

Chief Executive's Department
Democratic & Legal Services Division
Bernard Weatherill House
8 Mint Walk
Croydon CR0 1EA
DX 136017 Croydon 17
Tel/Typetalk: 020 8686 4433 Ext 64390
Fax: 020 8407 1322
Minicom: 020 8760 5797
Email: sebastian.brun@croydon.gov.uk

Mr Peter Morgan

Please ask for/reply to Sebastian Brun
Your Ref:
Our Ref: F/CRT/10008014
Date: 15 September 2017

BY EMAIL ONLY:

request-420842-c65f5144@whatdotheyknow.com

Dear Mr Morgan,

Internal Review of the Council's decision of 27 July 2017

I write in response to your request for an Internal Review dated 3 August 2017, sent by email to the Council's Information Team.

Background

The Council's decision of 27 July 2017 concluded that your request for information dated 25 July 2017 was 'manifestly unreasonable' under Regulation 12(4)(b) of the Environmental Information Regulations (EIR) 2004. The Council's decision contains adequate reasons to enable you to understand why the information you sought was not disclosed.

Your request for an Internal Review

Firstly, please accept my apologies for the delay in replying to you. The nature of your Internal Review required significant investigations and to clarify the issues raised by your request.

Having reviewed a sample of your correspondence, I have seen that you raised the same or similar issues in emails to various Council officers throughout May, June and July 2017. I have also seen evidence that Council officers responded to your frequent requests (which I describe as 'non-FOI correspondence') and also as part of the FOI/EIR regimes. A chronology prepared internally by the LA records that LA officers responded to your emails in May, June and July 2017 in relation to, among others, your legal/non-legal concerns about the LA's 20mph consultation/policy in designated

Areas 3, 4 and 5; the LA's recording and handling of objections regarding said policy; the TMAC report (9 May 2017) and the presentation of data in the accompanying spreadsheet to the TMAC report.

I understand, in respect of these same/similar matters, that you have threatened the Council with judicial review proceedings including issuing a 'Letter Before Claim' in accordance with the pre-action protocol; although I note that the requisite time period for lodging your proposed claim in the High Court has now expired.

Between January and June 2017, the Council has recorded some 70 items of correspondence sent from you regarding traffic and highway issues generally, and, by way of challenging various aspects of the Council LA's 20mph scheme (as noted above), you have emailed some 200 separate objections to a number of Council's officers including but not limited to the Highways Maintenance and Streets Teams. These figures are significant in themselves and impose a real burden on the Council in terms of time *and* resources that have been spent in reviewing and dealing with your repeat enquiries. The Council considers that this is an unreasonable approach to take in requesting information that results in a consequential increase in the use of Council resources in responding to such requests.

In considering your correspondence, I note that the date stamps, list of recipients and details of the origins of your emails are often removed from within the wider chain. This approach serves to increase confusion and duplication, as well as diverting LA staff from their core functions for considerable periods of time. The Council is of the view that this is not consistent with what the Information Commissioner's Office (ICO) would expect to see as good practice when making information requests from public bodies; I refer you to '*Information request dos and don'ts*' (<https://ico.org.uk/for-the-public/official-information/>).

In relation to recent FOI/EIR requests you have made to the Council, our records show:

Date received	Response date	FOI request detail
28.12.2016	3.2.2017 *Due date of response 26.1.2017	North East Croydon 20mph, consultation results, Spring 2016
15.5.2017	13.6.2017 (in time)	Request for text of objections proposed regarding TMAC
20.6.2017	21.6.2017 *LA manager responded	How many comments/complaints/objections received about designated Areas 3, 4 and 5,

Date received	Response date	FOI request detail
	directly outside of FOI regime	20mph scheme
25.7.2017	27.7.2017	Croydon BLANKET20MPH PLANS – processing of OBJECTIONS ***Gone to Internal Review***

Your past three requests are characterised by the same overlapping subject-matter. The Council maintains that these requests are burdensome because you requested such information under FOI/EIR when it had been provided to you in earlier non-FOI correspondence. The LA takes the view that your overlapping FOI/EIR requests are an improper use of your rights to information (a qualified right). It is also denied that the LA 'has not responded to any previous FOI / EIR Requests of mine since 10 Feb 2017' (your email of 3 August 2017 (22.20) refers).

The ICO's guidance 'Dealing with vexatious requests (section 14)', which public authorities should use when considering whether a request for environmental information is manifestly unreasonable on the grounds that it is vexatious, provides at paragraph [58]:

A request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example of this would be where an individual is placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden. [Emphasis added]

Paragraph 58 is relevant to, and indeed allows, an analysis of the circumstances surrounding your request of 25 July 2017. In order words, your request has to be viewed in the wider context of your dealings with the Council. The Council was entitled to conclude (as it did on 27 July 2017) that there is a causal connection between your previous non-FOI/EIR requests (voluminous and repetitive in nature) and your previous and current FOI/EIR requests for information on the very same/similar issues.

It is also relevant that, had your request for information of 25 July 2017 been granted, it is more likely than not that you would make further non-FOI and FOI/EIR requests in the future; this is based on your past course of dealings with the Council. The net effect of reviewing and dealing with your voluminous correspondence has imposed a real burden on the Council and its staff; and the Council considers that the primary

purpose of EIR Regulation 12(4)(b) is to protect finite public resources in the broadest sense of the word from such unreasonable requests.

As well as having considered the ICO guidance, the Council has also relied on case law in reaching the position that your request of 25 July 2017 was correctly treated as 'manifestly unreasonable'. In the cases of *Information Commissioner v Dransfield* [2012] UKUT 440 (AAC) and *Craven v Information Commissioner* [2012] UKUT 442 (AAC), the Upper Tribunal (UT) gave definitive, binding guidance on what were considered to be 'vexatious' and 'manifestly unreasonable' requests (the guidance remains good law as it was not challenged before the Court of Appeal in 2015). The UT stated that there is no material difference in practice between both terms, defined as whether a disputed request involves the '*manifestly unjustified, inappropriate or improper use of a formal procedure*' **and** that the background and context to an FOI request for information are key considerations to be taken into account by a public body when deciding to treat a request as 'vexatious' or 'manifestly unreasonable'.

Whilst Regulation 12(2) of the EIR 2004 specifically states that a public authority must apply a presumption in favour of disclosure, the Council's position is that, for all of the reasons listed above, the public interest in openness is outweighed by the drain on resources and diversion from necessary public functions that your repeated requests represent.

I have therefore concluded that the Council's decision of 27 July 2017 was correct in describing your request for information as 'manifestly unreasonable', thus barring the disclosure sought. However, in a continued effort to be helpful, the Council will on this final occasion provide you with the information you have requested. Please see the document named '***The Council's response to your EIR request of 25 July 2017***' appended to this letter.

Your frequent correspondence with the Council

Given your voluminous correspondence, the Council requests that you refrain from contacting individual officers repeatedly on the same/similar issues. When raising **new** issues, please write to our generic email addresses, which are reviewed regularly by the Council's officers:

- Highways matters including appeals or queries relating to the 20mph proposals: highwaysmaintenance@croydon.gov.uk
- Dangerous and illegally parked vehicles: parking@croydon.gov.uk
- Freedom of Information/Environmental Information requests: information@croydon.gov.uk

There is also a facility attached to the link below that allows you to report Highways issues directly, <https://www.croydon.gov.uk/doitonline/report-it> .

Your co-operation with the above procedure would assist us to respond to your enquiries efficiently, and I note that all Croydon residents are expected to communicate with us in the same way to ensure that we, as a Council, are able to provide a fair service. I trust this clarifies matters and we remain hopeful that your future contact with the Council is appropriate.

If you are not happy with the outcome of this 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

Yours sincerely,



Sebastian Brun
Trainee Solicitor
London Borough of Croydon

Enc: The Council's response to your EIR request of 25 July 2017

The Council's response to your EIR request of 25 July 2017

We adopt your numbering for ease of reference and respond as follows:

1. The time and date that the email responses were received by the 'objections' inbox was used to cross reference the individual receipts into a spreadsheet. This enabled an email with or without attachment to be linked to a row in the spreadsheet.
2. The number of responses was not broken down into the three areas, as some responses indicated that they were objecting to a single area, whilst other appeared to be objecting to 20mph in general and could therefore have been objecting to all three. As for the number of separate individuals who submitted a response, this not known as many individuals made numerous responses, sometimes through both electronic and paper submissions.

The aim was to highlight the individual objections each response contained, and ensure these were all captured and responded to within the report submitted to the Council's Traffic Management Advisory Committee (TMAC). The number of individual responses was not therefore considered to be the primary focus of the consultation.

3. It would be very difficult to determine with any accuracy the number of actual objectors. For this reason, the ownership of each objection, how many separate objections came from the same objector, or how many separate individuals submitted objections, has not been recorded. To go through the list and try to determine which responses are from the same objector would be particularly time-consuming and fraught with inaccuracy. The Council is therefore unable to disclose this information.
4. This has been answered previously.
5. It is not appropriate to provide any information that could identify an individual, which would be disclosing personal data to you.
6. Where responses were received from residents' associations or action groups, these were taken as being the views of the individual writer, and are therefore also subject to data protection considerations.

7. Where a response was received that included a comment on a particular road remaining at 30mph (or to be made 20 but to be retained at 30), this was simply noted in a list of roads and was considered at the TMAC meeting of 9 May 2017.
8. Yes.
9. Yes.
10. The Council is not obliged to hold a public inquiry as there has been adequate opportunity for stakeholders to express their views on the proposals through the public notice consultation process. Requesting a public inquiry does not constitute an objection and was therefore not reported.
11. The Council has followed the guidance provided by the Department for Transport (DfT) as it applies to 20mph areas. The DfT do not produce rules for implementing 20mph limits, just guidance.
12. In respect of variable 20mph/30mph limits, we refer you, for example, to section 5.9, subsections 5.9.1, 5.9.2 and 5.9.3 of the TMAC report.
13. In respect of roads with no street notice, by which we assume you mean roads to remain at 30mph, comments were received regarding these rather than objections. As they did not form part of a proposal, there was no invitation for anyone to object to a speed limit change. The list of roads suggested is in annex 3 of the report.
14. This is not practicable to provide and without any other identification is considered irrelevant.
15.
 - A. Three objections would have been counted individually. Whilst this means that repeat objectors would have had their objections counted a number of times, the Council emphasises that the objections themselves were considered on individual merit and not the number of such objections received. All received representations were considered carefully by the Council. For information on how the Council dealt with objections, please see sections 4.2 and 4.3 of the TMAC report.
 - B. This would have been counted as a single response, but would have had all of the objections it contained in the same way within the TMAC report.

- C. Three responses, with all of the objections being considered.
- D. One objection but, again, all the objections it contained would have been considered within the report.
- E. There would have been two responses received, but with the objections considered within the report.