

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

Date: 13 February 2023

Public Authority: Haringey London Borough Council
Address: 7th Floor, River Park House
225 High Road
Wood Green
London N22 8HQ

Decision

1. The Commissioner's decision is that the complainant's request for information about a planning application is manifestly unreasonable under regulation 12(4)(b) of the EIR, and that there has been no breach of regulation 9, which concerns advice and assistance. It is not necessary for Haringey London Borough Council to take any further steps.

Request and response

2. The complainant made the following information request to Haringey London Borough Council ('the Council') on 13 July 2022:
 - "1. A full non-redacted copy of the Development Agreement dated 20 December 2017, as requested at paragraph 1 of [redacted] 28 June 2022 letter; and
 2. The documents requested at paragraph 4 of our 1 July 2022 letter, namely documents evidencing the decision making process behind LBH's resolution at its December 2015 Cabinet to procure a new developer partner for HRW by way of an OJEU process and the subsequent selection of Lendlease as the preferred bidder.

Specifically, please provide the following documents (as referred to in the relevant Cabinet Reports as indicated):

- i. Full copy of GVA Bilfinger High Road West Business Case Report November 2015 – including exempt Financial Assessment of Delivery Options (December 2015 – Appendix 1).
 - ii. Copy of Briefing Note prepared by Eversheds LLP on the Procurement Options September 2015 and any other associated advice on the Procurement Process (December 2015, Appendix 1, para 7.1).
 - iii. AECOM Infrastructure Study (September 2016, Appendix 2, p.16).
 - iv. Copy of the preferred bidder's masterplan for the High Road West Area, approach to a design code, detailed socio-economic strategy, proposal and cost plan for the Library and Learning Centre, Affordable Housing strategy, replacement homes strategy, phasing approach and programme, land assembly strategy, estate management strategy, commercial strategy and sustainability and energy strategy (September 2017, para 6.46)."
3. This request was a refinement of an earlier request that the Council appears to have refused under regulation 12(4)(b) of the EIR and section 12 of FOIA, which concerns the cost of compliance.
 4. The Council's final position was to refuse the current request under regulation 12(4)(b) of the EIR as it considered the request to be manifestly unreasonable by virtue of the disproportionate burden involved in complying with it.

Reasons for decision

5. On the basis of the complaint to the Commissioner, this reasoning has first considered whether the request is for environmental information that is covered by the EIR. The notice then covers the Council's reliance on regulation 12(4)(b) of the EIR and whether there was a breach of regulation 9.
6. Despite the EIR's presumption in favour of disclosure which potentially makes the EIR more helpful to an applicant than FOIA, the complainant disputes that the requested information is environmental information. However, the request is for information associated with the development

of a piece of land. As such the Commissioner is satisfied that the information can be categorised as environmental information under regulation 2(a) and 2(c) of the EIR.

7. Under regulation 12(4)(b) a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable.
8. A request may be manifestly unreasonable because it is vexatious or, as in this case, because of the burden complying with the request would impose on the authority – in terms of cost or time.
9. The Freedom of Information and Data Protection (Appropriate Limit and Fees) sets out an appropriate limit for responding to requests for information under FOIA. The limit for local authorities is £450 or 18 hours work. Where the authority estimates that responding to a request will exceed this limit the authority is not under a duty to respond to the request.
10. Although there is no equivalent limit within the EIR, the Commissioner considers that public authorities may use equivalent figures as an indication of what Parliament considers to be a reasonable burden in terms of responding to an EIR request. However, the public authority must then balance the time estimates involved in responding to the request against the value of the information which would be disclosed before concluding whether the exception is applicable.
11. Unlike the FOIA equivalent (section 12), regulation 12(4)(b) of the EIR is subject to the public interest test. And, as noted, under regulation 12(2) of the EIR there is a presumption in favour of disclosure, which is not a feature of FOIA.
12. In its refusal of the request of 10 August 2022, the Council noted that the request includes the full Development Agreement, which includes 16 appendices which, together with the main document comprise over 700 pages. The Council also noted that the request includes a copy of the preferred bidder's bid documents which, together, comprise over 200 pages, and included:
 - masterplan for the High Road West area
 - approach to a design code
 - detailed socio-economic strategy
 - proposal and cost plan for the Library and Learning Centre
 - affordable housing strategy
 - replacement homes strategy
 - phasing approach and programme
 - land assembly strategy

- estate management strategy
 - commercial strategy and
 - sustainability and energy strategy
13. The Council advised that, assuming it would take approximately 1.5 minutes to review each page and assuming more than one officer reviewed the documents, even without calculating the time spent on other documents requested, the estimated time to review these documents would be significantly in excess of 18 hours. As such, it would be a manifestly unreasonable burden.
 14. At internal review, the Council noted that its response referred to the Development Agreement and that, as well as the main part of the Agreement, which is in the public domain as a redacted version, there are 16 appendices. The Council anticipated that exceptions may apply to parts of those documents. It said that the total number of pages in scope is "700".
 15. The Council then advised that "over 550 pages comprise the appendices". It said that it had not previously considered redacting this information in order to make it public and so would need to review it now "were it to do so." In addition to this, the Council said, in the second part of the request, approximately 200 pages related to the bid documents have also not been previously reviewed and would also need to be reviewed in the same manner.
 16. The Council confirmed that the time taken to review each page of the documents had been based on a test of a sample number of pages and was estimated to be 1.5 minute per page. As such, the time it would take to respond to the request would be significantly greater than 18 hours.
 17. The Council has provided a submission to the Commissioner. It confirmed that the request includes disclosure of the full Development Agreement, which includes sixteen appendices. Together with the main document this comprises over 700 pages. The main body of the Development Agreement document is in the public domain as a redacted document, but this is not the case for the appendices. These are long and complex and comprise around 550 pages. The Council says that they are highly likely to contain substantial amounts of confidential information, making the job of reviewing them very time consuming.
 18. The request is also for the preferred bidder's bid documents which together comprise over 200 pages and include the documents itemised above.

