

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2015

Public Authority: The London Borough of Barking and Dagenham
Address: Barking Town Hall
1 Town Square
Barking
IG11 7LU

Decision (including any steps ordered)

1. The complainant has requested information concerning rent arrears for the last five years from the London Borough of Barking and Dagenham (the Council). The Council initially provided some information and informed the complainant it did not hold any more. The complainant referred this matter to the Commissioner who wrote to the Council asking it for further detail regarding the information not held. The Council then applied section 14(1) to this request. The Commissioner informed the Council that he did not consider the request was vexatious and asked again for the Council's arguments as to why the information was not held. The Council then explained why it could not respond to each part of the request and now identified information held on manual records which it argued would take too long to locate. It therefore considered section 12 would apply to this data.
2. The Commissioner's decision is that the Council was incorrect to initially refuse part of this request on the grounds that the information is not held. It is therefore in breach of section 1(1)(a) of the FOIA. However the Commissioner considers that the Council is correct to apply section 12 to the outstanding information. No further steps are required.

Request and response

3. On 21 July 2014 the complainant wrote to the Council and requested information in the following terms:

"I wish to be informed as to the following details of rent arrears for the last 5 years (broken down by month):

The total per month of accounts in arrears

The mean average of rent arrears (by value in sterling) per month

The mean average of rent arrears (by weeks missed/underpaid) per month

The mean average of rent arrears (by value in sterling) when court action was taken to recover per month

The mean average of rent arrears (by weeks missed/underpaid) when court action was taken to recover per month"

4. In its response the Council informed the complainant that it does not hold the information in the form requested.
5. It explained it does not hold information about missed or underpaid rent as each tenant has a different liability depending on their Housing Benefit award level and whether previous arrears are being accounted for in the current year.
6. The Council explained it held no records regarding arrears levels and cases on a month by month basis until very recently (2013/14). It explained that where such records are not kept it cannot recreate the information retrospectively.
7. The Council provided the following information with regard to the number of arrears cases at the end of 2011, 2012 and 2013:

March 2011: 8598 current tenant cases in arrears and overall current arrears of £3.8 million.

March 2012: 7823 current tenant cases in arrears and overall current arrears of £3.2million

March 2013: 7836 cases and arrears £3.2million.

It provided records month by month for 2013/14:

Month	Cases	Overall current arrears (millions)
April	8866	3.3
M	8507	3.2
J	7585	3.1
J	7893	3.0
A	7727	3.3
S	8703	3.3
O	8636	3.3
N	7515	3.2
D	7905	3.2
J	7549	3.3
F	6592	3.4
March	6592	3.0

8. The complainant complained to the Council about this response on 13 August 2014.
9. He contacted the Commissioner on 21 August 2014 to complain about the way his request for information had been handled.
10. On 15 September 2014 the Commissioner asked the complainant to provide him with a copy of the internal review. This was provided to the Commissioner on 21 September 2014. It upheld the original response.

Scope of the case

11. On 21 September 2014 the complainant therefore asked the Commissioner to continue investigating this matter. He explained he did not believe that further information was not available. He argued that the Council submits lists of cases to the courts for rent arrears and therefore it must be recorded as to which accounts have legal actions taken against them.
12. The Commissioner wrote to the Council on 14 October 2014 and asked it to explain why it was satisfied that all the outstanding requested information was not held.
13. On 15 October 2014 the Council confirmed that it wished to apply section 14(1) of the FOIA to the request.

14. The Commissioner considered the Council's section 14(1) arguments and informed the Council he did not consider the request was vexatious. He repeated that he required the Council's explanations as to why the outstanding information is not held.

