

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

Date: 27 January 2021

Public Authority: Tameside Metropolitan Borough Council
Address: Tameside One
Market Place
Ashton under Lyne
OL6 6BH

Decision (including any steps ordered)

1. The complainant has requested from Tameside Metropolitan Borough Council (TMBC) information about action it has taken over breaches of planning conditions since 2010. TMBC disclosed some information, but said that it was not required to comply with the remainder of the request on the grounds that it was manifestly unreasonable within the meaning of regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that TMBC was entitled to refuse the request under regulation 12(4)(b) of the EIR. She also decided that the level of advice and assistance provided by TMBC complied with the requirements of regulation 9(1) of the EIR.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 9 March 2020, the complainant wrote to TMBC and requested information in the following terms¹:

"The Ministry of Housing, Communities & Local Government/Central Government publications, shows that each Local Planning Authority shall keep a register of enforcement action.

Viz: Section 188 of the Town and Country Planning Act 1990 and article 43 of the Town and Country Planning (Development Management Procedure (England) Order 2015.

Tameside Metropolitan Borough Council do not appear to keep such [sic] register. There is no register held on line and no suggestion or link is made on the official TMBC website to show where such a register may be inspected.

Question 1. Why does this authority not have open for public scrutiny a register of enforcement action?

FOI Request.

I request that this Authority supply a copy of enforcement action taken from 1/01/2010 through to this date of request, inc, and to show the following details:

- [1] Complaints made to the Authority by members of the public./other sources.*
- [2] Enforcement notices;*
- [3] Stop notices;*
- [4] Breach of condition notices;*
- [5] Planning enforcement orders.*
- [6] On reviewing some applications, individually, it appears that there may be a lack of consistency between planning officers on deciding if such action should be taken, can you therefore include any*

¹ Numbering has been added by the Commissioner, for ease of reference

record of any informal action taken, including a decision not to take further action in respect of any complaints."

5. TMBC responded on 6 April 2020. It explained that it was in the process of introducing a public access system which would make the register available online, but it was not ready yet. It said that compliance with the request in its current form would exceed the appropriate limit of £450, set under section 12 (Cost of compliance exceeds appropriate limit) of the FOIA. It invited the complainant to submit a more specific request, such as by specifying a particular address or site.
6. The complainant wrote to TMBC on 6 April 2020, expressing dissatisfaction with the decision and asking it a series of questions about the enforcement register. Before TMBC had responded, on 9 May 2020, he submitted a request for an internal review.
7. TMBC responded on 4 June 2020. It disclosed a copy of the planning enforcement register for the period specified in the request.
8. The complainant wrote again on 5 June 2020, pointing out that the disclosure did not cover all the information he had requested. He said that he still required the information at point [1] of the request:

"Complaints made to the Authority by members of the public./other sources."
9. TMBC responded on 10 June 2020. It said that this information engaged section 12 of the FOIA and could not be provided within the appropriate limit.

Scope of the case

10. The complainant contacted the Commissioner on 27 June 2020 to complain about the way his request for information had been handled. It was evident from his correspondence that he disagreed with TMBC's decision to refuse to disclose the information he identified as outstanding.
11. During the Commissioner's investigation, and having acknowledged that the complainant had requested environmental information, TMBC withdrew reliance on section 12 of the FOIA, and instead it applied regulation 12(4)(b) (Request is manifestly unreasonable) of the EIR. The complainant has been informed of this late revision.
12. Following the combined cases of the *Home Office v Information Commissioner* (GIA/2098/2010) and *DEFRA v Information Commissioner* (GIA/1694/2010) in the Upper Tribunal, a public authority is able to

claim a new exemption or exception either before the Commissioner or the First-tier Tribunal and both must consider any such new claims.

13. As is her standard practice, the Commissioner wrote to the complainant and summarised his complaint as being to know whether TMBC was entitled to rely on regulation 12(4)(b) of the EIR to refuse point [1] of the request. She invited the complainant to let her know if he considered there to be other matters which should form part of her investigation, but heard nothing further from him.
14. The analysis below therefore considers whether TMBC was entitled to refuse to comply with point [1] of the request under regulation 12(4)(b) of the EIR and whether it complied with regulation 9(1) (Advice and assistance).

Reasons for decision

Is the information environmental information?

15. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA. Regulation 2(1)(c) of the EIR defines environmental information as any information on:

"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 in [2(1)](a) and (b) as well as measures or activities designed to protect those elements."

