

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 August 2011

Public Authority: Tower Hamlets Homes
Address: Jack Dash House
2 Lawn House Close
Marsh Wall
London
E14 9YQ

Summary

The complainant asked Tower Hamlets Homes (the “public authority”) to provide information relating to its technical services. The public authority provided some information but maintained that further information was exempt by virtue of section 12 of the Freedom of Information Act 2000 (the “Act”) (cost of compliance would exceed the appropriate limit). During the investigation the public authority sought to aggregate this request with two other requests made by the complainant thereby exempting all three by virtue of section 12 (cost of compliance would exceed the appropriate limit). It also sought to introduce section 44 (prohibitions of disclosure) of the Act. The Commissioner’s decision is that the public authority was not able to aggregate the requests, it could not apply section 12 and, also, that it could not rely on section 44. The public authority’s handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

The Commissioner’s role

1. The Commissioner’s duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the “Act”). This Notice sets out his decision.

Background

2. Tower Hamlets Homes is an Arms Length Management Organisation (ALMO) and a local authority controlled company owned solely by London Borough of Tower Hamlets. As set out in the Commissioner's guidance on publicly owned companies, ALMOs are public authorities for the purposes of the Act under section 6(2)(b).
3. The complainant made three requests to the public authority which resulted in complaints to the Commissioner. All three requests were made via the 'Whatdotheyknow' website and can be followed through these links:
 - http://www.whatdotheyknow.com/request/20089_service_charges_costs#incoming-119959
 - http://www.whatdotheyknow.com/request/20089_service_charges_management#incoming-119976
 - http://www.whatdotheyknow.com/request/20089_service_charges_technical#comment-15007

This case relates to the bottom request.

4. The complainant has also made reference to a publication provided by Tower Hamlets Homes entitled "*Leasehold Focus*" dated September 2009. This is available online via the following link:
 - <http://www.towerhamletshomes.org.uk/PDF/12182%20LH%20Focus%20Service%20Charge%20web.pdf>

5. This publication states:

"Every year Tower Hamlets Homes estimates how much the service is going to cost you at the start of the financial year. You pay for services in advance as part of the agreement you have with the Council, your landlord. We will then bill or credit you the difference between that estimated cost and the actual cost of delivering those services before the end of the following September. Information on the actual cost is presented in your service charge certificate.

Your "actual" service charge is your exact share of the costs for services we delivered to you during the period of 1st April 2008 to 31st March 2009".

The request

6. On 27 February 2010 the complainant made the following information request:

"With respect to the 2008/9 Service Charge actuals, I request the sets of actuals for all technical services. This must include dates, specifications, costs, and inspection data..."

Please provide tables, particularly very big ones, in an electronic format that preserves both the machine-readable and human readable information. Tables, for example, could be in XML, CSV, or Open Document spreadsheet formats. This should also take less time for you to prepare: you presumably already have the information on computers".

7. On 2 March 2010 the public authority acknowledged the request.
8. On 26 July 2010 the public authority provided a joint response to all three of the complainant's requests. In respect of this request, it provided him with three figures for response repairs, cyclical repairs, major works (and a total of these three figures) and a further figure of what it called an 'admin fee for repairs'.
9. On 9 September 2010 the complainant sought an internal review. He advised:

"The answer did not include dates, specifications, costs, or inspection data.

If LBTH are practising good record keeping, it will be trivial to provide an exported spreadsheet listing every single invoice which could be broken down by type and block. This is a fantastic chance to open up in a way that could help explain running an estate to tenants and leaseholders.

Instead, the answer merely collated every single line item and invoice into three headings. It was not even divided into communal and tenanted technical services.

[Name removed] cited no exemptions for this, but simply did not give the information requested".

10. This was acknowledged on 13 September 2010. On 21 October 2010 the complainant was advised:

"The point that you made in your request is that the answer to your question collated all the line items into three headings. You have now confirmed that you would like dates, specifications, costs and inspection data.

That represents a large volume of data which is held in numerous documents to collate this would exceed the 18 hours referred to by [name removed] in her email of 2nd March 2010.

As you have already mentioned, Section 16 gives us a duty to provide advice and assistance. In the light of that I would invite you to refine your request for example you could request details of all the items which contributed to the figures which were collated to provide the previous response. The addition of the specifications and inspection data are the items which would take this over the 18 hour time limit.

Please confirm if you are content to refine your request or clarify what information you require".

11. On 31 October 2010 the complainant responded as follows:

"I disagree that I 'have now confirmed' what was in my original request. The original request was clear. There was no scope in law for [name removed] to effectively ignore my request, answering a different question, until I request a second internal review.

But in the interests of avoiding further delay, I shall adjust my request to remove the specifications and inspection data.

Thus, I request the sets of actuals for all technical services. This should include dates, costs, location, and a meaningful description that at least says what (eg repair, replace, investigate) was done to what (eg door, window, roof) and where.

As that is the information yo [sic] would need to collate to put together the actuals, I am hoping that it is already collated and is convenient for THH to provide".

12. On 9 December 2010 the public authority provided the following response:

"The Council has decided that your request for information dated 31th [sic] October 2010 will not be processed on grounds of cost.

