



MANCHESTER
CITY COUNCIL

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Date: 30th July 2018

By email to [request-466589-
c3ca3302@whatdotheyknow.com](mailto:request-466589-c3ca3302@whatdotheyknow.com)

Dear Mr Cowdock,

**Re: Internal Review – Environmental Information Regulations 2004 (EIR)
FOI/EIR reference SOL/AW8KKW-IR**

Thank you for your email dated 5 June 2018. Please accept my apologies for the delay in conducting this internal review. You were informed of the delay by email on 2 July 2018

On 22 February 2018 you submitted a request as follows:-

“Dear Manchester City Council,

Please acknowledge my request is being considered and disclose the following information:

1) Minutes of meetings with the professional representatives of “Abu Dhabi United Group” and “Loom Holdings” in the period between 01/01/2013 – 01/01/2015 attended by any of the following persons: the former Council Chief Executive Howard Bernstein, the current Council Chief Executive Richard Leese.

2) Emails to/from professional representatives of “Abu Dhabi United Group” and “Loom Holdings” (including CC'ed in correspondence) in the period between 01/01/2013 – 01/01/2015 in email accounts belonging to any of the following persons: the former Council Chief Executive Howard Bernstein, the current Council Chief Executive Richard Leese. Where an email has been identified please disclose the full thread for context. Please search draft and deleted email folders.

3) Please also provide a copy of the report which sets out the financial arrangements between Manchester City Council and “Abu Dhabi United Group” for the “Manchester Life” joint venture.

Yours faithfully,

Ben Cowdock”

On 22 February 2018 the Council acknowledged your request.

On 3 April 2018 you emailed the Council chasing up your request. On the same day the Council apologised for the delay and advised that as it involved going through and trying to obtain emails from our system your request was taking longer than expected

On 24 April 2018 you sent a further email chasing up your request. On 25 April 2018 the Council again apologised for the delay and advised you that a response would be given no later than Tuesday 1 May 2018

On 8 May 2018 you submitted a request for an internal review as follows:-

"Dear Manchester City Council,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Manchester City Council's handling of my FOI request 'Meetings and emails between Abu Dhabi United Group and MCC'.

I originally submitted an FOI request on 22nd February and have yet to receive a satisfactory response.

A full history of my FOI request and all correspondence is available on the Internet at this address: <https://www.whatdotheyknow.com/request/m...>

Yours faithfully,

Ben Cowdock"

Your request for an internal review was acknowledged on 9 May 2018.

On 25 May 2018 the Council responded to your request stating as follows:-

"I refer to your request for information dated 22 February 2018. Please accept my apologies for the delay in responding to your request.

You requested the following information.

"Please acknowledge my request is being considered and disclose the following information:

1) Minutes of meetings with the professional representatives of "Abu Dhabi United Group" and "Loom Holdings" in the period between 01/01/2013 – 01/01/2015 attended by any of the following persons: the former Council Chief Executive Howard Bernstein, the current Council Chief Executive Richard Leese.

2) *Emails to/from professional representatives of "Abu Dhabi United Group" and "Loom Holdings" (including CC'ed in correspondence) in the period between 01/01/2013 – 01/01/2015 in email accounts belonging to any of the following persons: the former Council Chief Executive Howard Bernstein, the current Council Chief Executive Richard Leese. Where an email has been identified please disclose the full thread for context. Please search draft and deleted email folders.*

3) *Please also provide a copy of the report which sets out the financial arrangements between Manchester City Council and "Abu Dhabi United Group" for the "Manchester Life" joint venture."*

Your request has been considered under the EIR because information concerning the Manchester Life development would be classed as environmental information given that it relates to development of land for housing, which would clearly affect the environment.

Whilst the EIR do provide access to environmental information, there are exceptions which allow a public authority such as the Council to withhold information in certain circumstances. All exceptions under the EIR are subject to the public interest test, and the Council must apply a presumption in favour of disclosure when considering that test.

The Council holds no minutes of meetings other than those which may be contained within emails

With regard to your request, I can confirm that searches have been undertaken which have located information falling within the scope of your request. Having considered the information, I have determined however that the information that falls within the scope of your request should be withheld because your request is considered to be manifestly unreasonable.

A search has been undertaken which has located 628 emails. Those emails have been retrieved using key words from your request as search terms, namely:

- *'Abu Dhabi United Group'*
- *'ADUG'*
- *'Loom Holdings'*

All of those emails were sent to or from Sir Howard Bernstein or Sir Richard Leese (who is the Leader of the Council (not it's Chief Executive)) over the period specified in your request.

In respect of these 628 emails, it is considered likely that many of them would be subject to many of the additional exceptions detailed towards the end of this letter. However, the Council does not intend to review each and every email because it considers that this would be manifestly unreasonable.

The EIR provide an exception for manifestly unreasonable requests. The exception at Regulation 12(4)(b) states as follows:

*“...a public authority may refuse to disclose information to the extent that –
(b) the request for information is manifestly unreasonable”*

The exception is intended to protect public authorities, such as the Council, from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation, in handling a request. The Information Commissioner’s (IC) guidance to this exception confirms that it can be used where the cost of compliance with the request is too great. In respect of the 628 emails it is the disproportionate burden that would be required to answer the request which the Council considers makes it manifestly unreasonable.

In order to respond to the request for these emails, an individual officer would have to read each email to determine whether it did fall within the scope of the request, and would then need to consider whether the content of the email was subject to an exception or whether it could be disclosed. Some of the emails are likely to be very brief, others will be much more detailed. Using an estimated average time of two minutes per email (which is likely to be a low estimate) would mean that it would take one officer almost 21 hours to read the emails which equates to three days of work. I therefore consider that on cost grounds, the manifestly unreasonable exception is engaged. Accordingly, I have gone on to consider the public interest test and have reached the view that when aggregating all of the public interest factors, the public interest favours withholding the requested information.

Public interest factors in favour of disclosure

- *The general public interest in transparency*
- *Public interest in understanding issues affecting the local community including the development of land*

Public interest factors in favour of maintaining the exception

- *Public interest in using public resources efficiently especially in the context of reduced budgets*
- *Disproportionate burden on the authority especially bearing in mind that it is likely much of the information would be subject to other exceptions under the EIR*
- *Public interest in not distracting officers from dealing with their core job responsibilities and diverting attention away from service delivery*

In addition, I consider that even if the IC were to conclude that your request is not manifestly unreasonable, the following exemptions are in

any event likely to apply to much, if not all, the information that you have requested:

- *Legal Professional Privilege (LPP) - Regulation 12(5)(b)*
- *Confidentiality of commercial information - Regulation 12(5)(e)*
- *Internal communications - Regulation 12(4)(e)*
- *Interests of third parties providing information - Regulation 12(5)(f)*
- *Personal information - Regulation 12(3)*

Although, when applying the manifestly unreasonable exception the Council is entitled to refuse the entirety of your request, to be of assistance I provide a link to public part of the report referred to in part 3) of your request:

<http://www.manchester.gov.uk/download/meetings/id/17155/3> a stimulus for residential growth

I note that on 8 May 2018 you requested an internal review, due the Council's delay in responding to your request. As the Council has now provided a substantive response, please confirm whether you still wish for an internal review to be undertaken. If you wish for an internal review to be carried out in relation to the Council's handling of your request you should contact the Information Compliance team in the first instance via informationcompliance@manchester.gov.uk

If you remain unhappy following completion of an internal review you can contact the Information Commissioner at:

*Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel: 01625 545700
Fax: 01625 524510
www.informationcommissioner.gov.uk*

Please remember to quote the reference number above in any future communications.

Yours sincerely,"

On 5 June 2018 you submitted a request for an internal review in which you state:-

"Dear Manchester City Council,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Manchester City Council's handling of my FOI request 'Meetings and emails between Abu Dhabi United Group and MCC'.