16. The request in this case is for information relating to planning matters. The Commissioner is satisfied that the requested information is on a measure that would, or would be likely to, affect the elements listed in regulation 2(1)(a) and is, therefore, environmental information under regulation 2(1)(c).

Regulation 12(4)(b) - Request is manifestly unreasonable

17. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. A request can be refused as manifestly unreasonable either because it is considered to be vexatious, or on the basis of the burden that it would cause to the public authority.
18. In this case, TMBC argued that the request was manifestly unreasonable on the grounds that to comply with it would impose a significant burden on it, in terms of cost and consumption of resources.

19. Regulation 12(4)(b) of the EIR exists to protect public authorities from exposure to a disproportionate burden in terms of the amount of time and resources that a public authority has to expend in responding to a request. In effect, it is similar to section 12(1) of the FOIA, where the cost of complying with a request exceeds the appropriate limit.
20. Under the FOIA, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') specify an upper limit for the amount of work required beyond which a public authority is not obliged to comply with a request. The Fees Regulations provide that the costs associated with dealing with a request (determining whether the requested information is held; finding the information, or records containing the information; retrieving the information or records; and extracting the requested information from records) should be worked out at a standard rate of £25 per hour per person. For local authorities, the appropriate limit is set at £450, which is the equivalent of 18 hours work.
21. The EIR differ from the FOIA in that under the EIR there is no upper cost limit set for the amount of work required by a public authority to respond to a request.
22. While the Fees Regulations relate specifically to the FOIA, the Commissioner considers that they provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that compliance with a request would expend. However, the Fees Regulations are not the determining factor in assessing whether the exception applies.
23. Regulation 12(4)(b) sets a robust test for a public authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request is "manifestly unreasonable", rather than simply being "unreasonable" *per se*. The Commissioner considers that the term "manifestly" means that there must be an obvious or clear quality to the identified unreasonableness.
24. The Commissioner's guidance on regulation 12(4)(b)² states that public authorities may be required to accept a greater burden in providing environmental information than other information.

² <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

25. Therefore, in assessing whether the cost or burden of dealing with a request is clearly or obviously unreasonable, the Commissioner will consider the following factors:

- the proportionality of the burden on the public authority's workload, taking into consideration the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services;
- the nature of the request and any wider value in the requested information being made publicly available;
- the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue;
- the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester;
- the presumption in favour of disclosure under Regulation 12(2) of the EIR; and
- the requirement to interpret the exception restrictively.

The complainant's position

26. The Commissioner understands the request to be motivated by the complainant's belief that TMBC was under a legal duty to publish an online register of planning enforcement action and that it had not done so. He also said he was concerned that complaints about planning breaches were being ignored by TMBC and he wished to scrutinise the complaints it had received.

TMBC's position

27. TMBC said that point [1] of the request was manifestly unreasonable on the grounds of the excessive cost of complying with it, which could not be justified by the purpose and value of the request.

28. TMBC said it had carried out a sampling exercise and the information described in point [1] is not held in an easily retrievable format. In correspondence with TMBC, the complainant had accepted that compliance with point [1] would necessitate the redaction of any information which might identify complainants. TMBC said that to do this, it would be necessary to manually review the 3714 individual complaint records which fell within the scope of point [1]. It said:

"Providing the information in respect of Point 1

(Complaints made to the Authority by members of the public/other sources):

Method

- *Does the Council hold the information requested? – Yes, for some records.*
- *Is it possible to search for the information, or a document which contains it? – Yes.*
- *Is it possible to retrieve the information? – Yes, for those records where the information exists.*
- *Is it possible to extract the information from a document containing it? – Yes, where the information exists.*

A Senior Planning Enforcement Officer identified the total number of planning enforcement complaint cases over the relevant period (i.e. 2010 – 2020). A sample of cases across each of the ten years was reviewed to determine whether the information was held and no less than three minutes was spent reviewing cases in each of the given years. This involved opening each of the cases in the Uniform database along with reviewing documents stored within the Uniform Document Management System and associated electronic records.

This exercise would then inform an estimate of the length of time required to review all records received during the relevant period 1 January 2010 to 9 March 2020.

Results

Due to organisation changes that have occurred within the ten year period the records associated with each case are held in different locations. Specifically, responsibility for processing planning enforcement complaints was transferred to the Single Regulatory Service within Environmental Services in 2017, but since that time planning enforcement cases have been investigated by both Environmental Services and the local planning authority dependent upon the complexity and the nature of the case.

The outcome of this exercise demonstrated that over a 30 minute period it was possible to review 14 records to ascertain whether the information requested was held in order to then extract it for release. No original record of the complaint was found on the systems that were searched when reviewing those 14 cases.

