

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

Date: 15 March 2021

Public Authority: London Borough of Tower Hamlets
Address: Town Hall
Mulberry Place
5 Clove Crescent
E14 2BG

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Tower Hamlets (the Council) containing a number of questions about the 'Liveable Streets' project in Bethnal Green. The Council provided some information in response to the request, explained that some information was not held, and refused part of the request on the basis of section 12(1) (cost limit) of FOIA.
2. The complainant raised a number of grounds of complaint with the Commissioner. In the Commissioner's view the Council should have considered the request under the EIR rather than FOIA. However, the Commissioner is satisfied that, following the provision of further information to the complainant during the course of her investigation, that the Council has identified and disclosed all of the information it holds which the complainant is entitled to under the EIR. The Commissioner has also concluded that the Council is entitled to refuse to comply with part of the request on the basis of regulation 12(4)(b) (manifestly unreasonable) of the EIR and that it is entitled to withhold some information on the basis of regulation 13(1) (personal data) of the EIR. However, the Commissioner has concluded that the Council breached regulation 5(2) of the EIR by failing respond to the complainant's request within 20 working days and by only disclosing

some of the requested information during the course of the her investigation.

Request and response

3. The complainant submitted the following request to the Council on 27 November 2019:

*'Information on Liveable Streets proposal
Data on traffic through the Bethnal Green area*

[1] I would like to see the data and evidence collected by the council and their agents on traffic movements through the Bethnal Green area that was used to compile its Liveable Streets Bethnal Green brochure. I would like a break down of specific timings , broken down into hours or smaller. I would like the source material

[2] Also, could you provide data regarding any CO2 emissions taken in the area when compiling the study, where it was measured how it was measured and by whom

[3] Evidence to substantiate claims that the road closures will improve anti-social behaviour and deter drug dealing.

[4] Please could you also provide me with road traffic accident figures/types of accidents and names of streets and number s where these have occurred.

[5] Please could you provide me the budget figures for the liveable streets project and a breakdown of where the funding has come from and reveal all conditions concerning how it could be spent an expiry date who is managing it etc/

[6] full disclosure of its source. who was tasked with delivery the information along with photographic evidence of deliveries ,dates when mail outs were said to be made including a comprehensive list of all the streets and properties and commercial .

[7] Figures and geographical references for on anti social behaviour crimes within the area.

*[8] Who said that Bethnal Green was the same at Walthamstow ?
Why?*

[9] Minutes. from all meetings where these proposals were either on the agenda or discussed under any other business at all?

[10] Why the website /on line survey tool broke two days before the original consultancy final date .

[11] Why were different deadlines or unclear deadlines published

[12] Who gave the quotes in the paper packs?

[13] Who provided highways consultation regarding the proposal to close off streets our turn them into one way or stop them being highways ?'

4. Having failed to receive a response from the Council, the complainant contacted it on 15 January 2020 and asked it to undertake an internal review in relation to its failure to reply to her request.
5. After some considerable delay, the Council provided her with a substantive response to the request on 1 May 2020. The response explained that her initial request of 27 November 2019 was not administered and it apologised for this oversight. With regard to the substance of the response, the Council's position was as follows:
 - Question 1 – the Council explained that it could not provide the information sought by question 1 as it was held by a third party on its behalf. However, the Council explained that it expected this information to be provided to the complainant within the next 7 days.
 - Question 2 – the Council explained that it did not hold this information.
 - Questions 3 to 7 and questions 10 to 13 – the Council provided information in response to these questions.
 - Question 8 – the Council explained that it did not accept the premise of the question, ie that someone had said that Bethnal Green was the same as Walthamstow.
 - Question 9 – the Council explained that it was relying on section 12 of FOIA to refuse to comply with this request because the estimated costs of compiling the information exceed the appropriate cost limit of £450.

Scope of the case

6. The complainant contacted the Commissioner on 6 February 2020 to complain about the Council's delay in responding to her request. She subsequently explained to the Commissioner that she was dissatisfied with the Council's response of 1 May 2020. The Commissioner clarified with the complainant that her grounds of complaint were as follows:

Question 1 – She was unhappy that the data disclosed by the Council in response to this request did not include any street names.

