



Our Reference: NBH/8EDCPA

10 September 2012

Mr Paul Hope

BY E-MAIL ONLY: whatdotheyknow.com...

Dear Mr Hope

**Re: - Request for Information –TRO on Peter Street - Reference Number:
NBH/8EDCPA – Internal Review of Response dated 23 June 2011**

I refer to your e-mails dated 14th June 2011 and 27th June 2011 and your requests that Manchester City Council should carry out an Internal Review into the handling of your Request for Information made under the provisions of the Freedom of Information Act 2000 (FoIA) and/or the Environmental Information Regulations 2004 (EIR).

I also refer to your recent telephone call and correspondence with Cathryn Cryer of the Council's Central Information Compliance Team and apologise for the delay in providing a response to your Request for an Internal Review.

Since your original Request asked for information in relation to the control of traffic, in carrying out this Internal Review the Council has considered your Request under the provisions of both FoIA and/or EIR. In your original FoIA/EIR request, which was lodged on the 23rd February 2011, you asked for the following information (division of your FoIA/EIR request into two parts has been made for ease of reference):

- [1] details of any traffic regulation order (TRO) that is in place on Peter Street Manchester M2 5 regarding Parking/ no loading dual purpose bays.*
- [2] Please also provide any internal correspondence or works orders regarding signage of these dual purpose bays.*

On the 14 June 2011, you asked for an Internal Review into the Council's handling of your FoIA/EIR Request on the grounds that you had "*not had a satisfactory explanation*" as to why the Council had not supplied you with the information that you had requested on the 23rd February 2011.

On Internal Review, it appears that one reason for the delay is that the Council officer who initially dealt with your FoIA/EIR Request was unable to identify the information that you were seeking. In particular, it appears that there was difficulty in establishing what information in respect of "internal correspondence and works orders" you were seeking, since your original FoIA/EIR Request did not provide a time period for the information that you were seeking and an e-mail was sent to you on the 23 March 2011 requesting clarification on this point. On Internal Review, I consider that while the Council was entitled to ask you for clarification as to the time period for the information that you were seeking, the Council should have requested this clarification shortly after receiving your FoIA/EIR Request on the 23 February 2011. I therefore uphold your complaint in relation to the delay in the Council's providing you with a response to your FoIA/EIR Request.

On 23 June 2011, the Council provided you with a response to your FoIA/EIR Request. Insofar as Part 1 of your FoIA/EIR Request is concerned, the Council provided you with an extract from the relevant Controlled Parking Zone Order. The Council also advised that "Whilst temporary orders were made in relation to this location, none were validly in force at the time of your request".

In your e-mail of the 27 June 2011, you state as follows:

You are obviously aware that there was an invalid TRO therefore so I don't understand why at the very least you couldn't have supplied its details?

I have considered your complaint regarding the Council's failure to supply you with details of the Temporary Traffic Regulation Orders. I have been advised that the Council interpreted Part 1 of your FoIA/EIR Request as referring to the Traffic Regulation Order that was in place at the date of your FoIA/EIR Request and that this is why you were not provided with details of the Temporary Traffic Regulation Orders relating to this site. However, as you have advised that you intended Part 1 of your FoIA/EIR Request to refer to include Temporary TROs, I attach a copy of a temporary TRO dated 12.08.2006 (which had expired before the date of your inquiry), and a copy of a notice relating to a second temporary TRO. Unfortunately, no copy of the second temporary TRO referred to in this notice is available. It is accepted however, that as there is an argument that the limitation on the duration of temporary orders under the Road Traffic Regulation Act 1984 was exceeded by the making of the second temporary TRO the Council erred in seeking to make this second temporary TRO.

Insofar as Part 2 of your FoIA/EIR Request is concerned, the Council advised that they considered that the statutory cost limit under Section 12 of FoIA was engaged as it would take more than 18 hours of Council officers' time to locate, review and extract the information that you had requested in relation to "*any internal correspondence or works orders regarding signage of these dual purpose bays*".

In this Internal Review I have also considered your request under the provisions of the EIR. Where the requested information is considered to be environmental information, there is no fixed cost limit under the EIR. However, Regulation 12(4)(b) of the EIR provides that a request may be refused to the extent that providing the information would be "manifestly unreasonable".

Although the EIR also provide that a reasonable charge may be levied for answering EIR requests, public authorities have been encouraged to align their FoIA and EIR charging policies to ensure consistency and avoid unfairness. The Council has therefore decided that EIR applicants should be treated the same as FoIA applicants and that no charge

should be levied if a request is capable of being serviced under the FoIA cost limit. Conversely, where an EIR request exceeds 18 hours, the Council has decided that the criteria for triggering the manifestly unreasonable exception in Regulation 12(4)(b) of the EIRs should be interpreted consistently with the cost limit under section 12 of the FoIA.