This meant reviewing each case took, on average, over two minutes to complete. This equates to approximately 132 hours in total for reviewing 3,714 records held (which is the total number of planning enforcement complaint records held on the Uniform system in the period to which the request relates). Additional time would also be required to extract the information in a presentable way to the requestor.

As such, to complete this as a standalone task within 18 hours would mean spending no more than 18 seconds in each record. For the reasons given above, it has been demonstrated that this is not achievable."

29. TMBC commented that the request was received during a period of significant disruption to its work and the allocation of its resources, due to the Covid-19 pandemic. It said:

"It is widely reported on a daily occurrence, the severe impact particularly on local authorities, in managing and operating their services within the current pandemic.

The Council has as a result of the pandemic, had to decant personnel from offices at Tameside One and other locations across Tameside, in addition to ensuring that service provision could be continued on a remote working basis.

The Council has, in addition to relocating a significant element of its workforce, undergone a process of re-organising resources to front line services that prioritise the most vulnerable within Tameside. These adjustments within a relatively short period of time have had acute operational impacts across the entire organisation."

The Commissioner's conclusion

30. The Commissioner has considered TMBC's estimates. She accepts that to comply with the request it would be necessary to consult each of the 3714 planning enforcements records falling within the scope of the request, to identify whether the originating complaint is held, and if so, to then locate it and extract the requested information. It would then be necessary to redact any personal data (in accordance with the protections afforded by the Data Protection Act 2018 and the General Data Protection Regulation, which the complainant has accepted as a necessary task).
31. TMBC has estimated that the activities involved in reviewing each record to establish whether a complaint is held to be, on average, just over two minutes per record, leading to an overall estimate of approximately 132 hours.

32. The Commissioner considers the cost estimate provided to her by TMBC to be cogent. She notes that even if the estimated time needed to review the records falling within the scope of the request was reduced by a half, the time required would still be significantly greater than the 18 hour upper limit for FOIA requests, set out in the Fees Regulations.
33. She is satisfied that the allocation of the resources necessary to process the request would have a significant and disruptive impact on TMBC's core services, at a time when its resources were already under considerable pressure. In the Covid-19 pandemic climate, many public authorities are facing severe front line pressures and are re-deploying resources to meet those demands. The Commissioner recognises the additional burden that the pandemic is placing on TMBC. She accepts that it does not have resources on hand such that it could absorb 132 hours work without this adversely impacting other service areas.
34. Turning to the value and purpose of the request, the complainant believes that TMBC is under a duty imposed by section 188 of the Town and Country Planning Act 1990³ and article 43 of the Town and Country Planning (Development Management Procedure (England) Order 2015⁴ to proactively publish online the requested information, and that it has not done so. He would presumably argue that TMBC has brought the burden of compliance on itself, by failing to comply with this duty.
35. The Commissioner has consulted both of these provisions. Section 188 of the Town and Country Planning Act 1990 requires that Local Planning Authorities (LPAs) maintain a register of enforcement and 'stop' notices. Article 43 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 prescribes the information which the register must contain. Breach of condition notices and planning enforcement orders should also be recorded on the register. A register is to be available for inspection by the public at the principal office of the LPA.
36. There is no requirement under these provisions for LPAs to include in the register details of the specific complaints they receive from members of the public and other sources, which is what point [1] of the request is concerned with. There is also no requirement that the information specified in the provisions be published online, merely that it be made available for public inspection "*at all reasonable hours*" (although the Commissioner notes that, going forward, it is TMBC's intention to place a

³ <https://www.legislation.gov.uk/ukpga/1990/8/section/188>

⁴ <https://www.legislation.gov.uk/uksi/2015/595/article/43>

version of the register online). The Commissioner has therefore accorded very little weight to the complainant's stated concerns on this point.

37. The complainant has also expressed concerns that not all planning complaints are actioned by TMBC, and that some are 'ignored'. On that point, TMBC explained to the Commissioner that it has discretion over how it responds to planning complaints. It said that formal enforcement action is not always the most efficient way of achieving compliance where planning breaches are identified. It therefore makes decisions on how to deal with complaints on a case-by-case basis, and failure to take formal enforcement action over a complaint is not an indication that compliance has not been achieved by other means.
38. Taking all the above into account, the Commissioner is satisfied that TMBC has shown that compliance with point [1] of the request would involve around 132 hours work. This is an expense which it could not be expected to absorb without it adversely impacting its service provision in other areas. Furthermore, the Commissioner finds that the burden would be so disproportionately excessive as to outweigh the other factors identified in the bullet points of paragraph 25.
39. Her decision is therefore that it would be manifestly unreasonable, on the grounds of cost and the burden that would be placed on its resources, for TMBC to comply with point [1] of the request.

