

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 May 2017

Public Authority: London Borough of Waltham Forest

Address: Waltham Forest Town Hall
Forest Road
Walthamstow
London
E17 4JF

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Waltham Forest ("the Council") for copies of policies and legislation.
2. The Commissioner's decision is that the Council has correctly applied section 21 (information reasonably accessible by other means) of the FOIA.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 11 June 2015, the complainant wrote to the Council. Contained within the complainant's letter were a number of information requests. These are set out below:

1. Please provide me with your Policy/the legal Regulations/timescales within which you must deal with an appeal.

2. Please provide the regulations and or your policy that states you have the authority to do so (relating to suspending your housing benefit claim).

3. Please provide me with a copy of the Regulations and the legal; basis for your actions. (relating to serving you with a court summons)

- 4. Please provide me with a copy of your Policy document on this issue (relating to letters seeking payment).*
- 5. Please provide me with a copy of your Policy Document and or the relevant legislation on this point (relating to the process that should be engaged when an appeal is being determined).*
5. On 15 July 2015, the complainant sent a further letter to the Council which contained the following information request:

 - 6. Please provide your policy and the housing benefit regulations on capital limits in relation to person injury trust fund.*
6. The Council responded to the requests on 10 August 2015. It referred the complainant to its own website and a legislative website to locate the requested information.
7. The complainant subsequently asked for an internal review. She explained that the response provided by the Council did not address the requests she had made.
8. Following the intervention of the Information Commissioner, the Council responded to the internal review request on 12 February 2016. However, the complainant did not receive a copy until 10 August 2016. The internal review response provided the complainant with precise links where she could access the requested information.
9. The complainant had a telephone conversation with the Commissioner on 25 August 2016 where she advised her that she did not have access to the internet. The Commissioner advised the complainant to raise this matter with the Council. The complainant subsequently returned to the Council advising it that she did not have access to the internet and asked for the information to be sent a hard copy of the requested information.
10. The Council responded on 22 September 2016 and explained that it was unable to provide the complainant with a hard copy of the requested information.

Scope of the case

11. The complainant contacted the Commissioner on 1 December 2016 to complain about the way her request for information had been handled.
12. The complainant argued that she had not been provided with the information she had requested. She also asked the Commissioner to

consider whether the Council has complied with the statutory timeframe to comply with a request.

13. During the Commissioner's investigation, the Council explained that due to the voluminous correspondence that it has had with the complainant, it was difficult to determine whether the Council policies falling within the scope of requests 4 and 5 had been provided to the complainant. This information was subsequently resent to her via the Commissioner.
14. The Commissioner has considered whether the information is reasonably accessible to the complainant by other means in accordance with section 21 of the FOIA.
15. The Commissioner has also considered whether the Council complied with section 10 of the FOIA.

Reasons for decision

Section 21 – information reasonable accessible by other means

16. Section 21(1) of the FOIA states:

"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."

17. The purpose of the section 21 exemption is to ensure that there is no right to access information via the FOIA if it is available to the requester by another route. Although the information may be available elsewhere, a public authority will need to consider whether it is actually 'reasonably accessible' to the applicant before it can apply section 21. Defining 'reasonably accessible' is open to interpretation, however where there is another existing, clear mechanism by which the particular applicant can reasonably access the requested information outside of the FOIA, it will be reasonably accessible to them.
18. The Commissioner notes that in its internal review response to the complainant, the Council provided direct links to the requested information. The Commissioner has viewed the information on the links and considers that it does provide the requested information.
19. However, the question for the Commissioner is whether the information available via those links is reasonably accessible to the complainant.
20. The Commissioner is aware that the complainant does not have access to the internet. The Commissioner is satisfied that this is the case as she has investigated a number of complaints made by the complainant and all

correspondence has been by fax and letter. In addition to this, the Commissioner is also aware that the complainant is a carer.

21. Upon receipt of the complaint, the Commissioner returned to the Council for further arguments. She advised the Council of the circumstances detailed at paragraph 20 and asked the Council to explain why it considered the information to be reasonably accessible to the complainant.

22. The Council explained:

"Although the Council does hold a copy of the full regulations these are not up to date and are only correct as at a particular point in time. Additionally they form part of a reference book which contains both commentary to and analysis of the regulations and is subject to copyright provisions. This book is freely available to purchase by the public.

The Council does hold some bits of the legislation which have been downloaded to support specific arguments related to appeals. These snippets are not stored in any central location and in some instances are even more out-dated than the copy of the full regulations".

23. The Council further explained that it was under no obligation to obtain the information under the FOIA for the complainant such as downloading the information from the website.

24. In addition to this, the Council explained:

"The Council is obliged to provide information that is only accessible on its website. Where the requester has demonstrated they do not have internet access. That information has been sent to Mrs Francois on request".

25. The Council acknowledged that the complainant was a carer. However, it remained of the view that it did not consider it was unreasonable to expect the complainant to access the information via the internet free of charge at one of the libraries within the borough.

The Commissioner's decision

26. When reaching a decision on this case, the Commissioner has referred to her guidance which states:

Subsection (1) describes the fundamental principle underlying section 21, which is that, in order to be exempt, information must be reasonably accessible to the applicant. Unlike consideration of most other exemptions in FOIA, this allows a public authority to take the individual

circumstances of the applicant into account. Note the importance of the phrase "to the applicant" – in effect a distinction is being made between information that is reasonably accessible to the particular applicant and information that is available to the general public. In order for section 21 to apply there should be another existing, clear mechanism by which the particular applicant can reasonably access the information outside of FOIA¹.

27. The guidance goes on to state that the assessment of whether the section 21 exemption can be successfully applied will be dependent on whether or not the requested information is reasonably accessible to that particular applicant who requested it.
28. The Commissioner notes that the fact the complainant does not have access to the internet means that the information is not as reasonably accessible as it would be to an individual that did have access to the internet.
29. The Commissioner has therefore balanced the difficulty in the Council providing the information against the difficulty that the complainant has in accessing the information.
30. The Commissioner is aware that the Council provided the complainant with a precise link to the requested information. The complainant simply needs to click the link to access the requested information. The Commissioner also acknowledges that the Council has a number of libraries where the complainant can access the information free of charge.
31. The Commissioner acknowledges that the complainant argued that the information she received in hard copy from the Council which consisted of the Council's own policies did not contain the information she was seeking. However the Commissioner considers that any information that has not been provided to the complainant is available to view via the links provided by the Council.
32. On this basis the Commissioner is satisfied that the Council has correctly applied section 21 of the FOIA.

¹ <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

Section 10 – Time for compliance

33. Section 1(1)(a) of FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
34. Section 10(1) requires that the public authority comply with section 1 promptly and in any event no later than 20 working days after the date of receipt of the request.
35. In this case, the Council responded on 10 August 2015 and directed the complainant to the gov.uk website where she could browse the legislation. A full response providing the complainant with precise links to the information was issued on 12 February 2016 but was not received by the complainant until 10 August 2016.
36. As the Council did not provide the complainant with the precise link in its initial response, the Council has breached section 10 by failing to respond to the request within 20 working days.

Other matters

Internal review

37. Under section 17(7) of the FOIA, it does not state that a public authority must have an internal review process in place. However under section 45 code of practice, it suggests that it is good practice to review a response when a requestor expresses dissatisfaction with it. An internal review gives a public authority an opportunity to review a response and it can also be helpful to resolve an issue informally.
38. Although there is no statutory time set out in the FOIA within which public authorities must complete a review, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review, and in no case should the total time taken exceed 40 working days. Where it is apparent that determination of the complaint will take longer than the target time, the authority should inform the applicant and explain the reason for the delay.
39. In this case, the complainant asked for an internal review to be carried out on 28 August 2015 and the Council issue the outcome of its internal review on 10 February 2016. As explained in paragraph 8, the Commissioner is aware that the complainant did not receive a copy of

the internal review until 10 August 2016. The Commissioner considers that the Council took in excess of five months to conduct the internal review which is a considerable amount of time.

40. The Commissioner would take this opportunity to remind the Council that it is good practice to carry out internal review within 20 working days and in any event, no longer than 40 working days.

Right of appeal

41. 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

42. 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.
43. 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

Jack Harvey
Group Manager
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