Question 6 – She was unhappy that the Council did not provide her with any photographic evidence of the deliveries being made. She suggested that the consultants involved in the project informed her that such information existed.

Question 7 – She has explained that the hotspot map and liveable streets spreadsheet were not actually attached the Council's response of 1 May 2020.

Question 9 – She disputed the Council’s position that providing the information sought by this request would exceed the appropriate cost limit.

Question 10 – She argued that the Council’s response did not answer the question asked because it did not explain why the website/online survey tool was broken.

Question 11 – She disputed the accuracy of the Council’s response because she believed that it did set different consultation dates.

Question 12 – She was dissatisfied that the Council did not provide her with the names of the specific individuals/organisations who gave each of the quotes.

Question 13 – She explained that this question was intended to find out which 'services and specialists' were consulted but this information has not been provided.

7. In the Commissioner’s view the given the subject matter of this request, ie the Living Streets programme, the Council should have considered this request under the EIR rather than under FOIA. This is because the information sought by the complainant, although wide ranging in scope, is information on a measure, namely the Living Streets programme, which is likely to affect the state of the environment. In the Commissioner’s view the requested information is therefore environmental information under regulation 2(1)(c) of the EIR. As result she has considered the Council’s handling of this request in line with the obligations placed upon it by the EIR rather than FOIA.

Reasons for decision

Question 1

8. In relation to this point of complaint, as with a number of others raised by the complainant, it is important to remember that the right of access under the EIR (and indeed under FOIA) is simply to recorded information. A public authority is under no obligation to create information or provide an opinion in response to a request.
9. The Commissioner has examined the recorded information falling within the scope of this request which was provided to the complainant. This consisted of an overview map which provides the location of the Automatic Traffic Counters (ATC). The locations are numbered and the map includes an overall summary of the data collected. In addition, spreadsheets were disclosed containing the primary, background data for each numbered location.

10. In relation to question 1, the complainant does not dispute that this was the data collected by the Council and its agents on traffic movements, which was the information sought by this question. Rather, she is unhappy that this data did not include street names. However, for the reasons discussed above, the right of access provided by the EIR is simply to recorded information. In the Commissioner's view the Council has fulfilled question 1 because it has provided the complainant with the recorded information it holds falling within the scope of the request. Whilst the information may not contain street names, there is no obligation on the Council to create this information or label the disclosed information accordingly in order to comply with the EIR.

Question 6

11. Question 6 sought details of the 'letter drop' of communications about the 'Liveable Streets' proposal. The Council's initial response to the request provided details of this process and explained that a delivery company had been tasked with delivering the consultation packs. However, the Council's response did not address the part of the question which sought photographic evidence of these packs being delivered.
12. In her submissions to the Commissioner the complainant explained that the consultants involved in the project had informed her that such information existed.
13. In its initial submissions to the Commissioner in relation to this point, the Council explained that it did not have photographic evidence of the letter drop and that the letter drop was undertaken by a third party. The Council noted that as a lessons learnt exercise from its Liveable Streets Bethnal Green scheme, it now asks for video footage of the Liveable Streets consultation documents being delivered.
14. In response to these submissions, the Commissioner sought clarification from the Council whether the terms of the contract / arrangements it had with the third party that took the photographs provided the Council with a right of access to the photographs. The Commissioner also noted that arrangements are now in place, following the lessons learned review, to provide the Council with video evidence of deliveries. However, the Commissioner explained that she wanted to better understand the arrangements in place in relation to photographic evidence falling within the scope of the complainant's request.
15. In response the Council explained that in relation to the letter drop in question, it decided not to require the third party to provide it with any photographic evidence as this was an additional cost service. However, the Council explained that it has now realised the value in this and has done so since.

16. In scenarios such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, and/or other explanations offered as to why the information is not held.
17. In light of the Council's confirmation that it specifically did not use the photographic evidence service offered by the third party in relation to the letter drop which is the focus of this request, the Commissioner is satisfied on the balance of probabilities that it does not hold any such information.

Question 7

18. During the course of the Commissioner's investigation, the Council provided the complainant with the hotspot map and liveable streets spreadsheet which resolved this aspect of the complaint.

Question 9

19. Although the Council refused to provide the information sought by this request on the basis of section 12(1) of FOIA, as explained above the Commissioner considers that this request should be considered under the EIR. The relevant exception under that legislation is regulation 12(4)(b) which provides that a public authority may refuse to disclose environmental information if the request for information is manifestly unreasonable. 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.
20. As the Commissioner's guidance on regulation 12(4)(b)¹ explains, whilst the section 12 cost provisions in FOIA are a useful starting point to determining whether the time and cost of complying with the request is obviously unreasonable, they are not determinative. Under these cost

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

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 the Council. 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 24 hours.

21. 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.
22. 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.

The Council's position

23. The Council explained to the Commissioner that to understand the complexity of providing the information requested by question 9 it was necessary to understand the background to the project. The Council explained that the Liveable Streets programme is a £27 million programme that stretches across 17 areas of the borough, effectively the neighbourhoods of Tower Hamlets. The Council explained that within each neighbourhood, of which Bethnal Green is one, it aimed to meet several objectives including encouraging walking and cycling, removal of rat running traffic, improving air quality and improving the public realm. The Council emphasised that this is a large important project for the Council, and with the wide scope to improve the neighbourhoods as a whole, it therefore required coordination across the organisation.
24. The Council explained that it had assumed that the question relates to the Bethnal Green area only (fitting with the other questions included in

the request) and not the Liveable Streets programme in general. The Council noted the Bethnal Green Scheme started in April 2019.

25. The Council provided the Commissioner with submissions to support the application of regulation 12(4)(b), but explained that it was useful first to consider this request in the context of section 12 in order to understand the likely cost of gathering the data.
26. The Council explained that the question relates to meetings where the Bethnal Green scheme was on the agenda or under any other business. The Council explained that this being an important project for the organisation and a neighbourhood approach meant that there are numerous departments in which these proposals could be discussed.
27. The Council explained that the first step would be to establish which departments may have held meetings on this subject over the course of the last 18 months. The Council explained that it was very likely that this would include teams that sit within the directorate for 'Place' (same as the Liveable Streets team) including the departments traffic, highways, parking, street lighting, parks, strategic policy, transport planning and waste services. Then further teams such as community safety and public health. In addition the Council explained that there were also meetings with executive teams and corporate directors which may cascade down in each of their directorates to team meetings. The Council explained that once it had established what departments have the potential to discuss the proposals, each one could be contacted and meetings identified for the past 18 months. Then the minutes of each meeting reviewed to see if Liveable Streets, and in particular the Bethnal Green proposals, were discussed.
28. The Council provided the following estimate in terms of the time it would take to complete this process:
 - Identification of departments teams by identifying meetings in the liveable street team over the 18 months and working out connecting departments that then may go on to have further meetings – 1 person x 2 days (15 hours)
 - Contacting each of the heads of each team and explaining the requirements – 1 person x 5 hours
 - Each department identifying the meetings minutes and if Bethnal Green was mentioned over the 18-month period.
29. In relation to this last task, the Council used the five person team working on Liveable Streets as an example. It explained that this team had an average of 5 meetings per week with agendas and minutes. The Council explained that as a rough estimate this equated to 390 meeting minutes (ie five meetings per week x 18 months) for the Liveable Streets team to find and review. The Council assumed that it would take

1 person 10 minutes to find each set of meeting minutes, check the data, extract the information and store it ready to be sent to one person to collect the data for release. This equated to 65 hours (10 minutes x 390 meetings (76 weeks x 5) = 3900 minutes or 65 hours). The Council argued that if it was assumed that locating the meeting minutes of the 10 other teams of similar size would take a similar amount of time then it would take be around 650 hours to locate all of the information in the scope of the request.

