

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

Decision Notice

Date: 4 June 2021

Public authority: Royal Borough of Kensington & Chelsea
Address: The Town Hall
Hornton Street
London
W8 7NX

Decision (including any steps ordered)

1. The complainant requested information relating to the Council's handling of a noise complaint about her family home. The Council provided some information, stated that it did not hold other information, and refused the remainder of the request in reliance on the exception at regulation 12(4)(b) on the basis that the request was manifestly unreasonable.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(b), and the public interest in maintaining the exception outweighs the public interest in disclosure. The Commissioner also finds that the Council does not hold some of the requested information. The Commissioner does not require any remedial steps to be taken.

Background

3. The complainant in this case has been in dispute with the Council for several years regarding the Council's handling of noise complaints submitted by the complainant's neighbour about the complainant's family home. The Council issued an abatement notice in 2015, which the complainant appealed via the Magistrates Court in 2016. The Court upheld the Council's decision to serve the abatement notice, but varied the terms of that notice. The Council subsequently withdrew the abatement notice.
4. The Commissioner has issued several decision notices in respect of requests made by the complainant seeking information relating to the Council's handling of the noise complaints. The request that is the subject of this decision notice follows an earlier request for similar information made to the Council in November 2018 (the 2018 request).

5. The Commissioner issued a decision notice in respect of the 2018 request on 2 February 2020, finding that the Council was entitled to refuse the request as manifestly unreasonable under regulation 12(4)(b).¹
6. The 2018 request was itself a slightly amended version of a previous request made in 2015, which had also been the subject of a decision notice; it was further appealed to the First-Tier Tribunal.²

Request and response

7. On 7 January 2020 the complainant submitted the following request for information to the Council:

All information requested is in relation to the piano dispute in the period before the Noise Abatement Notice was served, from 1st March 2014 to 8th April 2015 (ie. before legal proceedings had begun).

The information requested is:

1. Councillor Involvement

From 1st March 2014 until 8th April 2015 all communication between (to and from) RBKC officers and the following elected officials;

- a) Cllr Tim Coleridge (Former Lead Member for the Environment);*
- b) Cllr Tim Ahern (Former Lead Member for the Environment);*
- c) Cllr Nicholas Paget-Brown (Former Leader of RBKC)*

2. Instructions Given to Environmental Health Officers

Instructions given to the following environmental health officers prior to their site visits to the home of the complainant:

- a) Mr Dom Stagg*
- b) Raymond Asagba*

¹ <https://ico.org.uk/action-weve-taken/decision-notice/fer0808893/>

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1625680/fer0609019.pdf> and [https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2110/Carrabino,%20Annette%20EA-2017-0010%20\(21.11.17\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2110/Carrabino,%20Annette%20EA-2017-0010%20(21.11.17).pdf)

- c) *Melanie Adam*
- d) *James Guinan*

2. *Council Officer Field Notes*

Original field notes from site visits from each of the following officers who are known to have attended the complainant's home to consider the complaints. The date of the known visit is recorded with each name:

- e) *Dom Stagg (14th April 2014)*
- f) *Raymond Asagba (9th December 2014, 8th March 2015; at least one other date in 2014)*
- g) *Melanie Adam (12th December 2014)*
- h) *James Guinan (13th December 2014)*

All other field notes from any other visit

3. *Acoustic Recordings*

- a) *Logged results of acoustic recordings known to have been taken by RBKC officers (and subsequently destroyed) of the alleged nuisance; and*
- b) *Communications (emails, logs of conversations etc.) between RBKC officers and others, including the complainant, in respect of the results of the acoustic recording equipment.*

8. On 27 January 2020 the Council advised the complainant that it was extending the time for compliance as permitted under regulation 7 of the EIR. The Council explained that the complexity of the searches required additional time, and indicated that a substantive response would be issued by 3 March 2020.
9. The Council responded to the request on 2 March 2020, albeit that its correspondence was dated 28 February 2020. The Council stated that it did not hold any information relating to questions 1, 2a-d and 3a. It provided information in response to questions 2e-h, which it said it had previously disclosed to the complainant.
10. Finally, the Council refused to provide information falling within the scope of question 3b on the basis of regulation 12(4)(b). The Council reminded the complainant that she had previously requested this information as part of the 2018 request and the Commissioner had accepted that that request was manifestly unreasonable.