15. The Council then responded to each part of the request:

i. *The total per month of accounts in arrears.*

The Council explained this information has been provided.

ii. *The mean average of rent arrears (by value in sterling) per month.*

The Council explained it does not hold reports for a monthly average. It only produces an average/median figure year on year.

iii. *The mean average of rent arrears (by weeks missed/underpaid) per month.*

The Council explained this information cannot be provided as the Council records arrears by range and not by average weeks. Rent arrears is a rolling debt which includes arrears brought forward from previous years.

iv. *The mean average of rent arrears (by value in sterling) when court action was taken to recover per month.*

The Council explained that this is not reported as there is no way of finding out which cases went to Court in each month by value of arrears except by referring to manual records, examining each case and manually extracting the information. The Council explained it had no business interest in doing this. It explained that to search these manual records would amount to several weeks of work and therefore would fall under section 12.

v. *The mean average of rent arrears (by weeks missed/underpaid) when court action was taken to recover per month.*

The Council again explained it does not hold such an average.

16. The Commissioner therefore considers the scope of this case to be concerned with the Council's initial response that some of the information is not held and its subsequent response that it would take too long to search manual files for the outstanding information. This case is therefore concerned with the Council's potential breach of section

1(1)(a) of the FOIA and its subsequent application of section 12(1) to the request.

Reasons for decision

Section 1(1)(a)

17. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information relevant to the request is held.
18. Following its initial response, the Council informed the complainant and the Commissioner that it did not hold further information.
19. However on 30 January 2015 the Council informed the Commissioner that it did hold manual information with respect to part (iv) of the request for "*The mean average of rent arrears (by value in sterling) when court action was taken to recover per month*". The Council explained that the information could be located by examining the file for each case and manually extracting it.
20. The Council has explained it has no business interest in extracting this information. However the Commissioner considers that if the information is held, the Council is under an obligation by virtue of section 1(1)(a) of the FOIA to inform the complainant of this, unless relevant exemptions apply.
21. With respect to point (i) of the request, the Council has provided a breakdown by month for 2013/2014 as requested, but for 2011 to 2013 it has only provided one end-of year figure for the month of March. It explained that it only began to record arrears levels on a month by month basis very recently and where they are not on record, it cannot retrospectively recreate the information.
22. With respect to point (ii), the Council has explained it does not hold reports for a monthly average. For the years 2011 to 2013, it has only provided one end-of year figure for the month of March. The average arrears per month therefore cannot be calculated for these three years. However, because the amount of arrears has been given for each month of the year 2013/2014, an average per month can be calculated for this one year.
23. With respect to points (iii) and (v) the Council has explained it does not hold the requested averages.

24. With respect to point (iii), the Council has confirmed that it does not record the number of weeks per month where payment has not been received. It has confirmed that rent arrears are recorded as a cumulative amount of money within a range of financial values. It cannot therefore calculate the average arrears per weeks missed on a monthly basis from the data it holds for the months of April 2013 to March 2014.
25. The Council has explained that in the borough 70% of tenants rely on housing benefit to help them pay their rent. It can take between 4 and 20 weeks to determine an individual claim for benefit and therefore the time period before a claim award is on the rent account varies by many weeks.
26. The Council has confirmed it does not hold information on the number of weeks of debt but rather it holds information within the benefits team on the overall number of weeks that assessments are outstanding. It holds current arrears balances on tenants but these are very often cumulative over a number of financial years and liability varies in line with benefit entitlement changes in the year.
27. The Council has also explained that even tenants who qualify for full housing benefit usually have a weekly liability for water and sewerage rates and in some cases for a heating charge as well. It has explained these sums are all collected as part of the weekly rent. Individual claims awaiting assessment therefore could not be given a weekly rent value.
28. With respect to point (v), the Council further explained it cannot take court action if a claim remains unassessed so inevitably the Council has a proportion of cases where the amount of debt in terms of weeks of debt is much higher than the baseline guidance in Council policy.
29. It confirmed it does not hold information by 'weeks of debt'. Each case would have to be reviewed and the actual weekly charge translated into that week's debit amount and divided into the total arrears. However as arrears will often relate to previous years the value of 'rent weeks' would be an under estimate of the true number of weeks that had been unpaid.
30. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held.

31. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held; he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
32. The Council has explained why it does not hold the outstanding requested information and has explained why this information is simply not held in the form requested. The Commissioner considers that on the balance of probabilities it is likely the Council does not hold the outstanding requested information with respect to points (i), (ii), (iii) and (v).
33. However in failing to inform the complainant that further information is held in manual files with respect to point (iv) of the request, the Commissioner finds the Council to be in breach of section 1(1)(a) of the FOIA.

Section 12(1)

34. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of doing so would exceed the appropriate limit.
35. The appropriate limit is a cost limit set out in regulations that were introduced under the FOIA. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, known as the 'Fees Regulations' set the appropriate for non-central government departments, such as the Council, at £450.
36. Under the Fees Regulations public authorities are required to cost their spending on the relevant activities at £25 per person per hour. Consequently, the appropriate limit would be exceeded if a public authority estimated that it would take longer than 18 hours to carry out the relevant activities in order to comply with a request.
37. The Council applied section 12 to part (iv) of its response. This was with respect to the request for the mean average of rent arrears (by value in sterling) when court action was taken to recover per month.
38. The Council explained that this is not reported as there is no way of finding out which cases went to Court in each month by value of arrears except by referring to manual records, examining each case and manually extracting the information.
39. The Council explained that on average some 50 cases per month are referred to Court. Therefore for every year 600 records would need to be examined and tabulated.

40. The Council has estimated that it would take 10 minutes per case to locate and extract the information requested. This includes cross referencing IT and manual records and reviewing and collating the information as a monthly total.
41. The ICO website guidance¹ indicates what activities a public authority may charge for when estimating the cost of providing information under section 12 of the FOIA. This is based upon the [Freedom of Information \(Appropriate Limit and Fees\) Regulations 2004](#).

These activities include the following:

- determining whether the public authority holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
42. The estimate must be written with reference to the activities above and be detailed enough to satisfy the ICO that it is a reasonable calculation. It needs to be “sensible, realistic and supported by cogent evidence.”
 43. The Commissioner considers that 10 minutes per case is likely to be an overestimate of the time involved and notes that the time taken to review and collate the information cannot be included. However the Commissioner is satisfied that if at the very least it took 2 minutes to locate and extract the information required per case, it would take 20 hours (1200 minutes) to extract the required information for one year. To search for the information over a period of 5 years would therefore take 100 hours.
 44. In view of the above estimate, the Commissioner is satisfied that the Council was correct to apply section 12 to the part (iv) of the request. He also considers that as it is likely the Council could not even provide the information for one year under the cost limit, there was little scope for asking the complainant to narrow the scope of his request.

¹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/>

Other matters

45. The Commissioner notes that the Council has been reluctant to engage with him in providing a full and detailed response to his investigation. The Council has expressed the view that responding to such requests is a waste of time. It maintained it did not hold all the outstanding requested information until its final response when it explained that some information is held in manual files.
46. Although the Council has accepted the Commissioner's view that the request is not vexatious, it has explained that it considers the Commissioner's view to be 'disappointing'.
47. The Council has explained that its staff have reported they find the behaviour of the complainant intimidating. The Council has argued that its over-riding concern is to honour its duty of care to its employees and therefore it has an obligation to manage the complainant's contact.
48. The Council has argued that by refusing to recognise that the complainant's behaviour is vexatious, the Commissioner is undermining its approach to its wider management of this individual. The Council accepts the Commissioner is following his own guidance but he considers that this guidance needs to be more encompassing.
49. The Commissioner appreciates that the Council considers it must manage the complainant's behaviour. However, unless other exemptions apply, the Council has a clear obligation under section 1 of the FOIA to confirm or deny whether it holds the requested information. The Commissioner considers that in order to meet this obligation, the Council should provide a clear and a thoroughly researched response to a requestor in the first instance.
50. The Commissioner would also point out that both he, in many previous Decision Notices, and the First-tier Tribunal in previous decisions have made it absolutely clear, as indeed does the ICO's guidance, that section 14 (vexatious) relates to requests and not requesters. The Council should bear this point in mind when dealing with future requests in order to properly comply with its statutory obligations under FOIA.

Right of appeal

51. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

52. 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.
53. 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

Gerrard Tracey
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