It is estimated that the cost of locating and retrieving the information requested calculated according to the government's Freedom of Information (Fees and Appropriate Limit) Regulations 2004 would cost approximately £875 which is in excess of the upper limit of £450 set in the Regulations.

In accordance with the Freedom of Information Act 2000 this letter acts as a Refusal Notice.

You may wish to refine and resubmit your request so that it reduces the cost to below this upper limit. Your request is still for all the properties and the specifics of the technical service provided to each property. The information you have requested is not stored together in one place and therefore still takes a considerable amount of time to collate.

You may wish to reduce your request by requesting total amounts spent or specifying particular areas or projects”.

The investigation

Scope of the case

13. On 28 November 2010 the complainant contacted the Commissioner to complain about the way all three of his information requests had been handled.
14. On commencing his investigation the Commissioner clarified, in respect of this case, that he wished to have the following points considered.
 - No breakdown of costs had been provided.
 - Having narrowed his request, as advised, to keep it within the cost limit, it was still refused on cost grounds.
 - More information than has been released must be available within the limit.

Chronology

15. On 12 May 2011 the Commissioner commenced his enquiries with the public authority. As it had sought to rely on the cost limit the Commissioner asked for specific details about how this had been calculated.
16. On 17 June 2011 an interim response was sent. Within this response the public authority advised:

"The Council should have aggregated these three requests into a single request. Clearly 18 hours effort would not have been sufficient to cover the elements of [the complainant's] request which was to provide every contributing piece of information that made up the service charge bills for every Tower Hamlets Homes leaseholder. Given the established process whereby individuals can query their accounts, it is clear that [the complainant's] request is excessive".

17. In response to this the Commissioner advised that it might be possible to aggregate the requests but that in order to consider this he would require a detailed breakdown to demonstrate how the cost limit would be exceeded.

18. On 22 June 2011 a substantive reply was received. In this the public authority made the following points:

"... It could be viewed that [the complainant] in asking for this information is attempting to circumvent the procedure inherent in the Common and Leasehold Reform Act 2002. We would, therefore, welcome your assessment of the (admittedly late) applicability of Section 44 to this request.

Moreover [sic], given the aggregation of this request, and the fact that to provide the information for all repairs incurred by THH in a prepared format would involve querying some 20,000 records (even on the basis of 1 minute per request) would cost over £8300 based on 333 hours effort (20,000/60) we would like to apply the late application of Section 12, and refuse all 3 requests based on costs".

Analysis

Substantive procedural matters

Section 12 – cost of compliance exceeds the appropriate limit

19. For the same reasons given in his Decision Notice FS50369379, the Commissioner has concluded that the public authority's cost estimate and how this was arrived at is not reasonable, realistic or supported by cogent evidence. He has therefore concluded that section 12 of the Act does not apply in this case.

Section 16 – duty to provide advice and assistance

20. Section 16(1) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in a particular case if it has conformed with the provisions in the section 45 Code of Practice in relation to the provision of advice and assistance in that case.
21. Although the public authority purported to provide advice and assistance by suggesting the wording for a refined request to the complainant, when the complainant agreed to adhere to the suggested wording he was subsequently told that compliance would still exceed the appropriate limit.
22. The Commissioner considers the Council should have explained clearly to the complainant exactly what information it may be able to provide within the cost limit rather than making a specific suggestion which was clearly incorrect. As it failed to comply properly with its obligation, the Commissioner finds the Council in breach of section 16(1) of the Act.

Exemptions

Section 44 – prohibitions on disclosure

23. For the same reasons given in his Decision Notice FS50369379, the Commissioner has concluded that this exemption is not engaged.

Procedural requirements

Section 10(1) - Time for compliance

24. Section 10(1) provides that:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

25. Section 1(1) provides that:

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

(b) if that is the case, to have that information communicated to him."

26. The Commissioner finds that the public authority breached section 10(1) by failing to inform the complainant whether or not it held the requested information within 20 working days of the request.

Section 17 - refusal of request

27. Section 17(1) of the Act provides that:

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies."*

28. In failing to provide a valid refusal notice within the statutory time limit, the public authority breached section 17(1).

The Decision

29. The Commissioner's decision is that the public authority did not deal with the following elements of the request in accordance with the Act:
- it breached section 10(1) by failing to inform the complainant whether or not it held the requested information within 20 working days of receiving the request;
 - it breached section 17(1) by failing to provide a valid refusal notice within the statutory time limit;
 - it breached section 16(1) of the Act by failing to provide advice and assistance;
 - it inappropriately relied on section 12 of the Act;
 - it inappropriately relied on section 44 of the Act.

Steps required

30. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act.
 - The public authority should reconsider the complainant's request under the Act. It should either release the requested information, or issue a further refusal to the complainant in accordance with section 17 of the Act detailing why this information cannot be released. If appropriate, it should provide advice and assistance to the complainant, as explained in paragraph 21 above.
31. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

32. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

33. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

Dated the 16th day of August 2011

Signed

**Jon Manners
Group Manager**

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

Legal annex

Section 12 - cost of compliance exceeds appropriate limit

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

Section 16 - duty to provide advice and assistance

- (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
- (2) Any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.