19. The Council has then said that, assuming a rate of approximately 1.5 minutes needed per page per officer to review whether any of the information is exempted, "... based on reviewing a sample of 10 pages across two documents, this would already surpass the 18 hour timescale referred to above, while excluding the time taken to initially retrieve the documents and time taken in relation to redacting any exempt information. As well as this, the request includes due diligence documents, including financial and legal advice as well as advice on infrastructure."
20. The Council went on to say that at least two officers would need to undertake the process of redacting documents separately. This is so that one officer can check the other's work and to ensure material is redacted accurately and appropriately. Taken together, the Council considers that the estimated time to review these documents is significantly more than the 18 hours referred to. As such it would be a manifestly unreasonable burden on the Council.
21. To further support its position, the Council says that one of its officers has already spent approximately six hours identifying, retrieving and collating some of the information in order to provide that information to the Commissioner in relation to a separate complaint he is considering. The six-hour figure excludes any work reviewing and redacting those documents.

The Commissioner's conclusion

22. The Commissioner understands that the Council's estimates are based on the time it would take to review and redact the Development Agreement's appendices comprising approximately 550 pages and the bid documents comprising approximately 200 pages, a total of approximately 750 pages.
23. The Council's estimate of 1.5 minutes to review one page is a credible estimate in the Commissioner's view. He accepts that the material in scope will be complex, and that some information is likely to need to be redacted, such as commercial information and personal data. As such, he also considers it reasonable that a second officer is necessary to check the redaction work. If it took 1.5 minutes for one officer to review and redact the approximately 750 pages in scope that would take 18.75 hours. The Commissioner does not consider it would take a second officer the same amount of time to check the reviewed and redacted material. If it took that second officer 45 seconds to review the material, that would increase the time to approximately 28 hours.
24. The Commissioner appreciates that the request does have a value to the complainant as it concerns a planning decision which they are disputing

by way of a judicial review claim. Given the wider circumstances, however, and because formal processes exist to deal with planning matters, the Commissioner does not consider the value of the request is such that it merits the substantial burden to the Council that reviewing and redacting material would cause. It would take almost one working week to carry out this work and is in excess of the appropriate 18-hour time limit. The Commissioner has therefore decided that the request engages regulation 12(4)(b) of the EIR; it is manifestly unreasonable by way of compliance being a disproportionate burden. He has gone on to consider the balance of the public interest.

25. The Council says that when it considered the public interest in favour of disclosing the information, it took into account the EIR's general presumption in favour of disclosing information to promote transparency and accountability. The Council says it is not aware of any other public interest argument in favour of disclosing the information in this case. It has noted that it has published documents that it considers to be of public interest. These includes a redacted version of the Development Agreement (main body). It has also made the funding agreements available to the complainant recently, in separate correspondence (including through the judicial review process).
26. In their complaint to the Commissioner, the complainant has noted that in their request for an internal review they had presented the following arguments for disclosure:
 - i. Promotion of public understanding and safeguarding of democratic processes
 - ii. Upholding standards of integrity
 - iii. Good decision making by public bodies
 - iv. Ensuring fair commercial competition in a mixed economy
 - v. Public interest in the issues the information relates to which may have a significant/widespread impact on the public
 - vi. Presenting a 'full picture' of the reasons for public authorities' decisions; and
 - vii. Suspicion of wrongdoing on the part of the Council (in departing from commitments made in relation to the North Tottenham Regeneration Programme)
27. The majority of the complainant's arguments for disclosure are general public interest arguments; they do not relate to the information in this case specifically. Of more relevance to the information, the complainant has referred to a suspicion of wrongdoing but has not provided more detail on that point. As noted, a formal planning process exists, and this includes seeking a judicial review if there are concerns about a planning decision that has been made. The Commissioner finds that the information the Council has published about the planning application in

this case, together with existing planning processes and routes for progressing concerns about planning matters, meet the general public interest in transparency. On balance he finds that there is greater public interest in protecting the Council's resources and maintaining the regulation 12(4)(b) exception in this case.

28. Regulation 9 of the EIR places an obligation on a public authority to provide advice and assistance to an applicant, so far as it would be reasonable to expect the authority to do so.
29. In its response to the request of 10 August 2022, the Council advised the complainant that they could possibly amend their request so that the burden of complying with it was more proportionate. The Council gave as an example that they could request one of the pieces of information specifically.
30. The Commissioner finds that the Council offered the complainant adequate advice and assistance and there was no breach of regulation 9.

Right of appeal

31. 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 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

32. 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.
33. 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

Cressida Woodall
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