

Please ask for: Ann Sargent
Direct Line: (01322) 343085
Direct Fax: (01322) 343963
E-mail ann.sargent @dartford.gov.uk
DX: 142726Dartford7
Your Ref:
Our Ref: FOI 964
Date: 25th October 2011

Dear

RE: REQUEST FOR INFORMATION - ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR)

I refer to your request for information dated 19th September 2011. The request is being dealt with under the EIR as the information sought relates to noise and its impact on the environment.

Before responding to your request, I wish to extend my apologies for not explaining in my acknowledgement letter of 4th October 2011 that your request for information would be dealt with under the EIR. I should have also explained in my letter of 13 October 2011, that regulation 7 of the EIR provides that the Council may extend the period of 20 working days to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable to comply with the request within the earlier period of 20 working days or to make a decision to refuse to do so.

The response to your information request is as follows:

- a) *How many complaints/requests for a statutory nuisance (abatement order) have been made to Dartford Borough Council in the last 36 months related to nuisance dog barking?*

See table below

- b) *How many of these complaints/requests were not upheld by Dartford Borough Council (please provide numbers for each stage of the complaints process)?*

See table below

Year	Number of Barking Dog Complaints	Number of abatement notices served
2008/2009	132	1
2009/2010	135	1
2010/2011	150	0
Total	417	2

Please note that the figures above relate to the numbers of service requests made to the Council in respect of barking dogs and are not complaints against the Council.

c) *How many of these complaints/requests were only dealt with at stage one?*

No complaints were received against the Council in relation to barking dog nuisance.

d) *How many of these complaints/requests were dealt with at stage two?*

None (please see (c) above)

e) *How many of the complaints/requests dealt with at stage two resulted in a change of outcome to that of stage one?*

None (please see (c) above)

f) *How many of these complaints/requests were referred to the Ombudsman?*

None (please see (c) above)

g) *How many of the complaints/requests referred to the Ombudsman resulted in a change to both stage one and stage two?*

None (Please see (c) above)

h) *How many of these complaints/requests involved noise measuring equipment being installed at the complainant's property?*

To respond to this request, the Council would need to search 417 files to ascertain whether the information was held. This would incur unreasonable costs for the Council and/or an unreasonable diversion of resources. Please refer to paragraph 3(a) of the Refusal Notice below which sets out the Council's reasons for refusing this part of your request and the public interest test considerations.

i) *How many of these complaints/requests resulted in a statutory notice being issued?*

Two

j) *How many of these complaints/requests resulted in other enforcement action being taken by Dartford Borough Council?*

None

k) *What other enforcement action was taken by Dartford Borough Council in response to these complaints/requests?*

None

- l) *On how many separate occasions in the last 36 months has Dartford Borough Council enforced the terms of the tenancy agreement as detailed in this letter as a result of nuisance dog barking?*

None

- m) *What enforcement action was taken by Dartford Borough Council in regards to breaches of the tenancy agreement as a result of nuisance dog barking?*

None

- n) *Can you provide me with copies of any minutes of meetings held by Dartford Borough Council within the last 36 months, during which dog barking was discussed?*

No meetings of the Council dealt with barking dog nuisance.

- o) *Can you please provide me with a copy of all records and details of the investigation performed by Dartford Borough Council in response to my father's original complaint?*

Please refer to the attached documentation. A schedule has been provided for ease of reference. This schedule details where the information is released in full and where the information is released in part and where information has been withheld for the reasons specified in the Refusal Notice set out below.

The Refusal Notice

1. Document No. EHB01 is released in a redacted form. Personal information relating to telephone numbers, names and e-mail address have been redacted. I am withholding the redacted information since I consider that the exceptions under regulation 13(1) and (2)(a)(i) apply to it. Please refer to the reasons and public interest test considerations in paragraphs 3(b) and (c) below.
2. I can confirm that the Council holds the information in documents numbered HS03, HS04, HS05, HS07, HS08, HS09, HS10, HS12 and HS13. However I am withholding that information in its entirety, since I consider that the exceptions under regulations 12(5)(f) and 13(1) and (2)(a)(i) apply as set out below. Please refer to the reasons and public interest test considerations in paragraphs 3(b) and (c) below.
3. Under regulation 5(1) of the EIR, the Council is required to make environmental information available on request. However, that requirement is subject to:
 - (a) **Regulation 12(4)(b)** which provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.

