They posited that 3 minutes to review each document was reasonable. Taking that reading estimate any list of documents that exceeded 360 documents would exceed the time limit. Even if the review time were reduced to 2 minutes per document that would set the document list limit at 540.
31. None of the searches were for documents that took into account the necessary knowledge of HEPD. In our judgment no or insufficient consideration was given to the scope of the actual request and to reflect the change in the terms from the EA/2017/0047 request. That sample search run produced between 4,600 and over 5,000 results. However, we are not satisfied that these search results were limited to the files within the relevant time period. We note that a wider search (Audrey Street) limited to the relevant period in Edocs produced 662 results whereas what could be expected to be a more limited search (Audrey + school) produced over 5,000 results. Any search results that are not limited to the relevant time period have no validity in satisfying us that a relevant search within the scope of the request would exceed the relevant time and cost limits.
32. Mr Coleman's oral evidence was that he had not undertaken any searches which linked the name of HEPD or the term "head of educational property" to the request. In their letter of 19.9.17¹⁵ LBH did state that searching Edocs for "Head of Department" returned 184 files and that names of the Head of Department for that period returned 1076 results. It is the Tribunal's understanding that this relates to the 2 departments named in the EA/2017/0047 request and as such they do not assist in assessing the reasonable search required within the parameters of this request.

¹⁵ P127

33. Mr Coleman's rationale was that although there was a search field for "document author" this did not reflect whose document it was or who created it, but instead identified the individual that uploaded it to the system. The Tribunal accepts this, however, he told the Tribunal that it was possible to add multiple search terms to refine a search and that had HEPD's name or her job title been included in the search term it would identify any document in which she was referenced. We are satisfied that this would be material in identifying documents in which she was: sender, author, recipient, participant or mentioned thus demonstrating the prerequisite knowledge.
34. Although "Audrey +school" in Edocs led to 662 documents Mr Coleman could not tell us to what extent that would be reduced if the additional terms of the name of HEPD or "Head of Educational Property" were included in the search. The Tribunal accepts that there may be some inconsistency in the exact wording of the job title but observes that the search has to be reasonable on a balance of probabilities and the Tribunal and LBH are entitled to rely upon the usual way that HEPD referred to herself and was referred to by others. Whilst it was argued on LBH's behalf that there were numerous search terms that *could* be applied it would be unreasonable for them to do more as those that they had undertaken were sufficient and reasonable. The tribunal disagrees, the searches relied upon included "Audrey + drawing" it is not clear how that would fall within any definition of notes or "pieces of correspondence" neither could it fulfil the necessary criteria of demonstrating the contemplation of HEPD.
35. Mr Coleman was unable to assist as to the impact of using different punctuation in searches (e.g. "+" or " , ") although he had noted that the outcome was different. Similarly his evidence was that the results could be listed in order of relevance, however, he did not have a clear understanding of how this operated and thus whether any of the results could be discounted as irrelevant. Although we accept that he is familiar with the system and has a good working knowledge of it though his own use, he did not seek any guidance from LBH's IT department as to ways in which more targeted searches might be conducted including ways that the relevance of the search results could be assessed. Whilst we don't suggest that it would be reasonable to "buy in" outside assistance on the facts of this case, in light of the difficulties narrowing down the search the Tribunal finds it surprising that inhouse advice was not sought.
36. We accept that Mr Coleman spoke to HEPD and others working in the department at the time who told him that no such information was held. However, notwithstanding

their response, he did not seek their advice as to places where a targeted search might be made, which search terms were in common use at that time or any specific ways in which documents were stored, filed or compiled which would have assisted him to rule in or out certain types of documents and thus narrow down the search results.

37. The Council generally considers that an average of three minutes per document is a reasonable estimate. This estimate assumed that all documents would need to be opened in order to be sure of their contents. LBH argued that titles can be misleading and some titles are not indicative of contents being in effect serial numbers. The Appellant relied upon the ability to disregard documents based on title without looking at them to challenge the timings relied upon. Mr Coleman provided a screenshot of a generic list of documents from Edocs and whilst this list did not relate to the keyword searches; taking them as the representative sample of the idiosyncrasies of the way documents are named at LBH, the Tribunal is satisfied from this that the likely contents of 50% could be discerned from their title alone. Additionally, in the context of Audrey Street we are satisfied that it is likely that a proportion of those documents with identifiability from their title should be rejected as irrelevant based on title alone e.g. any document whose title related to Sebright primary could be rejected as out of scope on balance without needing to open it. The Tribunal was not provided with evidence relating to the make up of titles identified through key word searches but was satisfied that it was likely to be of sufficient quantity to significantly undermine the LBH estimate of time arising from multiplying the number of documents in the list by 3 minutes per document.
38. LBH additionally argued that 3 minutes was relevant because some documents are time consuming to search (such as excel documents and pdfs where the search function is less reliable). The Tribunal repeats its observations as to the materiality of having clarity as to the type of documents that are included in a request. Mr Coleman confirmed that he had looked through some documents on the sample runs but was unable to clarify: what types these were; how many and how long in fact each type of document actually took to review. The Tribunal is not satisfied therefore that 3 minutes per document is a reliable or reasonable estimate.
39. The Council relied upon the process of redaction of exempt information, including most obviously personal data, irrelevant and out of scope information, and the possible consideration and application of other exemptions as being material to the overall time

estimate. We observe that in light of what we consider to be the objective reading of the request namely that the request is fulfilled when 2 pieces of information have been identified we are satisfied that such redaction could only relate to 2 documents which would considerably limit the impact of this aspect of the time estimate.