Scope of the case

11. The complainant contacted the Commissioner on 9 March 2020 to complain about the Council's response to her request.

12. The Commissioner does not usually accept complaints for investigation unless the complainant has exhausted the public authority's internal review process. However, in this case the Commissioner is mindful that the complainant has been in correspondence with the Council for a number of years regarding various information requests on this subject matter. The Commissioner has issued a number of decision notices in respect of these requests, the most recent of which found that the Council was entitled to refuse requests as manifestly unreasonable. The Commissioner considers that this latest request represents an attempt by the complainant to submit a refined request that is not manifestly unreasonable. Therefore she considered it appropriate to accept the complaint for investigation without requiring a further internal review.
13. As set out in the previous decision notices, the Commissioner has emphasised that some of the requested information is the complainant's personal data. This is because the request relates to a noise complaint that was made about the complainant's family by their neighbour. Regulation 5(3) of the EIR states that the personal data of the applicant does not fall within the scope of the EIR. Therefore the Commissioner's decision relates only to the information that is not the complainant's personal data.
14. The Commissioner would also reiterate that her role is to decide whether a particular request has been handled in accordance with the requirements of the EIR. She cannot comment on or become involved in the complainant's wider dispute with the Council.

Reasons for decision

Regulation 5(1): duty to make information available **Regulation 12(4)(a): information not held**

15. Regulation 5(1) of the EIR states that, subject to other provisions, a public authority that holds environmental information shall make it available on request. Regulation 12(4)(a) provides an exception from the duty to make information available if the authority does not hold the requested information at the time of the request.
16. The Council's refusal notice stated that it had conducted searches but did not locate any information relating to parts 1, 2a-d and 3b of the complainant's request.
17. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, ie the balance of probabilities. Accordingly her investigation will consider the public authority's reasons for stating that it does not hold the

information in question, as well as the extent and reasonableness of any search conducted. The Commissioner will also consider any arguments put forward by the complainant as to why the information is held (as opposed to why it ought to be held). Finally, the Commissioner will consider whether there are any further steps she could require the public authority to take if the complaint were upheld.

18. The complainant referred the Commissioner to correspondence dated 9 June 2016 from the then Leader of the Council. This correspondence said that councillors had been "fully briefed by Council officers". In the complainant's opinion this suggested that recorded information was likely to be held by the Council.
19. The Commissioner asked the Council to explain how it was satisfied that it had conducted an adequate search for the requested information. The Council confirmed that it had conducted an e-discovery search using the complainant's surname, the surname of the neighbour who had complained about the noise, and the street name. The search was confined to the dates specified by the complainant. The Council's reasoning was that any information falling within the scope of the complainant's request would be likely to contain one or more of these search terms. This search did not return any information relating to parts 1, 2 or 3b of the request. The Council also confirmed that it had not archived any relevant information, nor was it held in a physical format. Therefore the Council was satisfied that an e-discovery search was the appropriate search method since it would be likely to identify relevant information held by the Council.
20. The Commissioner has considered the Council's search strategy and is satisfied that it is both reasonable and proportionate. In the Commissioner's opinion this search ought to have returned any relevant information as described in the request, to the extent that it was held by the Council. In view of this, the Commissioner is not persuaded by the complainant's argument that recorded information is held because councillors had been briefed on the matter. In the absence of evidence to the contrary, the Commissioner considers it reasonable to conclude that such a briefing is likely to have been verbal, and that records of a verbal briefing were unlikely to have been created.
21. The Commissioner has also considered whether, if she were to uphold the complaint, she could require the Council to undertake any action, such as further searches, that would be likely to locate relevant information. The Commissioner has been unable to identify any such action that would be reasonable in this case.
22. The Commissioner is further reminded that any information that is the complainant's personal data would not be considered environmental

information. Rather, it would fall outside the scope of the EIR by virtue of regulation 5(3). Accordingly the Commissioner is satisfied, on the balance of probabilities, that the Council does not hold any environmental information that falls within the scope of these parts of the complainant's request.