Public interest

40. Regulation 12(4)(b) of the EIR is subject to a public interest test, as required by regulation 12(1)(b), and so the Commissioner must decide whether the public interest in maintaining the exception is stronger than that in complying with the request.

The public interest in the request being complied with

41. The complainant did not specify any particular public interest that would be served, however the Commissioner notes his stated concerns, and considers that it would allow the public a degree of scrutiny over the extent to which complaints made to TMBC result in formal enforcement action.
42. TMBC acknowledged the public interest in being open and transparent in releasing information about planning enforcement complaints concerning alleged unauthorised development.
43. It said that the disclosure of the requested information would inform the public about the overall volume of planning complaints received and recorded by the LPA, as opposed to only those cases where formal

action was taken, which is what is contained in the enforcement register.

The public interest in maintaining the exception

44. TMBC referred the Commissioner to the considerable burden that would be imposed on it, which it said would result in the diversion of resources away from some areas and would have a proportionally detrimental impact on its provision of services to the public, particularly with regard to dealing with new planning enforcement complaints.
45. It noted that the request relates to all planning enforcement complaints made over a ten year period covering the whole Borough, rather than to a specific site or location, and considered this reduced the public interest in disclosure.
46. It referred the Commissioner to the considerable amount of information about formal action which was already in the public domain, via the enforcement register.
47. It argued that the planning system is largely a transparent process with the majority of information relating to planning applications already in the public domain. However, there is no statutory requirement (through planning legislation) to publish records of planning enforcement complaints, other than those where formal action has been taken, which is recorded on Planning Enforcement Register.
48. Finally, it said the release of details of complaints would require significant redaction to ensure complainants were not identified, so as to comply with GDPR. The information released would not, therefore, include names or addresses or any other identifying information. It would be extremely limited, and would be of limited interest or use to the public.

Balance of the public interest

49. The Commissioner recognises the importance of accountability and transparency with regard to decision-making by public authorities (particularly involving the spending of public money), and the necessity of a public authority bearing some costs when complying with requests for information. However, in considering the public interest test for this case, the Commissioner must assess whether the cost of compliance to, and impact on, TMBC is proportionate to the value of the request.
50. The Commissioner appreciates that there is often considerable local interest in planning matters, and particularly in how LPAs respond to claims that planning conditions may have been breached. It is therefore reasonable to conclude that the disclosure of information about planning complaints may increase public understanding of the circumstances in

which TMBC will seek to achieve planning compliance formally, as opposed to informally.

51. However, the Commissioner considers that there may be some complaints which had no merit or which did not reveal an obvious breach of planning conditions, and were not taken forward. Since the request asks for details of complaints but not outcomes, it is unlikely to be possible for the public to be able to determine, at a glance, whether or not informal action was taken in response to a particular complaint. The information therefore has limited value from that perspective.
52. The Commissioner accepts that the request had a serious purpose and value. However, she nevertheless considers that the burden that would be imposed on TMBC by compliance with the request, during a time in which TMBC was already under considerable pressure to support its front line services by diverting resources from other business areas, to be manifestly excessive and disproportionate to any benefit that would flow from the disclosure of information. It is therefore the Commissioner's decision that the public interest lies in maintaining the exception in this case.

Presumption in favour of disclosure

53. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019):

"If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure..." and "the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations" (paragraph 19).

54. As covered above, in this case the Commissioner's view is that the balance of the public interest favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) applies.

Regulation 9 – Advice and assistance

55. Regulation 9(1) of the EIR provides that:

"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."

56. This regulation places a duty on a public authority to provide advice and assistance to someone making a request. The Commissioner considers that this includes assisting an applicant to refine a request if it is deemed that answering a request would otherwise incur an unreasonable cost.
57. TMBC pointed out that it had provided the complainant with a significant amount of information which was relevant to the other points of his request. It had also explained to him why it could not comply with point [1] and had invited him to refine his search terms to particular locations in order to bring the request within acceptable parameters.
58. The Commissioner considers that it would be difficult for TMBC to have offered any more meaningful advice about refining or narrowing the request in order to provide the complainant with further information.
59. Taking the above into account, the Commissioner considers that TMBC complied with the requirements of regulation 9(1) of the EIR.

Right of appeal

60. 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

61. 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.

62. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF