

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

**Date:** 23 March 2022

**Public Authority:** London Borough of Lambeth  
**Address:** Lambeth Town Hall  
Brixton Hill  
London SW2 1RW

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to payments made in connection with work on Cressingham Gardens.
2. The Commissioner's decision is that The London Borough of Lambeth ("LB Lambeth") incorrectly dealt with the request under FOIA and should, instead have considered it under the EIR.
3. The Commissioner further finds that the LB Lambeth is not entitled to withhold the requested information under regulation 12(4)(b) – manifestly unreasonable.
4. The Commissioner requires LB Lambeth to issue a fresh response that does not rely on regulation 12(4)(b) of the EIR.
5. LB Lambeth must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## Request and response

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6. On 2 February 2021, the complainant wrote to the public authority and requested information in the following terms:

*"I understand that Lambeth council has made payments to Mott Macdonald totalling around £875k in connection with its work on Cressingham Gardens. Please provide a copy of all invoices and any other documentation that was collected to support the sign off of the payments (e.g. completion certificates)"*

7. On 17 February 2021 the complaint made an additional request as follows:

*"Please provide a copy of all documents (e.g. contracts, agreements, statements of work etc) and communications which relate to the council's commissioning of Homes of Lambeth to act in connection with Cressingham Gardens estate, the scope of such work and any terms & conditions."*

8. The public authority responded on 25 February 2021 and refused to provide the requested information citing section 12(1) FOIA – cost of compliance - as its basis for doing so.
9. Following an internal review the public authority wrote to the complainant on 30 March 2021 and maintained its position.

## Scope of the case

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10. The complainant contacted the Commissioner on 27 April 2021 to complain about the way their request for information had been handled.
11. The Commissioner considers the scope of this case to be to determine if the public authority is entitled to withhold the requested information by virtue of the costs it would incur.

## Reasons for decision

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### Is the requested information environmental as defined by the EIR?

12. Regulation 2(1) of the EIR defines environmental information as being information on:

*"(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including*

wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)";

13. In the Commissioner's view, the information requested would constitute a measure as defined in (c) above likely to affect the elements of the environment such as land and landscape as defined by Regulation 2(1)(a). He is therefore satisfied that the information falls within the definition of environmental information under Regulation 2(1)(c) of the EIR.

14. Therefore, the Commissioner considers that LB Lambeth should have handled the request under the EIR rather than under FOIA. He has adopted a pragmatic approach here to avoid any further delays in this case; rather than ordering LB Lambeth to provide a response under the EIR, the Commissioner has considered its FOIA submissions and explanations and applied them to the applicable EIR Regulation, which is 12(4)(b) – manifestly unreasonable (on cost grounds). There is no direct equivalent of section 12 in the EIR. However, the EIR do allow a public authority to refuse a request that is 'manifestly unreasonable'.

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

15. Although LB Lambeth refused to provide the information sought by the request on the basis of section 12(2) of FOIA, as explained above the Commissioner considers that this request should have been handled under the EIR.

16. 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.
17. There is no definition of “manifestly unreasonable” under the EIR, but in the Commissioner’s opinion, manifestly unreasonable implies that a request should be obviously or clearly unreasonable. One such way a request could be manifestly unreasonable is if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable.
18. 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.
19. As the Commissioner’s guidance on regulation 12(4)(b)<sup>1</sup> explains, whilst the section 12 cost provisions in FOIA are a useful starting point in determining whether the time and cost of complying with the request is obviously unreasonable, they are not determinative. Under the section 12 cost provisions the appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (‘the Fees Regulations’) at £450 for public authorities such as LB Lambeth. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours.
20. However, as noted the section 12 provisions are not determinative in deciding whether a request is also manifestly unreasonable. Furthermore, in assessing whether the cost or burden of dealing with a request is ‘too great’ under the EIR, public authorities will need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable.
21. This will mean taking into account all the circumstances of the case including:
  - the nature of the request and any wider value in the requested information being made publicly available;

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

- 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 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; and
  - 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.
22. In its submission to the Commissioner LB Lambeth stated it would need to search four inboxes and the following keywords in email and its shared document folders:-
- Cressingham, Cressingham Gardens, Cressingham Gardens Estate, CG,CGE, Trinity Rise, Hardel Walk
23. It provided a spreadsheet to support its estimate that this would take between 51 and 53 hours, which it considered would place considerable burden on the authority.
24. LB Lambeth estimated that it would take 60 minutes to download, import and synchronise files for each of the four inboxes identified. A further 50 minutes was estimated to carry out keyword searches on the hard drives of each of the user's device.
25. The above estimate is based on the minimum amount of time, which equates to approximately 52 hours. Clearly, this estimate far exceeds the 18 hour limit imposed by the Fees Regulations referred to above, and even if the estimate were to be halved, it would still exceed the cost limit.
26. However, unlike FOIA, there is an explicit obligation of transparency under the EIR which adds further weight to the Commissioner's decision in this regard. 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.
27. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019), "*If application of the first two stages [ie engagement of the exception and public interest test] 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).

28. To assist the Commissioner in understanding the nature of the request, any wider value and the importance of any underlying issue to which the request relates, he has carried out a number of internet searches.

29. At the time of the request (February 2021) it was reported<sup>2</sup>:

*"A 20-home scheme which will require part of Tulse Hill's historic Cressingham Gardens estate to be demolished has been recommended for approval by Lambeth council. Cressingham Gardens residents, who have been engaged in a near 10-year campaign to save the 306-home estate since the council first earmarked it for redevelopment in 2012. Residents take the council to the High Court twice, winning one case in 2015 but losing another in 2016. Residents won the right to manage the estate themselves in 2018 with then-housing minister Kit Malthouse approving the decision the following year.*

*But with the management agreement still unsigned, the council has pushed ahead with the estate's redevelopment and unveiled plans for the Roper's Walk scheme, at the southern end of the estate, in a consultation in December last year."*

30. The Commissioner also notes the following website articles also published in 2021:

[Judge gives green light for Judicial Review #3 | Save Cressingham Gardens \(wordpress.com\)](#)

[Council to swerve Cressingham Gardens judicial review with new planning hearing | Brixton Blog](#)

[Save Cressingham Gardens \(wordpress.com\)](#)

and more recently [Save Cressingham Gardens campaign update – March 2022 – Brixton Buzz](#)

31. As LB Lambeth considered the request under FOIA it has not taken account of any public interest arguments, and consequently the Commissioner is unable to discern any factors that may be applicable in this case.

### **The Commissioner's decision**

32. Clearly the proposed development will have a significant impact on a large number of individuals living in the area. Not just those whose homes may be earmarked for redevelopment, but also the disruption to

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<sup>2</sup> <https://www.bdonline.co.uk/news/lambeth-set-to-approve-demolition-of-first-part-of-historic-estate/5110164.article>

the surrounding area. In addition, it appears there are environmental issues to be addressed, such as the 'toad pathway'.

33. The Commissioner acknowledges there may well be a burden placed upon LB Lambeth to provide a response to this request. However, in all the circumstances of this case he does not consider it is a manifestly unreasonable one.
34. LB Lambeth therefore cannot rely on regulation 12(4)(b) as its basis for refusing to disclose the requested information.

### **Other matters**

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35. The Commissioner wishes to comment more generally on the way LB Lambeth has handled this request for information. Firstly, the Commissioner is disappointed that LB Lambeth did not consider which was the appropriate access regime to handle the request.
36. Furthermore, in its submission to the Commissioner it merely stated that if the Commissioner considered EIR was the appropriate access regime then it would rely on regulation 12(4)(b). By failing to properly consider the relevant exception, LB Lambeth did not consider the public interest inherent in the EIR.

## Right of appeal

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37. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.

39. 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 .....**

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**