Your request for the number of complaints/requests involving the installation of noise measuring equipment at the complainant's property

would require the Council to search 417 files to ascertain whether the information was held. This would incur significant unreasonable costs for the Council estimated to be:

417 files @ 10 minutes per file = 69.5 hours
69.5 hours @ £15 per hour = £1042.50

The request would also incur an unreasonable diversion of staff resources in the Environmental Protection team comprising four staff. Considered in light of the appropriate limit of 18 hours (x £25 per hour) under the FOI fees regulations, such a large search would seriously disrupt the everyday work of the Environmental Health Section. Although the release of information would promote accountability and transparency in public services, the time it would take in responding to the request would divert a disproportionate amount of the Council's resources from its core functions. I am of the view that the cost of complying with this part of the request is manifestly unreasonable.

Having considered the specific presumption in favour of disclosure at regulation 2(2) of the EIR, in light of the arguments for the above factors, I am satisfied that in all the circumstances of the case that the public interest in maintaining the exception under regulation 12(4)(b) outweighs the public interest in disclosing the information.

The Council is under a duty to offer you advice and assistance and suggests that you may wish to narrow your request so that it would no longer be manifestly unreasonable.

- (b) **Regulation 12(5)(f)** which provides that, to the extent that the information was provided by a third party on a voluntary basis in the expectation that it would not be disclosed to any other third party or the public, a public authority shall not disclose the information.

The purpose of this exception is to protect the voluntary supply to public authorities of information that might not otherwise be made available. It operates on the principle that if those who provide information on a voluntary basis suffer as a consequence of providing that information, they will not be so willing to volunteer information in the future.

The information contained in documents numbered HS03, HS04, HS07, HS08 and HS09 was provided by a third party on a voluntary basis in the expectation that it would not be disclosed to any other third party or the public. I am satisfied that by the very nature of the information contained in these documents, there would be some probable adverse affect on the provider of the information if the information were to be disclosed. The suppliers of the information have not consented to disclosure.

Having considered the specific presumption in favour of disclosure at regulation 2(2) of the EIR, in light of the arguments for the above factors, I am satisfied that in all the circumstances of the case that the public interest in maintaining the exception under regulation 12(4)(b) outweighs the public interest in disclosing the information.

- (c) **Regulation 13(1) and (2)(a)(i)** which provides that, to the extent that the information requested includes personal data of which the applicant is not the data subject and the disclosure of the information to a member or the public would contravene any of the data protection principles set out in the Data Protection Act 1998 (DPA), a public authority shall not disclose the personal data.

The first principle of the DPA requires that the processing of personal data is fair and lawful and that at least one of the conditions for processing in Schedule 2 is met. I have considered whether the disclosure of personal data in documents numbered EHB01, HS03, HS04, HS05, HS07, HS08, HS09, HS10, HS12 and HS13 would be fair. In order to reach a view on this, I have considered what would be the reasonable expectation of the individual who contacted the Council, i.e. would they have any expectation of their personal data being provided to a third party. I consider that the Council should be able to carry out investigations as a result of information received. There must be an expectation that the interests of the parties involved in an investigation will be protected and all parties will be treated fairly. In order for the Council to operate effectively, it must be able to receive information without necessarily identifying the source publically. It is unlikely that the individual contacting the Council would have had any expectation that their personal data would be released to a third party. Indeed, it is in the public interest that the anonymity of complainants be preserved, so that members of the public may submit their concerns to public authorities without fear of redress. I have concluded that disclosure in this case would not be fair.

Schedule 2 of the DPA sets out the conditions under which personal data could be released. There are six conditions in Schedule 2 of the DPA but only condition 1 (consent) or condition 6 (legitimate interests) are relevant to disclosure under the DPA. In this case, consent has not been given.

Condition 6 establishes a three part test which is concerned with balancing the legitimate interests of the public in disclosure against the interests of the individual whose data it is. It is my judgement that, in this case, there is no legitimate public interest in disclosing the information. Even where the disclosure is necessary for a legitimate interest of the public, it nevertheless must not cause unwarranted interference (or prejudice) to the rights, freedoms and legitimate interests of the data subject. I consider that the disclosure of names, telephone numbers, e-mail addresses and other personal sensitive information relating to an identifiable individual would constitute an unwarranted interference in the individuals' private lives.

