

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2012

Public Authority: London Borough of Southwark

Address: Town Hall
Peckham
London
SE5 8UB

Decision (including any steps ordered)

1. The complainant requested the full medical reasons for moving overcrowded households from band 3 to band 2 from Southwark Council (the council) during a specified period of time. The council withheld the information under section 12 of the FOIA.
2. The Commissioner's decision is that the council has correctly applied section 12. He requires no steps to be taken in this case.
3. However, the Commissioner finds that the public authority failed to comply with section 17(5) of the FOIA in that it did not cite section 12(1) within 20 working days of receipt of the request.

Request and response

4. On 10 September 2010, the complainant asked for information relating to reasons why Homeseach applicants were moved from band 3 to band 2 between 3 September 2008 and 3 September 2010.
5. The council responded fully on 19 October 2010.
6. A second request stemming from the response to the complainant's first request was made by the complainant on 4 August 2011 for the following information:

"...I would like to know the full list of medical reasons, i.e., disease/illness/sickness type, that resulted in moving affected households from Band 3, to Band 2 under:

-----CAT_OC_MED 811--combined overcrowding/medical

I am specifically looking for information that relates to a specific condition, e.g., diabetes, asthma, depression, etc, etc..."

7. On 6 September 2011, the council responded by suggesting that the requested information was not available in the manner in which he had requested it.
8. The complainant asked for an internal review of the council's decision on 7 September 2011.
9. Following an internal review, the council wrote to the complainant on 21 October 2011. It stated that the review had applied section 12 as the cost of compliance would exceed the appropriate limit.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled. His letter included a number of issues related to his dissatisfaction with the council that were beyond the Commissioner's remit.
11. The Commissioner considers that the focus of this complaint is the council's application of section 12 to the information the complainant requested on 4 August 2011.
12. On 20 December 2011, the council provided its arguments to the Commissioner on the application of section 12.
13. The Commissioner wrote to the complainant on 21 December 2011 explaining that he was likely to uphold the council's view in this matter. However, the complainant did not accept this view.

Reasons for decision

14. Section 12(1) provides that a public authority will not need to comply with section 1(1) if the costs of doing so would exceed the appropriate limit. For public authorities like the council, this limit is set at £450. It is calculated using a flat rate of £25 per hour and so equates to 18 hours work. A public authority can only take certain activities into account when assessing whether compliance with a request would exceed the cost limit. These factors are:

(a) determining whether it holds the information;

- (b) locating the information, or a document which may contain the information;
 - (c) retrieving the information, or a document which may contain the information; and
 - (d) extracting the information from a document containing it.
15. The council explained to the Commissioner that it knew that the requested information was held and therefore did not need to spend any time determining this. It argued that locating, retrieving and extracting were "*inextricably linked*" and that it was not possible to provide a detailed estimate for each discrete activity. The estimate the council provided covered the total time taken to carry out all three activities to provide information to cover the scope of the request.
 16. The council stated that there were 811 cases relevant to the period to which the request relates. Within those 811 cases there were 1,025 individuals who had had a medical assessment carried out. The discrepancy arose because in some households a medical assessment was carried out on more than one person.
 17. The council carried out a sampling exercise. In a straightforward case the time spent in locating, retrieving and extracting the information on a case file was 7.5 minutes per case. In the sampling exercise 16 cases were completed in a period of 2 hours. In some instances, however, locating, retrieving and extracting the information is more complicated because locating the name of the person(s) who had a medical assessment carried out is not immediately apparent as the individual's name does not always match the family name of the household in question. In those cases locating, retrieving and extracting the information took 12.5 minutes per case. It took 4 hours to deal with 25 cases.
 18. As there are 811 cases the council calculated that providing the information which had been requested would take 128 hours of work. In the circumstances the council maintained its stance that the cost of compliance would exceed the appropriate limit set out in section 12 of the FOIA. The estimate has been based on the quickest method of gathering the requested information. The information is not stored on a database but is held on CD ROM or manual files.
 19. The council further explained that it had advised the complainant on 6 September 2011 that providing a full list of medical reasons would not in itself explain the reasons why Homeseach applicants were moved from band 3 to band 2. Reclassification is based on a number of factors. Even where a medical condition is established, prioritisation for

rehousing is not automatic as the applicant/s current property could still be determined as suitable.

20. The council told the Commissioner that it did not believe that it could provide further advice or assistance as it would only have been able to provide the complainant with a small proportion of the 811 case files. This would not have met the applicant's request or assisted him. It did not consider that refining his request would assist him either. The complainant argued in his letter to the Commissioner, dated 19 January 2012, that he did not accept that the council could provide partial information whilst withholding "*more contentious material*". Therefore the Commissioner agrees that providing advice and assistance to refine the request would not adequately meet the complainant's requirements.
21. The Commissioner considers that the estimate the council has given is realistic and evidence-based because a sample has been carried out. He has considered the hypothetical situation where every case proved to be straightforward and concluded that this would still produce a figure exceeding 100 hours. Bearing this in mind, the Commissioner has concluded that the council applied the exemption at section 12 correctly. After considering all the arguments relevant to the cost limit exemption, the Commissioner is satisfied that the disclosure of the withheld information within the scope of the request would exceed the 18 hour limit.

Section 17(5)

22. Section 17(5) of the FOIA states that a public authority relying on a claim that section 12 or 14 applies must give the applicant a notice stating that fact within 20 working days of receipt of the request.
23. The council initially responded outside the statutory 20 working days and did not cite an exemption because it explained that the information was not held in the manner in which it had been requested. At internal review stage the council cited section 12 as the reason for its inability to provide the requested information. Therefore the Commissioner finds that the council failed to comply with section 17(5) of the FOIA.

Right of appeal

24. 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 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

25. 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.
26. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF