

Sycamore House, Town Hall Complex, Forest Road, Walthamstow, E17 4JF

Mr Akhtar

Ask for: Gavin Douglas

Email: Gavin.douglas@walthamforest.gov.uk

Via email

Direct line: 8496 2201

Date: 05-10-2011

Dear Mr Akhtar

Request for Review – Freedom of Information Request FOI 2011-00405

I refer to your request for review under the FOI Act, received by the Council on 14/09/2011.

I have carried out the review by looking at the information that was provided to you in response to your initial request, your further questions, and I have considered the Council's obligations under the act.

As a result of my review, I can advise you that the initial decision that exemptions apply to part of the information requested by you has been upheld for the following reasons.

Section 12 (4) (b) of the Environmental Information Regulations 2004 provides an exemption to the obligation to comply with a request for information where it is manifestly unreasonable as the amount of time involved in redacting sensitive information is very substantial. Gathering together information regarding evidence used where noise abatement notices have been served would therefore be likely to involve a significant cost and diversion of resources from the Council's other work.

Section 42 (1) of the Freedom of Information Act 2000 provide that information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information, subject to the application of the public interest test. To the extent that your request seeks disclosure of legal advice given to the Council, this request is refused under Section 42. In considering the balance of the public interest test, my view is that public interest will weigh in favour of withholding such information relating to legal advice provided to the Council in cases where such disclosure might prejudice any future actions taken by the Council under its functions.

However by way of provision of advice and assistance, I have sought to clarify our responses provided to you as follows;

'I also wish you to consider a part of the reply provided in the context of Immanuel International Christian Centre and bearing in mind that the authority won its case at the

appeal hearing (With the Magistrates Court agreeing with Legal Counsel and presumably the factors below):'

- i) Duration - would a person be correct in assuming that your client department would say that the 20 minutes of nuisance would be the maximum duration?*

Duration of nuisance is dependant on the frequency and impact of the nuisance and not limited to maximum 20 minute duration.

ii) Frequency - It is understood that in the case of the Immanuel International Christian Centre this occurred once a week, on a Sunday morning from 11am. Would it be correct that your client department use once a week as a basis for frequency?

When assessing nuisance once a week may be used in terms of frequency but this would depend on other factors such as the duration of the nuisance and impact of any material interference with the use of a property.

'In the case of Immanuel International Christian Centre, I believe that a professional opinion was formed by the Environmental Health Officer (s) so clearly the council should and does hold information of professional opinions where noise abatement notices have been served.'

Professional opinions in relation to the serving of a noise abatement notice are based on officer's professional judgement, are made subjectively and will depend on the impact of the nuisance on a person quiet enjoyment of their property; factors taken into account will include duration and frequency of the nuisance and the material interference with the use of property.

The officer's evidence for each case is recorded in notebooks and witness statements but unfortunately, in this case under regulation 12 (4) (b): The request for information is manifestly unreasonable as the amount of time involved in redacting sensitive information is very substantial. Gathering it together would therefore be likely to involve a significant cost and diversion of resources from the Council's other work.

It would be an onerous exercise for Council officers to extract and collate this information from the relevant files and would divert those staff resources from mainstream work. The considerable resource implication to the Council is an unreasonable and disproportionate burden. This falls within the scope of guidance issued by Defra and the Information Commissioner's office in relation to what can amount to 'manifestly unreasonable'.

'Your reply begs one further question - At the appeal Rishi Nathwani (prosecuting) said "The council is legally obliged to serve an abatement notice on the first visit." - With this in mind please provide any information held on why the authority when a statutory nuisance has been witnessed it did not issue a noise abatement notice. Such information should include but not be limited to relevant legislation, policies, procedures and court Cases'

The Council adopted an enforcement concordat in December 2000 and takes a balanced view when considering any possible action to ensure that it is both

appropriate and proportionate; wherever possible the Council will seek to resolve matters in an informal manner, using formal action as a last resort. The concordat promotes consistent, practical and equitable enforcement practices and can be accessed via the link <http://www.walthamforest.gov.uk/es-enforcement-protocol-30apl07.pdf>

Generally the advice given to officers where they are satisfied that a statutory nuisance has occurred is to issue a standard letter (appendix 1) advising of the Council's statutory duty and of its powers that are available where statutory nuisance occurs. If officers continue to witness statutory nuisance then formal action is taken and an abatement notice is served; however if appropriate and proportionate an abatement notice may be served immediately at the officers discretion and will depend on factors such as the level of nuisance occurring, the numbers of people affected, and the perpetrators willingness to comply with any requests from an officer to cease the nuisance.

The Clean Neighbourhoods and Environment Act 2005 (CNEA) Part 7 also reflects this approach and addresses various issues relating to noise nuisance. Local authorities have been given discretion that allows them to employ alternative means to resolve complaints about noise qualifying as a statutory nuisance prior to issuing an abatement notice.

The CNEA amended Section 80 of the Environmental Protection Act 1990 (c. 43) (summary proceedings for statutory nuisances) as follows;

(2A)Where a local authority is satisfied that a statutory nuisance falling within paragraph (g) of section 79(1) above exists, or is likely to occur or recur, in the area of the authority, the authority shall—

(a)serve an abatement notice in respect of the nuisance in accordance with subsections (1) and (2); or

(b) take such other steps as it thinks appropriate for the purpose of persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence.

Your right to complain to the Information Commissioner

If you remain dissatisfied with this response, you have the right to make a complaint to the Information Commissioner. If you wish to pursue such a complaint, please write to:

First Contact Team
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Alternatively, you can contact the office via their helpline: 0303 123 1113.

You can obtain further information about this via this link:

http://www.ico.gov.uk/complaints/freedom_of_information.aspx

Yours sincerely

A handwritten signature in black ink, appearing to read 'G. Douglas'.

Gavin Douglas
Head of Environmental Health & Trading Standards.