I have given consideration to a tribunal's decision in case EA/2008/0054 where the complainant asked for the name of the person who had made an arbitrary/malicious complaint about his septic tank. The tribunal said at paragraph 45 that "...there were no public interest considerations in this appeal which could override the confidentiality implicit in the original letter of complaint" and went on at paragraph 47 to say that they were satisfied

that "no further disclosure of information could be made without contravening the first data protection principle".

Having considered the specific presumption in favour of disclosure at regulation 2(2) of the EIR, in light of the arguments for the above factors, I am satisfied that in all the circumstances of the case that the public interest in maintaining the exception under regulation 12(4)(b) outweighs the public interest in disclosing the information.

If you wish to object to my decision in the first instance, or if you are unhappy with the way in which your enquiry has been dealt with, you may ask for an internal review by initiating the Council's Corporate Complaints Procedure, details of which may be obtained by logging onto the Council's website <http://www.dartford.gov.uk> or telephoning or emailing me. Should you remain dissatisfied with the decision on internal review, you may appeal to the Information Commissioner, Wycliffe House, Water Lane, Wilmslow SK9 5AF. There is no charge for making an appeal.

I would be grateful if you would address any future correspondence you may have in relation to this matter to me, quoting the reference number FOI. 964

Yours sincerely



Ms A Sargent
Environmental Health Manager
Environmental Health

PP

SCHEDULE OF DOCUMENTS

Document No: HS01: Released in full - Initial Email received by customer services in respect of dog barking at 13 Hope Cottages dated 19/08/08

Document No: HS02: Released in full - Letter sent by Elaine Ambrose (EA) Housing Services to occupants of 13 Hope Cottages dated 19/08/08

Document No: EHB01: REDACTED Environmental Health Service Request Historical record raised 28/08/08

Document No: HS03: Released in full - Email exchange between Colin Bernard (CB) and EA dated 26/08/08

Document No: EHB02: Released in full - Email from Niall Lester (NL) to CB dated 01/09/08

Document No: EHB03: Released in full - Letter re barking complaint to Mr Bishop (MB) owner of dog dated 01/09/08

Document No: EHB04: Released in full - Letter from NL to CB re barking dated 01/09/08

Document No: EHB05: Released in full - Email exchange between NL and CB re dog barking incidents dated 15/16/09/08

Document No: EHB06: Released in full - Letter to CB from NL dated 18/09/08

Document No: HS03: EXCEPTION APPLIED TO UNDATED LETTER

Document No: HS04 EXCEPTION APPLIED TO LETTER DATED 18/09/08

Document No: HS05: EXCEPTION APPLIED TO LETTER DATED 24/09/08

Document No: EHB07: Released in full - Email from NL to CB requesting situation update dated 29/09/08

Document No: EHB08: Released in full - Email from CB to NL detailing noise events dated 30/09/08

Document No: HS06: Released in full - Email exchange between CB and EA re neighbour issues dated 14/10/08

Document No: HS07: EXCEPTION APPLIED TO EMAIL DATED 14/10/08

Document No: HS08: EXCEPTION APPLIED TO EMAIL DATED 14/10/08

Document No: HS09: EXCEPTION APPLIED TO EMAIL DATED 20/10/08

Document No: HS10: EXCEPTION APPLIED TO EMAIL DATED 22/10/08

Document No: EHB09: Released in full - Copy of diary sheet and photographs from CB to NL received 10/11/08

Document No: EHB10: Released in full E-mail - from NL to CB confirming insufficient evidence to justify installation of noise recording equipment dated 11/11/08

Document No: HS11: Released in full Email - exchange between EA and CB dated 25/11/08

Document No: EHB11: Released in full - Customer satisfaction reply from CB received 27/03/09

Document No: EHB12: Released in full - Letter sent by Julie Short (JS) to CB in response to customer satisfaction survey dated 09/04/09

Document No: HS12: EXCEPTION APPLIED TO LETTER DATED 05/10/11

Document No: HS13: EXCEPTION APPLIED TO LETTER DATED 05/10/11

Document NO: HS14: Released in full - Letter from Howard Stoate MP to Peter Dosad dated 09/04/09