40. For the reasons set out above we are not satisfied that the request is manifestly unreasonable in reliance of the s12 FOIA costs limit.

Advice and Assistance

41. LBH argued that the issue of advice and assistance pursuant to regulation 9 EIRs was not before the Tribunal as the Commissioner did not make an explicit finding of breach. The Tribunal disagrees and is satisfied that the issue for the Commissioner upon receipt of a complaint is to determine whether the public authority dealt with the request in accordance with Part I of FOIA (S50(1)). On appeal the issue for the Tribunal is whether the Commissioner's decision notice was in accordance with the law (S58(1)). The latter in effect requires the First-tier Tribunal to consider afresh whether the public authority dealt with the request in accordance with Part I.¹⁶
42. In *Kirkham v ICO [2018] UKUT (AAC)* the upper tribunal noted that whilst the responsibility rests with the requestor to make requests that do not fall foul of s12, there is a counterweight in s16 which provides the power and the duty for the authority to assist a requester to make a request in appropriate terms.¹⁷ This case falls to be dealt with under EIRs wherein the corresponding regulation is regulation 9 which provides:
- (1) *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.*
- (2) *Where a public authority decides that an applicant has formulated a request in too general a manner, it shall—*
- (a) *ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and*
- (b) *assist the applicant in providing those particulars.*

¹⁶ Kirkham v ICO [2018] UKUT 126 AAC paragraph 17

¹⁷ Paragraph 12

43. It was argued by LBH that reg 9's relevance under reg 12(4)(b) was limited to the public interest and possibly the extent to which the fees limit could be exceeded if additional cost arose out of a public authority's own actions. It was their case that its relevance when considering the engagement of a regulation was limited to reg 12(4)(c) which explicitly requires a public authority to have complied with regulation 9 before it can refuse a request based upon it being too general. Whilst the wording of regulation 12(4)(c) echoes that used in regulation 9(2) the terms of reg 9(1) mirror those of s16 FOIA with its general application. They are not limited on their face (either overtly or by implication) to any specific exemptions.
44. Advice and assistance is not material to the Tribunal's determination that the appeal should be allowed, which rests upon flaws relating to the reasonableness of the cost estimate however, the Tribunal makes the following observations. Mr Coleman was clear in his evidence that he did not consider it his role to help the Appellant to refine his request into terms that could be fulfilled within the costs regulations. This was disappointing in light of the Tribunal's clear indication in EA/2017/0047 that: *"The Council was less than punctilious in the steps it took to assist the Appellant (under obligations imposed by EIR regulation 9 to refine his information requests in a way that would make them most effective within costs limits when applied to a records system with which it was familiar but he was not..."*¹⁸
45. He noted that there had been multiple information requests from the Appellant on the same general topic and his view was that considerable Council time had already been expended in considering how to respond to these claims. The Tribunal observes that this request has been considered by LBH as an independent request in that they have not sought to "roll up" the time spent dealing with the requests in support of their claim that the request exceeded the cost provisions. In light of the difficulties the Appellant has had understanding how to reduce the scope of his request; the Tribunal is satisfied that timely advice and assistance might well have reduced the burden on the council and resolved the matter satisfactorily without so much effort having to be expended. The responsibility for this failure lies with LBH.

¹⁸ Paragraph 27(f)

46. The Appellant had demonstrably tried to find the terms of an acceptable request that did not fall foul of the costs regulations which would enable the information he sought to be looked for. He had sought to vary the terms of the requests but was considerably hampered by having no information as to how the documents were stored and what the sticking points were such as (timespan, type of document and multiple locations). The Upper Tribunal when considering the scope of the search observed¹⁹ that if a requester wants to limit the extent of a public authority's duty, the way to do it is through the terms of the request. However, the Tribunal observes that this is hard to do if the Appellant has not been provided with enough information as to the way information is held and the timescales that are applicable to be able to make a judgment.
47. The Tribunal is satisfied that it would have been reasonable to provide advice and assistance to the Appellant in this case both in defining what he meant by the terms used and in seeking to see if agreement could be reached as to the locations to be searched so as to keep the search within the cost limit. If, taking the Tribunal's observations as to the scope and manner of the search into consideration the LBH are still of the view that the costs limit would be exceeded the Tribunal would expect to see positive evidence that Regulation 9 had been addressed prior to a refusal notice being issued in that regard.

Conclusion

- 48.** For the reasons set out above the Tribunal allows the appeal. The LBH are hereby directed within 35 days to take into consideration the Tribunal's findings as to the scope of the request and the parameters of a reasonable search as set out above in order to either provide the information or a refusal notice pursuant to regulation 14 EIRs.

Signed Fiona Henderson

Judge of the First-tier Tribunal

Date: 6th July 2018

¹⁹ Paragraph 14