

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 August 2017

Public Authority: London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Croydon ("the Council") relating to whether families similar to his own have been placed in temporary accommodation and/or rehoused permanently by the Council.
2. The Commissioner's decision is that the Council has correctly applied section 12 of the FOIA to the request and has also provided the complainant with advice and assistance in accordance with section 16 of the FOIA. However, the Council has not complied with the FOIA in the following ways:
 - It has breached section 10 of the FOIA, since it did not respond to the request within the statutory timeframe.
 - It has also breached section 17 of the FOIA in failing to inform the complainant accurately of its reasons for refusing the request within the time for compliance.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 19 March 2016, the complainant wrote to the Council and requested information in the following terms:

"I am therefore requesting under the freedom of Information Act statics [sic] which fully answer these regrettable fears, applicable to the time we have been homeless and in temporary bed and breakfast accommodation and for those families who have received more appropriate and speedier treatment. I would like substantiated proof why they were treated so, made available to my member of parliament or the Local Authority Ombudsman (if it is of a sensitive nature)."

5. The Council did not respond to this request and the complainant wrote to the Council again on 4 April 2016 in the same terms. The Council has stated that it did not receive the letter of 4 April 2016.
6. On 20 June 2016, in another letter to the Council, the complainant added the following comment to his request:

"Satisfactory resolution in this case would require that as a pre-requisite that you provide statistical evidence of all similar families to us, where they have been accommodated, the type of accommodation, where permanently housed, their gender, age and ethnicity. This is covered by the freedom of Information Act and you must now comply."

7. On 10 August 2016 the Council responded. It asked the complainant to clarify what information he was seeking and reminded the complainant that his request needed to be for recorded or statistical information and not for an opinion.
8. On 20 August 2016 the complainant wrote to the Council and reiterated his request of 19 March 2016 and his comment of 20 June 2016. He commented that he had already clarified that he was asking for *"statistical evidence"* in his letter of 20 June 2016. He also expressed dissatisfaction with the length of time that it had taken the Council to reply to his request. He declined to provide further clarification.
9. The Council responded on 26 September 2016 and refused to provide the requested information. It cited the following exemption as its basis for doing so: section 12 of the FOIA (Cost of compliance exceeds appropriate limit).
10. The complainant requested an internal review on 7 October 2016.

11. The Council sent him the outcome of its internal review on 24 November 2016. It maintained its application of section 12 but also stated that not all of the information was held.

Scope of the case

12. The complainant wrote to the Commissioner on 30 November 2016 to complain about the way his request for information had been handled. The Commissioner received the complaint on 7 December 2016.
13. During the Commissioner's investigation, it has been clarified with the complainant and with the Council that the scope of the request by the complainant comprises statistical information regarding the treatment of all similar families to the complainant, specifically including:
 - Where they have been accommodated
 - When permanent accommodation was provided
 - Gender
 - Age
 - Ethnicity
 - How long they waited

- for the period from when the complainant was moved into temporary accommodation (8 June 2015) until the date of his request.
14. Also during the Commissioner's investigation, the Council has accepted that it had not made clear to the complainant whether it held all the information captured by the scope of his request, and confirmed that it did hold the information.
15. The Commissioner has considered whether the Council has complied with the following sections of the FOIA: section 10 (time for compliance), section 16 (duty to provide advice and assistance) and section 17 (refusal of request) and has considered whether the Council has correctly withheld the information under section 12 of the FOIA (cost of compliance exceeds appropriate limit).

Reasons for decision

Section 12 – cost of compliance

16. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the fees regulations.")
17. This limit is set in the fees regulations at £600 for central government departments and £450 for all other public authorities. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours.
18. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - a) determining whether it holds the information;
 - b) locating a document containing the information;
 - c) retrieving a document containing the information; and
 - d) extracting the information from a document containing it.
19. The four activities are sequential, covering the retrieval process of the information by the public authority.
20. The Council confirmed that it does hold the information requested by the complainant. It initially explained that the information is stored across three different electronic systems.
21. The Council explained that to provide the complainant with the information he has requested (where each family is accommodated when permanent accommodation was provided and how long the families waited, together with the age, gender and ethnicity of family members), by extracting data from the three systems, would require a level of technical expertise which is not currently possessed by any officer at the Council. It would require interrogating the data stored on the three systems to create a specific, bespoke report.
22. The Council confirmed that this type of report is not currently in use within the Council.

23. The Council argued therefore that the appropriate costs limit would be exceeded since it would need to seek to obtain the services of an individual who could collate the information from the three systems to provide the information requested.
24. The Council also estimated the cost of extracting the information manually from the three systems. Based on there being approximately 500 cases in each of the three systems and allowing one minute per case to extract the relevant information, the Council estimated that it would take it over 25 hours (3 X 500 = 1500 minutes) to extract the relevant information.
25. The Council expressed regret that it did not, in its response to his request, provide a detailed explanation to the complainant as to why it would exceed the appropriate costs limit to provide him with the information he requested.

Evidence provided by the Council

26. The Commissioner asked the Council to provide further details and evidence of its assertions regarding the way in which the information was stored.
27. The Council explained that general information about how many people were housed during the relevant period, together with information about their ethnicity, age and gender, was readily available and indeed has offered to provide this to the complainant.
28. However, it explained that it would have extreme difficulty in providing information about specific families which had been housed in bed and breakfast accommodation and then been re-housed, since this would require the manual review of individual case files to see if they had been in this type of accommodation, for how long and whether there were similarities with the complainant's family.
29. The Council explained that the information is held by three separate teams: Housing initiatives; Lettings; and Housing Allocations.
30. The Council explained that accordingly it would take more than 18 hours to locate and extract the information, since approximately 500 case files would need to be reviewed.
31. Allowing for 1 minute per case, simply to check each one of the 500 cases on each of the three systems would take 1500 minutes, that is, 25 hours, to see if relevant information was held.

32. The Council agreed to carry out a sampling exercise to test the estimate for extracting the information in a way that could be presented to the complainant.
33. The Council has provided the Commissioner with a report which contains a sample of data, redacted to remove personal information, from three specific families' cases and which also explains exactly how the Council has located and extracted the data. It specifies the activity necessary to locate the information at each stage; for example, "person search," "click on household," "click on decision;" together with an explanation of why each action was necessary, for example "to locate customer," "to see household members, ages and gender," "where customer placed" etc.
34. To extract information in the manner described in the report in each of the three cases took 20 minutes, 17 minutes and 12 minutes respectively.
35. The Council has also provided the Commissioner with screenshots of the information held on its systems which show that the method described by the Council on its report accurately shows the route necessary to assemble the requested information. The screenshots show that the information is held on a number of different Microsoft applications, including Excel, Sharepoint and Dynamics rather than being held together in one type of application.

The complainant's view

36. The complainant has expressed surprise at the Council's assertions regarding its storage of data since he considers that the information he is seeking is available either as a 'dataset' or via the part of the Council which deals with housing benefit.
37. In particular, he has asserted that: *"when the information contained within an application is later transferred on computer, it often forms part of a dataset for ease of access... or is simply stored on an excel file... it is this information which comprises the housing database and like any database, it can be extracted at the stroke of a few keys and exported to excel where it can be reduced very close to what is required within negligible manipulation time."*

Is the information held as a dataset?

38. The Commissioner has asked the Council to respond to the complainant's assertions, and in particular to comment on whether the information is held within a single database, such as the housing benefit database.

39. The Council considers that the fact that the information is held in not one but three databases means that it is not being held as a 'dataset' that could easily be provided. It could not be presented to the complainant without being extracted from different applications and presented in a bespoke manner.
40. In summary, the Council has explained that there is no single database and that consequently the information cannot be extracted at "*the stroke of a few keys.*" To extract data relating to "*families of similar priority*" requires a manual review of the information stored across the three different systems.
41. The Council further explained that "*there is no overarching dataset detailing the anonymised circumstances of each case.*"
42. In response to the complainant's assertion that the information could be extracted from the housing benefit database, the Council has stated that only the size of the family and the benefits they are on could be extracted from it and not all of the information requested by the complainant. As previously explained, it has offered to provide some relevant information, but its difficulties lie in providing the all of the information captured by the complainant's request since it is not stored on one database nor one type of application.

Conclusions regarding the application of section 12

43. The Commissioner has considered the evidence provided by the Council to support its arguments, and its responses to the complainant's assertions and suggestions.
44. She notes that for the period of the request, there are approximately 500 cases from which the Council would need to extract information in order to compare the families' situations with that of the complainant and to establish how each was treated.
45. It is evident from the screenshots provided to the Commissioner that the details requested by the complainant regarding different families' treatment by the Council, together with details of each family's make-up, are not held on a single database and indeed are held on different Microsoft applications.
46. She is satisfied therefore that the Council has demonstrated, by providing screenshots and detailed explanations, that it could not provide all of the information captured by the complainant's request other than by accessing the three different databases to extract information from the different applications, which would then need to be cross-referenced to "match up" the information relating to particular individuals.

47. She agrees with the Council's view that the information is not held as a dataset.
48. The Commissioner also accepts that the Council has demonstrated that extracting the information requested by the complainant in three out of approximately 500 cases took 20 minutes, 17 minutes and 12 minutes respectively.
49. She therefore considers that, even allowing for a natural "speeding up" of the extraction process to, say, 7 minutes per case, it would take a member of staff more than 1080 minutes (18 hours) to review and extract information from 500 files.
50. The Council has explained that while certain individuals might possess the appropriate level of technical expertise to create a programme that could extract the information from the different systems, there are currently no officers at the Council who could do this. The Commissioner agrees that the cost of recruiting an external consultant especially for this purpose could reasonably be included in the Council's costs estimate and would in itself exceed the suggested limit of £450.
51. The Commissioner's decision is that the Council has correctly applied the exemption at section 12 of the FOIA.

Section 16 – duty to provide advice and assistance

52. Section 16(1) of the FOIA states that:

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."

53. The Commissioner notes that the Council asked the complainant to clarify his request on 10 August 2016, but he declined to provide clarification. While this was understandable in view of the fact that he had made the same request three times before, the first occasion being in the previous March, this can nevertheless be seen as an effort by the Council to consider what information it might be able to provide.
54. In its internal review response of 24 November 2016, the Council summarised what it believed the complainant to be looking for and responded accordingly. While upholding its application of section 12 of the FOIA, it referred the complainant to information that was already in the public domain and which, it stated, might assist him with his enquiries. The information, broadly, comprised statistical data sets published by the government relating to homelessness.

55. The Council has explained to the Commissioner that this published information closely matches the data requested by the complainant, although not every aspect of his request is published; for example, people's gender.
56. The Commissioner also notes that during the course of the investigation the Council has offered to provide the following information to the complainant: *"general information about how many people were permanently housed, their ethnicity, age and gender."* It also explained which part of the request it was having difficulty in fulfilling.
57. In the Commissioner's view, despite an unacceptable delay in responding appropriately to the complainant's request and the regrettable confusion arising over whether or not the Council held all of the information initially, the Council has subsequently offered sufficient advice and assistance to the complainant to satisfy the Commissioner that the Council has complied with section 16 of the FOIA.

Section 10 – time for compliance

58. Section 10 of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt."*
59. From the information provided to the Commissioner in this case, it is evident that the Council did not respond to the request within the statutory timeframe of 20 working days. She has therefore found the Council to be in breach of section 10 of the FOIA.

Section 17 – refusal notice

60. Section 17(1) of the FOIA states that:

"A public authority.... must, within the time for complying with section 1(1), give the applicant a notice which... specifies the exemption in question and states why the exemption applies."
61. In this case the Council issued a refusal notice specifying that it was applying the exemption where the cost of compliance exceeds the appropriate limit (section 12 of the FOIA) more than 20 working days after the date of the request. Accordingly, the Commissioner has determined that the Council has breached section 17(1) of the FOIA.

Right of appeal

62. 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

63. 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.
64. 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

Alun Johnson
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF