

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2011

Public Authority: Hounslow Homes
Address: St Catherine's House
2 Hanworth Road
Feltham
TW13 5AB

Decision (including any steps ordered)

1. The complainant requested a list of properties available to rent between February 1995 and December 1996.
2. The Information Commissioner's decision is that Hounslow Homes has provided all the information held in relation to the request.
3. The Information Commissioner does not require any further remedial steps to be taken.

Request and response

4. On 12 August 2010, the complainant wrote to Hounslow Homes and requested information in the following terms:

"Re: List of properties available to rent between February 1995 to December 1996 inclusive.

We should be most grateful if you could please provide pursuant to the aforesaid Act the entire list of all properties that were available to rent by the Housing Department of the Council of the London Borough of Hounslow. This department which later became Hounslow Homes Limited as an ALMO of the Council of the London Borough of Hounslow. Please provide the list within the time period as the Act allows..."
5. Hounslow Homes responded on 7 September 2010. It provided a list of properties available to rent between April and December 1996. Hounslow Homes explained that the previous information covering the

remainder of the request from February 1995 to March 1996 was *'destroyed several years ago'* due to a new system being introduced in April 1996 and only the *'current status of each property'* was transferred across at that time.

6. The complainant requested an internal review on 11 April 2011. To date, Hounslow Homes has not completed the internal review.

Scope of the case

7. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He did not believe that Hounslow Homes had provided him with all the requested information. In correspondence to the Information Commissioner, the complainant made the point that even information which had been deleted should be considered as held owing to the fact that electronic documents *"are almost impossible to destroy and can usually be retrieved if sufficient time and expertise is applied"*.
8. The Information Commissioner has investigated what information is held by Hounslow Homes and whether all the available information has been provided to the complainant.

Reasons for decision

9. Section 1 of FOIA states 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."

10. The Information Commissioner is aware that some of the information requested was provided in the original response from Hounslow Homes, namely the information covering April to December 1996. Hounslow Homes provided a copy of this information to the Information Commissioner as part of his investigation.
11. The Information Commissioner made enquiries regarding the remaining information. He asked Hounslow Homes for an explanation as to why the change in computer software meant that information prior to April 1995

could not be retrieved. He also asked how information was recorded and searched for.

12. Hounslow Homes explained to the Information Commissioner that the decision to move housing information from the old mainframe system to the new system was taken and managed by the London Borough of Hounslow in 1996. This was before Hounslow Homes was established in 2002, therefore, the *"data migration scope, including which information would be transferred across"* is unknown to the current officers at Hounslow Homes.

13. However, in answer to the Information Commissioner's enquiries, Hounslow Homes provided details as to why some of the requested information was not held. It informed the Information Commissioner that:

"OHMS (Housing Management System) went live at the beginning of April 1996 and when data regarding the status of each property was being transferred over from the old mainframe system, only the latest status for each property (and the date of that status) was transferred over. Therefore, we only have information as to whether a property was let or void at the time the data was transferred and do not have a record of the history prior to that."

14. Hounslow Homes continued:

"After OHMS went live, access to the mainframe system was maintained on a view-only basis but after access was withdrawn, the data was retained for 2 years before finally being destroyed."

15. In answer to the complainant's assertion that electronic information can never be destroyed, the Information Commissioner takes the view that electronic information which has been deleted but remains in a virtual "trash can" or "recycle bin" is held for the purpose of FOIA. However, he considers that in general information deleted from a recycle bin is classed as not held, even where it can technically be recovered or restored.

16. Deletion is generally a two-stage process – files are firstly moved to a recycle bin or trash can, and then deleted from the recycle bin or trash can. When a computer file has been completely deleted, the area it occupies is designated as being free, and ready to accept new data. The file can still technically be retrieved or recovered until it has been overwritten by new data. Files which remain in a trash can or recycle bin cannot be overwritten.

17. Information which has not yet been overwritten can be recovered. Recovery of information still retained in a local computer's recycle bin or networked computer's drive can generally be achieved by using software

that is part of the computer's own operating system, whilst recovery of information which has been deleted from these areas but not yet overwritten will generally require the use of specialist software, such as readily available 'undelete' data recovery programmes.

18. The Information Commissioner's view is that, in general, a public authority will not hold information when it is capable of being overwritten; that is, after it has been deleted from a recycle bin.
19. In this case, the Information Commissioner has not gone as far as to consider whether the information requested is held with regards to its state of deletion as the information concerning properties available to rent prior to April 1996 was never transferred across to the current software used by Hounslow Homes.
20. The Information Commissioner is satisfied that Hounslow Homes does not hold any further information in relation to the complainant's request and that all the information held has been provided to him.

Other matters

21. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint.
22. As he has made clear in his *'Good Practice Guidance No 5'*, the Information Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Information Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Information Commissioner is concerned that in this case, Hounslow Homes did not complete an internal review, despite the publication of his guidance on the matter.

Right of appeal

23. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. 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.
25. 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

Jon Manners
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Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF