

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2012

Public Authority: London Borough of Islington
Address: Town Hall
Upper Street
London
N1 2UD

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Islington (the council) relating to service charges for particular properties as far back as records would allow. 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.
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 22 September 2011, the complainant wrote to the council and requested information in the following terms:

"FULL copies of ALL original (Excel) spreadsheets for ALL service charge headings as applied to [named location] for as long as records allow (min. of 6 years)... Include all associated spreadsheets, and other associated documentation (including copies of invoices) to which any cells may referenced by others...(sic)

Information already provided may be excluded, PROVIDED that it has not changed."

5. The council responded on 20 October 2011, refusing to provide all of the information requested due to the restrictions placed upon it by the Landlord and Tenant Act.
6. Following an internal review, the council wrote to the complainant on 19 December 2011. The internal review acknowledged that the original request had not initially been processed under the correct legislation but refused to provide the requested information on the basis of the exemption at section 12 of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 1 November 2011 to complain about the way his request for information had been handled.
8. The Commissioner considers that the focus of this complaint is the council's application of section 12 to the information the complainant requested on 22 September 2011.
9. On 23 March 2012, the council provided its arguments to the Commissioner on the application of section 12
10. The Commissioner wrote to the complainant on 17 April 2011, explaining that he was likely to uphold the council's view in this matter. However, the complainant did not accept this view.
11. The Commissioner wrote again to the council asking if it had provided any advice and assistance to the complainant and requesting a further breakdown of part of the estimate it had provided.

Reasons for decision

12. Section 12(1) provides that a public authority will not need to comply with section 1(1) if the cost of doing so would exceed the appropriate limit as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations).
13. 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.
14. The complainant wrote to the Commissioner on 17 April 2012 maintaining that the council had provided very limited information in response to his information request. He did not accept that the fees limit would be exceeded and suggested that the council's method of keeping information should not mean that it could not comply with the FOIA legislation.
 15. Whilst responding to the Commissioner's view that he was likely to uphold the council's application of section 12, the complainant further argued that the council was adopting a strategy in order to prevent the disclosure of what he considered to be over-charging. He did not accept that the information he requested could not be easily and rapidly accessed.
 16. In its letter to the Commissioner on 23 March 2012, the council stated that it had previously supplied the requested information over a period of years under section 22 of the Landlord and Tenant Act, the Freedom of Information Act and as a course of business request. Copies of the requested information previously provided were sent to the Commissioner. However, it was asserted that providing at least 6 years of information would, in its view, exceed the fees limit.
 17. Firstly, the council made the assumption that it did not need to determine whether it held the requested information and therefore did not include a charge/hourly rate for this aspect.
 18. The information covered a period of 4 years. The council stated that information for the years 2009/10 and 2010/11 had already been provided to the complainant and sent attachments to that effect to the Commissioner. A breakdown was provided for each head of charge for each year. There are at least 10 heads of charge for which the information must be located. In order to do this, the folder for the relevant year must be found and within the folder there are usually separate folders for each head of charge. Within each folder for the heads of charge the appropriate documents need to be identified. If the required data is not found, consultation would have to take place with other members of staff. The council estimated this activity to take 1 hour or £25.

19. The council states that not all the data is held in folders. Some of the requested information is held on databases or systems that need to be run to retrieve the requested information. It gave the example of 'historic repair jobs'. 'Historic repair jobs' are held on a database and it is necessary to enter parameters before running a search. Once completed, the information can be viewed in a spreadsheet format. The data can then be narrowed down in this format and grouped to make it easier to identify the specific repair jobs relevant to the enquiry. At this point another database is accessed to provide further invoice details for each of the repair jobs identified as relevant to the enquiry. These have to be run and retrieved one at a time. The council estimated that this would take 3.5 hours or £87.50.
20. Once the necessary information has been retrieved for all the heads of charge, it is possible to extract and organise the information. The raw data does not always address the enquiry and often requires specific details to be extracted and presented clearly. After the Commissioner requested more detail regarding the council's estimate with regard to the extraction of the requested information, the council provided a further breakdown. It explained that there are 11 heads of charge that relate to the complainant. One of these is a fixed cost which takes a relatively short time to produce. The relevant information for the remaining ten charges has to be broken down into a comprehensible format. This may involve creating spreadsheets and including the details specific to that leaseholder, rather than providing all the data for the whole borough. The council provided a specific example of the breakdown for caretaking. It took approximately 30 minutes to produce these details. On this basis the council estimated that it would take approximately 5 hours to extract the information under 10 heads of charge which, taken over 4 years (2 years had already been provided under another of the complainant's requests), would equate to approximately 20 hours. The council's figures vary slightly even within its second breakdown. The council's original estimate was 18 hours at a cost of £450 for this one activity. The Commissioner has reached the conclusion that the estimated figure for extracting the information alone, might be nearer to 17-18 hours which is in line with the first estimate, rather than 20 hours.
21. The council has estimated that it would take a total of 22.5 hours at a cost of £562.50 to comply with the complainant's request. The Commissioner is satisfied that the council has only included the activities that are specified in Regulation 4(3) in its estimate and that this estimate is "*sensible, realistic and supported by cogent evidence...*" Although this evidence is not overwhelming, he does note that a limited sampling exercise was undertaken which gave some indication of the likely time involved in providing the requested information. In this case the complainant's argument, though seriously held, is based

on his view that the council must be able to collate this information easily and that the only reason it cannot do so is because it is attempting to hide something. However, the Commissioner considers that a cost estimate will only be disregarded if it fails to consider an absolutely obvious alternative means of extracting the requested information. This would not appear to be the case here.

Section 16(1)

22. Section 16(1) imposes an obligation on 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 any 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.
23. The complainant's central argument focused on the way in which information was stored by the council, rather than what might be provided within the fees limit. However, he told the Commissioner that the council had never given him advice as to how his request/s could be narrowed in order that it might be within the fees limit.
24. In contrast, the council argued that it had had a large number of freedom of information requests from the complainant over the previous year. The council described its general efforts to help the complainant by having meetings and exchanging emails with him to provide advice and assistance on the phrasing of the complainant's questions in an attempt to "*better understand*" what he was requesting and the limits on what might be possible. The council stated that it had been "*bombarded*" with emails and requests for information which generally resulted in dissatisfaction, requests for review, and further escalation. It argued that this process had had a detrimental effect on its staff.
25. Although the arguments put forward in paragraph 24 are not strictly relevant to the application of section 12, the council maintained that the complainant had requested copies of invoices "*as far back as records allow*". The council explained that its records only went back 6 years. The Commissioner notes that the phrasing of the request itself does not suggest a willingness to accept anything less than a full response. During the investigation it came to light that the complainant had already received some of the requested information which had not satisfied him. He had stressed, after the internal review, that the information be provided in full, which would again suggest that anything less would not have been acceptable.

26. For these reasons, the Commissioner does not require the authority to take any further steps in relation to its obligation under section 16.

Section 17(5)

27. 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.
28. The council responded within the statutory timeframe but did not cite an exemption because it relied on another piece of legislation – section 22 of the Landlord and Tenant Act 1985. Some of the more recent information was supplied under that legislation but it was pointed out that requests had to be made within 12 months of the end of each relevant accounting year.
29. At internal review stage, the council acknowledged its mistake and 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

30. 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

31. 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.
32. 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
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