30. The Council explained that the next task would be to collect all the information in a suitable format to enable for it to be sent to the complainant. This would, at a minimum, take 1 person a day (7.5 hours).
31. Therefore, in total the Council argued that taking a subjective and restricted view of the tasks required would suggest that it would take 677.5 hours to fulfil question 9 (or in the context of section 12 an estimated cost of £16,260).
32. In terms of the EIR, and with reference to the headings set out above, the Council provided the Commissioner with the following submissions to support its view that the request was manifestly unreasonable:
 - The nature of the request and any wider value in the requested information being made publicly available.
33. The Council explained that as part of the scheme it had undertaken an extensive engagement process and provided the information and data used to make a decision on the scheme. The Council noted that this is outlined in the publicly available and detailed Cabinet report and all background data on its website. The Council also explained that a video of the Cabinet meeting in which this issue was discussed and approved is also available online. The Council argued that the provision of the minutes sought by question 9 would not serve to provide any wider value.
 - The importance of any underlying issues to which the request relates and the extent to which the responding to the request would illuminate that issue
34. The Council explained that the complainant's reason for including such a wide scope in the question is unclear and it assumed that she was trying to find something against the scheme. The Council argued that it had been very clear with the process and data and provided as much information on its website as possible throughout the process. The Council noted that it had also provided information to the requestor in other FOIs and emails.

- 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 service
35. The Council explained that although it is a big employer, it runs many services and at present has taken on additional works and pressure due to the Covid-19 pandemic. In addition, working patterns have changed and running services differently, as a result of pandemic, has increased work load. The Council explained that the Liveable Streets team of five is a relevantly small team and the time required in processing request above would reduce the capacity of the team for a sustained period and stop the delivery of other works.
- The context in which the request is made, which may include the burden of responding to other requests on the same subject form the same requester.
36. The Council explained that the requestor has had continued dialogue with the Liveable Streets team and other officers in regard to the scheme. This has included a site visit and meeting with officers and the Mayor of Tower Hamlets to put across her concerns.
37. In light of the above factors, the Council explained that it considered this request to be manifestly unreasonable. It noted that as part of its response it had asked the complainant to reduce the scope of the request so that it could be answered within the timeframe of FOIA (or indeed so that it was not manifestly unreasonable). The Council suggested that this could be a time period, or more helpfully, would be the rationale for the request so that it could identify appropriate meetings and provide the minutes.

The Commissioner's position

38. The Commissioner notes that the Council has explained the pressures that the Covid-19 pandemic has placed upon it. The Commissioner does not doubt that this is the case. However, the request pre-dates the pandemic as it was submitted on 27 November 2019, albeit she acknowledges that due to the Council's delays in processing the request its reply was not issued until 1 May 2020. In terms of the Council's cost estimate, the Commissioner accepts the methodology that it has set out in terms of the process that would need to be followed in order to locate information falling within the scope of the request. However, the Commissioner considers the timeframe of 18 months to be too long a search period. The Bethnal Green project started in April 2019 and a 18 month search period would extend until September 2020.
39. The role of the Commissioner in investigating complaints about public authorities' handling of EIR requests (and FOIA requests) is limited to considering the circumstances as they existed at the time of the

request. Therefore, the Commissioner considers that the Council only needs to search for any relevant meetings for the period April 2019 to November 2019, a period of 8 rather than 18 months. (Albeit she accepts that if relevant information is held about the project before its start date that then this would only result in it taking the Council longer to comply with the request.)

40. Nevertheless, the Commissioner accepts that even searching for information during this shorter time period would take a considerable period of time. For example, the Liveable Streets team would still have to locate 5 meeting minutes per week over a 32 week period (8 months x 4) which would involve finding and extracting data from 160 meetings. The Commissioner accepts that the Council's estimate of 10 minutes to locate each minute and extract and relevant information is a reasonable one so it would take 1600 minutes, or 26 hours, to complete this exercise for the Liveable Streets team alone. Using the same calculation method, it would take an additional 260 hours for the other 10 teams in the Council (26 hours x 10 teams). The Commissioner also accepts that the preliminary work identified by the Council would still need to be undertaken, as would the process of collating the information, which would take approximately an additional day of work. As a result the Commissioner accepts that it would take the Council as estimated 300 hours to locate, extract and collate the information for the period April 2019 to November 2019.
41. Clearly such an estimate is sufficient for the Council to be able to rely on section 12(1) of FOIA to refuse the request. However, for the reasons explained above the relevant question is whether the request is manifestly unreasonable and thus whether the regulation 12(4)(b) applies.
42. Having considered the circumstances of the request the Commissioner is satisfied that the request is one that it can be correctly categorised as manifestly unreasonable. The estimated time to fulfil question 9 significantly exceeds – more than ten fold - the cost limit for section 12 of FOIA. Furthermore, the Commissioner accepts the Council has been involved in public consultations about this project and that considerable information about it has already been put into the public domain. She also notes the Council's point that it has answered previous requests from the complainant on this subject and has engaged with her outside of the FOI/EIR process. The Commissioner accepts that the complainant has a legitimate interest in understanding the Council's decision making on the project. However, she does not consider that a request seeking minutes of *any* meeting across the *whole* Council where this project was discussed is a reasonable one when taking into account the burden complying with it would place on the Council.

Public interest test

43. Regulation 12(4)(b) is subject to the public interest test. 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. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019), '*If application of the first two stages 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).
44. As the Commissioner's guidance on this exception explains 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. For the reasons set out above, the Commissioner accepts that there is arguably some value in the Council fulfilling the request because it could provide a further insight into the Bethnal Green project and the complainant has a legitimate interest in understanding more about this project. However, following on from the reasons set out above, in the Commissioner's view such an interest is outweighed by the public interest in maintaining the exception, even taking into account the presumption in favour of disclosure, given the significant burden complying with the request would place on the Council.

Question 10

45. Question 10 sought information about why the website/online survey tool broke two days before the original closing date of the consultation.
46. In its response to the complainant the Council explained the deadline for consultation was Monday 25 November 2019 and that the website and survey were open and working throughout Saturday 23 November 2019, which was two days before the consultation deadline, and it had responses from people on this date.
47. In her complaint to the Commissioner about this question the complainant argued that the Council's response did not answer the question asked because it did not explain *why* the website/online survey tool was broken.
48. In its submissions to the Commissioner the Council explained that it did not accept that the website went down and therefore it did not hold any information relevant to this question.

49. As set out above, where there is some dispute as to whether recorded information falling within the scope of a request is held, the role of the Commissioner is simply to determine whether, on the balance of probabilities, a public authority holds such information.
50. In the circumstances of this particular request the Commissioner notes that the Council does not accept that the website survey stopped working two days before the deadline; indeed it has responses from the two days prior to the deadline. In light of this, the Commissioner considers it logical that the Council does not hold any recorded information falling within the scope of question 10; it does not accept that the online tool broke, and thus there is no reason why it would hold any recorded information about that topic.

Question 11

51. In its initial response to this question, the Council explained to the complainant that the end date for consultation date was 25 November 2019 and that this did not change throughout the consultation.
52. In her submissions to the Commissioner the complainant disputed the accuracy of this response because she believed that it did set different consultation dates. The Commissioner asked the complainant to provide her with any evidence that would support her position. The complainant did not provide the Commissioner with any such evidence. (The only evidence the complainant provided related to the closing dates of a different consultation exercise.)
53. Therefore, the Commissioner is satisfied that on the balance of probabilities the Council does not hold any recorded information about why the dates of the consultation changed simply because there is no credible evidence to suggest that the dates of the consultation *did* in fact change.

Question 12

54. The information packs the Council distributed about the proposals contained a number of quotes regarding the existing traffic arrangements, and the impact of them, in Bethnal Green. The complainant asked the Council who provided these quotes. In response the Council explained that the quotes were provided by residents, businesses and key stakeholders.
55. During the course of her investigation the Commissioner established that of the three quotes, one of these (namely '*Old Bethnal Green Road should be filtered to reduce cars travelling through the area and past the schools*') was not attributed to anyone. The other quotes were given by individuals and not business or stakeholders. The Council explained that

it considered the names of these individuals to be exempt from disclosure under regulation 12(3) and 13(1) of the EIR.

56. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
57. In this case the relevant condition is contained in regulation 13(2A)(a)². This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
58. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then regulation 13 of the EIR cannot apply.
59. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

60. Section 3(2) of the DPA defines personal data as:

'any information relating to an identified or identifiable living individual'.

61. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
62. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
63. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

² As amended by Schedule 19 Paragraph 307(3) DPA 2018.

64. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the individuals in question who provided the quotes. She is satisfied that this information both relates to and identifies the individuals concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
65. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
66. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

67. As explained above, the second element of the test is to determine whether disclosure would contravene any of the DP principles. The most relevant DP principle in this case is principle (a).
68. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

69. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
70. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

71. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that '*processing shall be lawful only if and to the extent that at least one of the*' lawful bases for processing listed in the Article applies.
72. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

'processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and

*freedoms of the data subject which require protection of personal data, in particular where the data subject is a child*³.

73. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
74. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

75. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
76. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

³ Article 6(1) goes on to state that:-

'Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks'.

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA) provides that:-

'In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted'.

77. The Commissioner acknowledges that the complainant wishes to access the information in order to further her understanding of the Liveable Streets project in Bethnal Green. The Commissioner accepts that this is a legitimate interest. Furthermore, as noted above, she accepts that there is a general interest in the transparency for its own sake. The Commissioner therefore accepts that there is a legitimate interest in the disclosure of this information.

Is disclosure necessary?

78. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.

79. However, the Commissioner is not persuaded that disclosure of the withheld names is necessary. The extent to which disclosure of these names would add to the complainant's, or indeed the wider public's, understanding of the project is arguably very limited. Disclosure would simply reveal the names of two individuals who provided quotes to be included in the information booklet about the project. The Commissioner is not persuaded that the disclosure of such names is necessary to meet the legitimate interest in understanding the project itself. Furthermore, in the Commissioner's opinion the confirmation that the quotes were from individuals rather than business has met any legitimate understanding in who the Council was influenced by.

80. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, she has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).

81. The Commissioner has therefore decided that the Council was entitled to withhold the information under regulation 13(1), by way of regulation 13(2A)(a).

82. Since the end of the transition period following the UK's departure from the EU, the GDPR were replaced by the UK GDPR. As this request was received before the end of that transition period, the application of regulation 13(1) has been decided by reference to the GDPR. However the Commissioner is also satisfied that the disclosure of the personal data to which that exception was applied would not contravene the UK GDPR for exactly the same reasons.

Question 13

83. As part of her investigation of this aspect of the complaint the Commissioner explained to the Council that the complainant was intending to establish what 'services and specialists' were consulted but this information has not been provided to her.
84. As part of its submissions to the Commissioner the Council explained that as part of its approval process it went through the Council's Cabinet and as part of this it produced a report on the engagement it undertook for the scheme. The Council explained that this provides the background and also the stakeholders it spoke to as part of the scheme and directed the Commissioner to this.⁴ The Council also explained that in addition to this process, the programme and schemes are being developed with the transport consultants called Project Centre Ltd.
85. The Council subsequently provided this explanation to the complainant. The Commissioner considers that the provision of this information fulfils question 13 of the request and therefore it has fulfilled its obligations in relation to the EIR in respect of this part of the request.

Delays in responding to the request

86. Under the EIR, a public authority has a duty to inform the requester whether it holds the information and if so, to communicate the requested information to them, according to regulation 5(2), 'as soon as possible, and no later than 20 working days after the date of receipt of the request.'
87. In the circumstances of this case the complainant submitted her request to the Council on 27 November 2019. However, it failed to provide her with a substantive response to her request until 1 May 2020. This delay represents a breach of regulation 5(2) of the EIR. The Council also breached regulation 5(2) in relation to the delay in providing information to the complainant which was only disclosed during the course of the Commissioner's investigation.

⁴ This can be found at <http://democracy.towerhamlets.gov.uk/ieListDocuments.aspx?CIId=720&MIId=10197&Ver=4> item 6.1, as part of the Cabinet report and in appendix C.

Right of appeal

88. 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: 0300 123 4504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

89. 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.

90. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF