

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2017

Public Authority: London Borough of Lambeth Council
Address: 1 Ivor House
Acre Lane
London SW2 5BF

Decision (including any steps ordered)

1. The complainant has requested information about a particular housing file. London Borough of Lambeth Council (LBL) has refused to comply with the request which it says is vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the request is vexatious under section 14(1).
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 15 March 2017, the complainant wrote to LBL and requested information in the following terms:
5. *"I wish to make a fresh new Freedom of Information Act 2000/Data Protection Act 1998 application, for a full copy of my parents' [Address redacted] tenancy/housing file."*

6. LBL initially handled the request under the Environmental Information Regulations (EIR). It said, in its response and at internal review, that the request was 'manifestly unreasonable' under regulation 12(4)(b) of the EIR and that certain information the complainant had requested would be exempt from release because it was personal data or because it concerned the course of justice.
7. During the Commissioner's investigation, LBL reconsidered its response and revised its position. It has now considered the request under the FOIA and considers that section 14(1) applies to it because the request is vexatious. LBL communicated this new position to the complainant on 8 September 2017.
8. The Commissioner is satisfied that the FOIA is the correct information regime under which to handle this request. Regulation 2(1) of the EIR provides definitions of what constitutes environmental information. The Commissioner considers that information relating to a personal housing file sits at several removes from matters identified in regulation 2(1). She is satisfied that the requested information does not constitute environmental information as defined by the EIR.

Scope of the case

9. The complainant contacted the Commissioner on 19 May 2017 to complain about the way her request for information had been handled.
10. The Commissioner's investigation has focussed on whether the complainant's request can be categorised as vexatious under section 14(1) of the FOIA.

Reasons for decision

11. Section 14(1) of the FOIA says that a public authority isn't obliged to comply with a request for information under the FOIA, if that request is vexatious.
12. The term 'vexatious' isn't defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. One of these is the burden placed on the authority. In her guidance on section 14(1), the Commissioner allows for public authorities to claim redacting information (that is, to removing or obscuring specific information that is exempt from release) as part of the burden.
13. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself

is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request.

14. In its submission to the Commissioner, LBL says that it is relying on section 14(1) because of the amount of time it would take it to review all the files covered by the request and to redact information from these. LBL says that it would need to redact information that is exempt from release under section 42 of the FOIA (legal professional privilege) or section 41 (information provided in confidence). LBL has acknowledged that it cannot rely on section 12 of the Act to undertake this redaction work.
15. Section 12 of the FOIA says that a public authority is not obliged to comply with a request if the cost of complying with it would exceed the appropriate limit of £450 or 18 hours work. However, the cost and time of redacting information cannot be included in the cost estimate for applying section 12. Consequently, LBL is relying on section 14(1), as above.
16. Regarding a disproportionate burden on the authority, the Commissioner identifies that an authority is most likely to have a viable case where:
 - (i) the requester has asked for a substantial volume of information
 - (ii) the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO; and
 - (iii) any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
17. LBL has explained that the complainant has requested all of the housing files relating to her deceased parents. It says there are over 270 files to examine and a brief overview of the first seven of these files equates to 640 pages. LBL considers that, overall, there would be more than 20,000 pages to review and that this is a substantial amount of information.
18. LBL has told the Commissioner that it is currently involved in a legal dispute with the complainant, as she is occupying her deceased parents' property without authorisation. It says this is an ongoing issue and it does not yet have possession of the property concerned.
19. LBL considers that the information it holds (that is, the 270 files) would include emails between its legal department and its housing officers in which the legal department provides legal advice about the above case.

LBL considers this information would be exempt under section 42 of the FOIA (legal professional privilege).

20. LBL says it would not necessarily be easy to extract the legal advice from all the documents held as it would need to review each individual document to locate any legal comment or advice, and then redact it.
21. LBL considers that the requested information would also include information that is exempt from release under section 41 of the FOIA (information provided in confidence), as it would relate to information provided in confidence to it by the complainant's parents.
22. It says that the housing records would be likely to include correspondence from the complainant's parents relating to the suitability of the housing provided; and may include sensitive information about the health of her parents. LBL says it would therefore need to review each of the 270 files in considerable detail to consider whether identified information was provided in confidence by the complainant's parents and whether there would be an expectation that the information would not be released to the world in general – which is what release under the FOIA is, effectively.
23. With regard to point 1 at paragraph 16, the Commissioner is satisfied that the complainant has requested a substantial volume of information; some 270 files which LBL has estimated contain in excess of 20,000 pages.
24. With regard to point 2, from the information LBL has provided, the Commissioner is prepared to accept that the requested information is likely to contain information that is potentially exempt from release under section 41 and section 42 of the FOIA.
25. The Commissioner is also prepared to accept, with regard to point 3, that any exempt information is likely to be scattered throughout the information and that it would not be straightforward to identify and isolate it. If it took only 30 seconds to review each page contained in the files, reviewing in excess of 20,000 pages would take more than 165 hours, or more than four working weeks.
26. Because the three criteria above have been met, the Commissioner is therefore of the view that it would be a considerable burden to LBL to review all the files and identify and redact information that it considers to be exempt from release under the FOIA. She has gone on to consider whether, in all the circumstances, this burden is disproportionate to the request's value.
27. The Commissioner appreciates that the information the complainant has requested is of interest to her. However, the Commissioner has to consider whether the request is of sufficient wider public interest or

value that it would be reasonable for LBL to comply with it, despite the burden involved. On this occasion, the Commissioner considers that complying with the request would be a burden that is disproportionate to the request's wider value as the requested information is unlikely to be of interest to the wider general public.

28. Because the Commissioner is satisfied that complying with the request would be a burden to LBL and that the burden is disproportionate to the request's value, she is satisfied that LBL can categorize the complainant's request as vexatious under section 14(1) of the FOIA and is not obliged to comply with it.

Right of appeal

29. 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

30. 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.

31. 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
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Wycliffe House
Water Lane
Wilmslow
Cheshire
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