Regulation 12(4)(b): manifestly unreasonable request

23. Regulation 12(4)(b) of the EIR provides an exception from disclosure to the extent that the request is manifestly unreasonable. The term "manifestly unreasonable" is not defined in the EIR. However the Commissioner follows the lead of the Upper Tribunal in *Craven v Information Commissioner & DECC*.³
24. In *Craven* the Tribunal found that there is, in practice, no difference between a request that is vexatious under the FOIA and one which is manifestly unreasonable under the EIR, save that the public authority must also consider the balance of public interest when refusing a request under the EIR.
25. A differently constituted Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield*.⁴ The Upper Tribunal's approach, subsequently upheld in the Court of Appeal, established that that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious. The Commissioner is of the opinion that these concepts are equally relevant when assessing whether a request for environmental information is manifestly unreasonable.
26. The Commissioner notes that regulation 7(1) allows a public authority to extend the time for compliance from 20 to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable to meet the 20 day deadline. However, in *Craven* the Tribunal again commented 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 (assuming, of course, it is also satisfied that the public interest test favours maintaining the exception). The absence of any provision in

³ [2012] UKUT 442 (AAC)

⁴ [2012] UKUT 440 (AAC).

the EIR equivalent to section 12 of FOIA makes such a conclusion inescapable."

The Council's position

27. The Council considered part 3a of the complainant's request to be manifestly unreasonable on the grounds that compliance would constitute a disproportionate burden on its resources. The Council noted that the request was a reworded version of a large portion of the 2018 request, which the Commissioner had found to be manifestly unreasonable.
28. The Council repeated the search that it had undertaken in respect of the 2018⁵ request; ie, using the search terms "Acoustic" and "Recordings" for the time period specified by the complainant. This search returned 503 items over four email accounts, and the Council maintained that, as with the 2018 request, it would be too burdensome for it to review and extract the information relevant to the request, from the data returned by the search.
29. During the course of the Commissioner's investigation the Council agreed to conduct a further electronic search for information relating to part 3a of the request, following a suggestion from the complainant. The Council used the search terms "Acoustic" and "Recordings", and the date range 5 March 2015 - 8 April 2015.
30. Having conducted the search the Council advised the Commissioner that it returned 7.05GB data, which was too big to download. The Council repeated the search using the same time period and the search term "Acoustic" but this did not significantly reduce the amount of data returned. The Commissioner understands that these searches had the effect of being broader in scope, despite the fact that they aimed to narrow the scope. The Council therefore remained of the position that the complainant's request was manifestly unreasonable.

The complainant's position

31. During the course of the Commissioner's investigation the complainant provided several detailed submissions in support of her position. The complainant referred to other information requests she had made to the Council, both before and during the Commissioner's investigation. The

⁵ See <https://ico.org.uk/action-weve-taken/decision-notice/fer0808893/>, paragraph 41 onwards.

complainant noted that she had been provided with information comprising her personal data in response to a subject access request, which she felt supported her claim that the noise complaint had been improperly handled by the Council. The Commissioner has considered all the information provided by the complainant but does not consider it necessary to refer to each communication in detail within this decision notice.

32. The complainant emphasised her disagreement with the Council's assessment that her request was manifestly unreasonable. She reiterated arguments put forward during the Commissioner's investigation of her previous complaints, and maintained that the First-Tier Tribunal, as well as the Commissioner and the complainant herself, had been misled by the Council during the appeal of the 2015 request in 2017.