In your e-mail of the 27 June 2011, you state as follows (the division of your response into parts is for ease of reference):

- 2.1 *Frankly I do not believe that it would take the time you have estimated to supply the details of works orders and internal correspondence requested as The New Roads and Street Works Act 1991 (NRSWA), supported by relevant Regulations and Codes of Practice, requires authorities to maintain an electronic Register of Works.*
- 2.2 *Furthermore under various acts the authority is required to investigate representations and challenges to parking fines. Your excuse states it would take an excessive amount of time to obtain correspondence, works orders and a TRO, therefore are you suggesting that Manchester City Council cannot fulfil its statutory obligation both to maintain a register and to investigate representations and challenges when it involves road works and signage?*

In relation to your statement at Part 2.1 above, I have asked the relevant Council officers to confirm whether or not there are any entries on the Council's Street Works Registers (as referred to in The Street Works (Registers, Notices, Directions and Designations) (England) (Regulations) 2007("the Street Works Registers Regulations")), in respect of signage of the dual purpose bays on Peter Street. In relation to the Street Works Registers Regulations, I have been advised that there are no entries in respect of signage of the dual purpose bays on Peter Street for the period from 1st April 2008 (when the Street Works Regulations came into force) to the 22 February 2011. If the works to install the signage for dual purpose bays on Peter Street involved:

"the width of carriageway available for vehicular traffic being reduced –

- (i) by one or more traffic lanes
- (ii) by more than one third in a case where there are no such lanes; or
- (iii) by any amount in a traffic sensitive-street at a traffic-sensitive time,"

then you are correct in stating that Regulation (4)(5) of the Street Works Registers Regulations requires the Council to make an entry on the Council's Street Works Registers. It therefore appears that, if the works to install the signage for dual purpose bays on Peter Street did fall within the scope of Regulation 4(5) of the Street Works Registers Regulations, Council officers should have made an entry on the Council's Street Works Registers, but failed to do so. As a result of this Internal Review I can confirm that relevant officers within the Council have been reminded of the requirements for inclusion on the Council's Street Works Registers of signage works where these come within the scope of Regulation 4(5) of the Street Works Registers Regulations.

In relation to your statement at Part 2.2 above, as part of this Internal Review, I have asked the relevant Council officers to carry out a further search to try to locate any works orders in connection with the installation of signage for the dual purpose bays on Peter Street. The Council has also contacted Manchester Contracts (which is the part of the Council's Trading Services Department that undertakes signage works on behalf of the Council). Manchester Contracts have located the following information on their SAP ICT system in respect of works orders relating to signage for the dual purpose bays on Peter Street:

Description of Works	Order Number	Date Work begins	Date Work ends	Estimated Cost of Works
PETER STREET MANUFACTURE & ERECT SIGN	60000985	21.08.2006	31.03.2007	£2,543.26
PETER ST - MANUFACTURE & ERECT SIGNS	60002123	16.03.2007	31.03.2007	£2,533.80
PETER STREET:SIGNAGE WORK	60004105	19.03.2008	31.03.2008	£312.68

I have been advised that Manchester Contracts have no records prior to the introduction of SAP on 1st April 2006 as their old system 'servitor' is no longer supported by IT.

In relation to your request for copies of "correspondence" held by the Council in relation to signage for the dual purpose bays on Peter Street, as part of this Internal Review, I have asked the relevant Council officers to explain why they believed that it would take more than 18 hours to "locate retrieve and extract" the requested information. I have been advised that the Council Officer who initially dealt with your FoIA/EIR Request endeavoured to find out which Officer within the Council's Neighbourhood Services Directorate would have been dealing with "works orders" in respect of signage for the dual purpose bays on Peter Street. I have been advised that in relation to the Order Numbers 60000985 and 60002123 referred to in the table above, two of the Council Officers who dealt with these signage works are no longer employed by the Council. However, as part of this Internal Review I have asked for a search of the archived e-mails of these two Council Officers. This has disclosed the following e-mails (copies of which are attached at Appendix 1 to this letter);

1. Copy e-mail dated 02.10.2006, time 14.38;
2. Copy e-mail dated 07.03.2007, time 12.10;
3. Copy e-mail dated 07.03.2007, time 12.40;
4. Copy e-mail dated 09.03.2007, time 15.41 with one attachment;
5. Copy e-mail dated 12.03.2007, time 10.18 with two attachments;
6. Copy e-mail dated 12.03.2007, time 13.50;
7. Copy e-mail dated 13.03.2007, time 17.18;
8. Copy e-mail dated 14.03.2007, time 08.18 with one attachment;
9. Copy e-mail dated 14.03.2007, time 09.19 with one attachment;
10. Copy e-mail dated 14.03.2007, time 10.03;
11. Copy e-mail dated 15.03.2007, time 08.32
12. Copy e-mail dated 16.03.2007, time 14.58
13. Copy e-mail dated 11.04.2007, time 17.21

In relation to Order Number 60004105, I attach for your information a copy of e-mails dated 17.01.2008 and 06.03.2008 which have been located by the Council Officer who dealt with this matter.

Please note that the names of individual officers have been redacted from the above e-mails as the Council considers that these fall within the exemption at Section 40(2) of FoIA

and/or Regulation 13 of the EIR, which applies to information which is "personal data" about living individuals.

As a result of this Internal Review I can confirm that in respect of your request for information regarding copies of "works orders" held by the Council in relation to signage for the dual purpose bays on Peter Street, I have upheld your complaint that the Council was incorrect to maintain that the exemption at Section 12 of FoIA (and Regulation 12(4)(b) of the EIR) applied in respect of information for the period from the 1st April 2006 to 22nd February 2011. I can also confirm that, in respect of your request for information regarding copies of "correspondence" held by the Council in relation to signage for the dual purpose bays on Peter Street, I have also upheld your complaint in part, as it has proved possible for the Council to identify some e-mail correspondence which was sent by the Council Officers who placed Works Orders for signage works on Peter Street with Order Numbers 60000985 and 60002123 and 60004105.

As part of this Internal Review I have also considered your statement in your e-mail to the Council of the 27 June 2011 regarding the fact that you believe that the information that you are seeking "has already been compiled for your Parking Manager, Graham Marsh". With regard to this statement, I have been advised by that the Council Officer who originally dealt with your FoIA/EIR Request considered that you were seeking information that would be held by what was (as at the date of your Request), the Council's Highways Department. Unfortunately, when you were asked for clarification as to the information that you were seeking by the Council in our e-mail of the 23 March 2011, you did not explain that the information was connected with a matter that had been considered by the Parking Adjudicator. I therefore consider that the Council Officer who was dealing with your Request was justified in their belief that you were only seeking information that was held by what was (as at the date of your Request), the Council's Highways Department.

Insofar as you have now amended your Original FoIA/EIR Request by explaining that you are seeking information that you believe will be held by the Council's Parking Manager, Graham Marsh, I have been advised that the following information has been identified as coming within the scope of your clarified FoIA/EIR Request:

Advice that has been provided to the Council Officers in the Council's Neighbourhood Services Directorate by the Council's Legal Services Department in connection with the Parking Adjudication Hearing.

The Council considers that the information that you have requested is exempt from disclosure under FoIA and EIR on the following grounds:

Legal Professional Privilege (Section 42 of FoIA / Regulation 12(5)(b) of EIR)

I have concluded that the information requested is protected from disclosure by the exemption provided under Section 42 of FOIA or alternatively Regulation 12(5)(b) of EIR. Both these exemptions have the effect of protecting legally privileged communications between the Council and its professional legal advisers created for the primary purpose of obtaining/given legal advice.

The importance of legal professional privilege to the administration of justice was stressed in the case of *Three Rivers DC –v- Bank of England* (no 6)(2004). The principle is based upon the need to protect a client's confidence that any communication with his or her professional legal adviser will be treated in confidence.

The exemptions protecting legally privileged information are subject to a public interest test.

Whilst I acknowledge that there is a public interest in understanding information which informs the Council's decision making process, this needs to be balanced against the public interest in the Council being able to communicate fully and frankly with professional legal advisers and vice versa.

It has been accepted by the Information Tribunal that "there is a strong element of public interest inbuilt into the privilege itself." In my view the public interest in disclosure is not sufficient to justify overriding the strong public interest in favour of maintaining this exemption.

In view of the foregoing, I have decided to uphold your Complaint in part, insofar as it relates to copies of Works Orders in relation to signage for the dual purpose bays on Peter Street for the period from the 1st April 2006 to 22nd February 2011, and correspondence in relation to signage Order Numbers 60000985, 60002123 and 60004105.

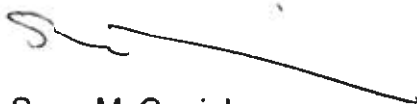
I would like to apologise to you for the delay in providing you with a response to your request for an Internal Review.

If you remain dissatisfied following this internal review, you have a right to apply to the Information Commissioner (IC) for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

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

Yours Sincerely



Sean McGonigle
Assistant chief Executive
Neighbourhood Services