I would like to reiterate my desire for this to be reviewed internally and reject the assertion my request is "manifestly unreasonable". The request is clearly in the public interest as it directly relates to correspondence and decisions made in a deal worth £1 billion and relating to tens of thousands of future homes in Manchester. In addition to this there have been no minutes made available by the council relating to meetings between officials and private bodies in the relation to this deal, which adds further weight to the argument that providing this information is in the public interest.

When balanced against the estimate of "three days work" of a single council official's time this appears more than proportionate given the level of public interest there is in this matter. Issues arising around data sensitivity can be easily addressed through redacting relevant information as is done by a number of other public bodies when responding to requests such as this.

I would like my original request for internal review to be taken into account to ensure this is carried out as soon as possible.

A full history of my FOI request and all correspondence is available on the Internet at this address: <https://www.whatdotheyknow.com/request/m...>

Yours faithfully,

Ben Cowdock"

Your request was acknowledged on 5 June 2018 and on 2 July 2018 you were advised of a delay in completing this internal review and that you should expect a response by no later than 31 July 2018.

In conducting the internal review, I have considered your request, the response you received, and the comments you provided following receipt of the response. Firstly, please accept my apologies for the failure to respond to your original request within the 20 working day time limit and for you having to chase up your request.

I can confirm that upon internal review the original decision has been upheld for the following reasons:

The Council's response to your request identified that a search has been undertaken which has located 628 emails within the scope of your request. The response went on to say using an estimated average time of two minutes to review each email (which is likely to be a low estimate) would mean that it would take one officer almost 21 hours to read the emails which equates to three days of work.

The Environmental Information Regulations 2004 state as follows:-

12.— Exceptions to the duty to disclose environmental information

- (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.*

Regulation 12(4)(b) of EIR states

“For the purposes of paragraph (1)(a)[of EIR] a public authority may refuse to disclose information to the extent that –

- (b) the request for information is manifestly unreasonable”*

The Information Commissioner has issued guidance on the application of manifestly unreasonable requests – regulation 12(4)(b). The guidance in its entirety can be accessed via the following link:- <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

Paragraphs 6 to 8 of the guidance states.-

General principles of the exception

6. *The EIR allow public authorities to refuse a request for information that is manifestly unreasonable. The inclusion of the word “manifestly” means that there must be an obvious or clear quality to the unreasonableness.*
7. *The purpose of the exception is to protect public authorities from exposure to a disproportionate burden or an unjustified level of distress, disruption or irritation, in handling information requests.*
8. *The exception can be used:*
 - *when the request is vexatious; or*
 - *when the cost of compliance with the request is too great.*

Paragraphs 17 to 20 of the guidance goes on to say:-

General approach

17. *Under the EIR, unlike under FOIA, there is no appropriate costs limit above which public authorities are not required to deal with requests*

for information. The main provision for dealing with burdensome requests under the EIR is regulation 7(1).

7(1) Where a request is made under regulation 5, the public authority may extend the period of 20 working days referred to in paragraph (2) to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.

18. *However, the exception at regulation 12(4)(b) of the EIR can apply if the cost or burden of dealing with a request is too great.*

Example

*This position was confirmed, again in the Upper Tribunal case of *Craven v The Information Commissioner and the Department of Energy and Climate Change* [2012] UKUT442 (AAC).*

*“Taking the position under the EIR first, 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 the EIR equivalent to section 12 of FOIA makes such a conclusion inescapable.”
(paragraph 25)*

19. *In assessing whether the cost or burden of dealing with a request is “too great”, public authorities will need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable.*
20. *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;*
 - *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.*

A sample of emails has been considered as part of this internal review. 72 emails were reviewed which took on average one minute twenty seconds to review. Those emails did not include attachments or other emails referred to and therefore the Council's estimate of two minutes per email for the remainder of the communications appears accurate. Whilst the initial response identified 628 emails, due to the wide nature of your request, additional documents, emails etc are likely to be identified which will extend the scope of your request further. Having considered a sample of the emails a number of additional exemptions under the Environmental Information Regulations 2004 apply. These include – Confidentiality of commercial information - Regulation 12(5)(e), Internal communications - Regulation 12(4)(e), Interests of third parties providing information - Regulation 12(5)(f) and Personal information - Regulation 12(3). These and others are likely to apply to the remaining emails within the scope of your request. Having considered the applicable exemptions, it is likely that only a limited number of email communications are likely to be disclosed which provides little value to members of the public or aid debate about the subject. This in turn is likely to prompt further requests which would be equally burdensome upon the Council to respond to. I am satisfied that the amount of time required to meet your request would be too great and therefore the exemption provided by Regulation 12(4)(b) is engaged

I note in your request for an internal review that no minutes of meetings have been made available. The Council's response to your request confirmed that the Council holds no minutes of meetings within the scope of your request

I will now go on to consider the public interest test. The Information Commissioners guidance states as follows:-

The public interest test

29. *Many of the issues relevant to the public interest test will have already been considered when deciding if this exception is engaged. This is because engaging the exception includes some consideration of the proportionality and value of the request.*
30. *Nevertheless, public authorities must go on to apply the public interest test set out in regulation 12(1)(b). A public authority can only withhold information if the public interest in maintaining the exception outweighs the public interest in disclosing the information.*
31. *Regulation 12(2) specifically states that a public authority shall apply a presumption in favour of disclosure.*
32. *In practice public authorities will usually be able to just 'carry through' the relevant considerations from engaging the exception into the public interest test.*

Public interest in maintaining the exception

33. *The public interest in maintaining this exception lies in protecting public authorities from exposure to disproportionate burden or to an unjustified level of distress, disruption or irritation in handling information requests.*
34. *Dealing with manifestly unreasonable requests can place a strain on resources and get in the way of public authorities delivering mainstream services or answering other requests.*

Public interest in disclosure

35. *There will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation in environmental decision making, all of which ultimately contribute to a better environment.*
36. *The weight of this interest will vary from case to case, depending on the profile and importance of the issue and the extent to which the content of the information will actually inform public debate. As the information will often not have been collated for 12(4)(b) cases, this may have to be determined from considering the nature of the request, the type of information likely to be covered or from collating a small representative sample*
37. *There may of course be other factors in favour of disclosure, depending on the particular circumstances of the case. For example, these could include accountability for spending public money, the number of people affected by a proposal or any reasonable suspicion of wrongdoing.*

The Council's letter to you considered the following matters.-

Public interest factors in favour of disclosure

- The general public interest in transparency
- Public interest in understanding issues affecting the local community including the development of land

Public interest factors in favour of maintaining the exemption

- Public interest in using public resources efficiently especially in the context of reduced budgets
- Disproportionate burden on the authority especially bearing in mind that it is likely much of the information would be subject to other exceptions under the EIR
- Public interest in not distracting officers from dealing with their core job responsibilities and diverting attention away from service delivery

Whilst it is accepted that the starting point is a presumption in favour of disclosure there is a strong public interest in not placing a manifestly unreasonable burden upon public authorities which in this case outweighs the presumption in favour of disclosure. The request has been made at a time of significant reductions in public expenditure with Councils having to make significant savings whilst continuing to provide front line services such as adult social care and the protection of vulnerable children. In this case due to the volume of emails, the amount of time required to consider them and based upon the balance of probabilities the likelihood that a number of exemptions are likely to apply to the information it would be manifestly unreasonable to comply with your request.

If you are not satisfied with the response to your request for an internal review you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel. 01625 545700
Fax: 01625 524510
Email: casework@ico.org.uk
www.ico.org.uk

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Yours sincerely



Jacqui Dennis
Deputy City Solicitor