The Commissioner's findings

33. The Commissioner recognises that the complainant in this case is of the enduring opinion that she and her family have been ill-treated by the Council regarding the noise complaint. The matter was dealt with by the Magistrates' Court in 2016, yet the complainant has submitted numerous requests for information to the Council since then. The Commissioner has issued a number of decision notices, as indicated above, dealing with the complainant's dissatisfaction with the way the Council has handled her various requests.
34. The complainant has already received her own personal data (to the extent that she is entitled to receive it), and she has been advised that this information falls outside the scope of the EIR by virtue of regulation 5(3) of the EIR. Given the subject matter of the complainant's requests, this means that the scope of the Commissioner's investigation under the EIR is necessarily extremely limited. Nevertheless the complainant appears not to accept, or not to understand that the Commissioner cannot require the Council to disclose under the EIR information that is the complainant's personal data.
35. The Commissioner accepts the Council's explanation of the work required to go through and separate out the information that is not the complainant's personal data, especially given that much of the remaining information is likely to include personal data relating to the complainant's neighbour, another private individual. The Commissioner does not consider it necessary to replicate the arguments she has set out in the previous decision notices relating to similar requests.
36. Consequently the Commissioner is satisfied that the Council is entitled to rely on the exception at regulation 12(4)(b). However the Commissioner is mindful that regulation 12(4)(b) is a qualified exception

and therefore subject to the public interest, as well as the presumption in favour of disclosure.

37. The Commissioner recognises that where a request is refused as manifestly unreasonable, it may be reasonable for a requester to consider revising or refining the scope of their request. Unfortunately in this case – and prior to it - the complainant has sought to pursue several complaints in respect of separate requests, whilst simultaneously submitting further, similarly worded requests on the same subject matter. Whilst the Commissioner does recognise the complainant's determination to pursue her grievance, she considers that this behaviour is unhelpful and crosses the line from persistent to obsessive. The Commissioner is of the opinion that there is a strong public interest argument in protecting a public authority from the burden of dealing with such requests.
38. The complainant has also corresponded frequently with the Commissioner during the course of her enquiries. The Commissioner has explained that her role is to decide whether a particular request for information has been handled according to the legislation. Despite this, the complainant has frequently reiterated the historic details of her dispute with the Council, above and beyond the relevant information required for the Commissioner to make a decision in this case.
39. The Commissioner has set out in previous decision notices that she agrees with the Council's assessment that there is relatively limited public interest in disclosure, since the requested information relates wholly to the Council's handling of one noise complaint (albeit over a period of time). The Commissioner is persuaded that the complainant is seeking to use the EIR as a means of continuing her personal dispute with the Council, despite the fact that she cannot receive information that is her personal data under this access regime.
40. The Commissioner has acknowledged the complainant's personal sense of grievance, but has found that this is not a strong public interest argument in favour of requiring the public authority to comply with a manifestly unreasonable request. The Commissioner is not convinced that compliance with the request would in fact inform the public about the way the Council handled the noise complaint. It would be more likely to lead to further requests on the same subject, since the complainant is unlikely to accept any response that does not confirm her view of the dispute.
41. The Commissioner has also drawn attention in previous decision notices to the significant pressures faced by the Council in terms of competing priorities and the consequences of dealing with the Covid-19 pandemic. The Commissioner has found that obliging the Council to comply with the complainant's previous requests would be likely to have an adverse

impact on the handling of other requests for information, and the delivery of important public services generally. The Commissioner remains of the view that there is a substantial public interest in protecting the ability of public authorities to deploy their limited resources in the most reasonable and proportionate manner. In this case the Council has had to divert resources to dealing with the complainant's requests that may otherwise have been spent on requests that benefit the wider public.

42. For the reasons set out above the Commissioner finds that the public interest in maintaining the exception in this case clearly outweighs the public interest in disclosure, even taking into account the presumption in favour of disclosure. The Commissioner would urge the complainant to consider carefully the impact of making further requests on the same issue to the Council.

Right of appeal

43. 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 123 4504
Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

44. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.

45. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF