

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 February 2018

**Public Authority:** London Borough of Barnet Council

**Address:** North London Business Park  
Oakleigh Road South  
London N11 1NP

#### Decision (including any steps ordered)

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1. The complainant has requested documents associated with a particular land asset. London Borough of Barnet Council ('the Council') refused to comply with the request under section 12(1) of the FOIA (cost exceeds the appropriate limit).
2. The Commissioner's decision is that:
  - the Council is not obliged to comply with the complainant's request under section 12(1); but that
  - it breached section 16(1) as it rejected considering any advice and assistance it could offer the complainant.
3. The Commissioner does not require the Council to take any steps to ensure compliance with the legislation.

#### Request and response

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4. On 3 January 2017, the complainant wrote to the Council and requested information in the following terms:

*"Please provide copies of All Procedures, Rules and documentation historically used (since Jan 2012) to guide the administration of the Estate Management and Valuation function of Barnet Council (or relevant departments prior to any organisational change). This should*

*include:*

*[1] 1. The specific input documentation that were merged to create the current 2014 Management of Assets, Property and Land Rules (i.e. I wish to check for myself if there was truly a clerical error in retaining the reference to separate procedures, or whether there was always an intention to have a separate set of supporting procedures in addition to the Rules).*

*[2] 2. All other process, procedure, or guidelines documents generated or used since Jan 2013 (i.e. historic and current) related to the Estate Management & Valuation Function. I am interested primarily in any final, or final draft documents (i.e. I do not need to receive "revision history" documents). The intent here is to establish whether there the Estate Management and Valuation function does in fact have Procedural Guideline documents that should be separately referenced in the Management of Assets, Property and Land Rules. For clarity, I am seeking existing documentation related to:*

*a. LBB Estate Management Procedures & Guidelines. These are requested to establish whether they do in fact exist. Equally, if it were the case that such document do not exist, then this may well be a breach of accepted good practice, and this raises a whole set of other questions for the ARG to consider.*

*b. LBB Valuation Guidelines & Procedures. These are requested to better understand the logic for the insistence by the Barnet Valuer (and other Council Leadership) that 'due process' has been followed in all aspects of this Ravensfield Land disposal process. For example, I am seeking any documentary evidence that "Enhanced Valuation" for pricing of adjoining land garden-only land is legitimate (note any such evidence would need to*

*reference specific procedures and not some generic statement such as "consistent with Red Book Guidelines"). As an example previous FOI request to Barnet indicated that Enhanced Valuation was applied to 2 other requests to purchase garden land. Neither request completed (which they are highly unlikely to do when land is valued on an enhanced valuation basis). See here*

*For the benefit of the FOI Officer, this detailed context for this request is given in the email below."*

5. The Council responded on 19 January 2017 (its reference 3311397). It refused to comply with the request under section 12(1) of the FOIA as to do would exceed the appropriate limit. The Council advised that, given the background to the request, it would not offer advice and assistance as to how the complainant might refine the request to bring it within the cost limit. The Council also advised that it would be likely to categorise further requests from the complainant on the same issue as vexatious under section 14(1) of the FOIA.
6. The Council provided a review on 5 September 2017. It upheld its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 11 July 2017 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focussed on whether, under section 12(1) of the FOIA, the Council is not obliged to comply with the complainant's request as to do so would exceed the appropriate limit. She has also considered the Council's obligation under section 16(1) to offer advice and assistance.

### **Reasons for decision**

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#### **Background**

9. In its submission to the Commissioner the Council has provided a background to the request. It says that the complainant has submitted a series of information requests to the Council about land at the rear of his property that he sought to purchase from it. From the information the Council has provided, it seems to the Commissioner that the complainant's correspondence began in 2011.
10. The Council has noted that, since 2011, it has undergone a major reorganisation and has moved to a commissioning services model of delivery. Since 2013, its Property and Facilities, Estates & Property Management function has been operated by Capita on behalf of the Council. This resulted in a change of personnel in some areas of the service, and changes in working practices in terms of roles and responsibilities. This had consequential changes to where information was being stored.

## Section 12 – cost exceeds the appropriate limit

11. Section 12(1) says that a public authority is not obliged to comply with a request if the authority estimates it would exceed the appropriate cost limit to do so.
12. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the Council. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
  - determine whether it holds the information
  - locate the information, or a document which may contain the information
  - retrieve the information, or a document which may contain the information, and
  - extract the information from a document containing it.
13. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit – in line with section 16 of the FOIA.
14. The Council says that all Property and Facilities, Estates & Property Management information, as well as Governance information, is held electronically on a particular server. The Commissioner assumes that the Council is referring here to *current* (and up to 3 January 2017) property and governance information.
15. The Council has told the Commissioner that it does not hold semi-current paper records on-site because it does not access these records frequently and lacks on-site storage space. The Council says semi-current paper holdings such as these are boxed, barcoded (numbered) at box and file level, and indexed by the relevant service area's Records Champion. This is then quality checked by the Records Management Team, and sent to the Council's current off-site storage provider Stor-a-File. The Council's records are held at Stor-a-File's site in Corby. The Council has provided the Commissioner with a spreadsheet showing stored paper records held for Property and Facilities, Estates & Property Management and Governance areas. Approximately 3,000 files are listed.

16. Should a file be required throughout the duration of its life at Stor-a-File, the relevant Records Champion requests it by using the associated barcodes and descriptions assigned when it was indexed. The barcode and description data is held by the service area, and a master copy by the central Records Management Team, who help locate file and box numbers when necessary.
17. The Council has explained that legacy Records Management practices at the Council mean that some records held in off-site storage were not indexed with clear file descriptions, and that some only have box descriptions. In addition, prior to summer 2015, files were not allocated file barcodes; these were only allocated at box level. This can create scenarios where it is more time consuming to locate files. However, where files are not allocated barcodes, Stor-a-File will search boxes off-site on behalf of the Council to locate files based on any descriptions provided. Should a single file be required out of a box that does not have a barcode, Stor-a-File will attach a barcode to this before sending it to the Council to ensure there is a clear audit trail for the file. The Council will then update its records with this information.
18. Retention periods are applied to off-site storage holdings per file or at box level (where there are various related files in a box) by the Records Champion. These are applied using the Council's records retention schedule. Once records reach their retention periods, the Records Management service will contact the relevant Records Champion and provide him or her with a list of these records. The Records Champion will then seek authorisation from senior management to sign off on destruction of these records. Following sign off, Records Management will inform Stor-a-File that these records can be destroyed. They will then be destroyed on behalf of the Council and destruction certificates will be provided once complete.
19. With regard to its electronic records, the Council has told the Commissioner that an initial sampling exercise was undertaken by its Property Valuer, who was the officer responsible for co-ordinating the search strategy. The Property Valuer confirmed that her estimate of the time taken to locate the information held was based on the quickest method of gathering the requested information. This would need to be detailed and time consuming trawls through the shared drive. The searches would involve accessing a targeted set of folders and then opening up each email or document within each folder to see if it contained anything in scope of the request.
20. The Council says that the Property and Facilities, Estates & Property Management electronic filing system comprises 208 high level folders. Underneath each high level folder, there are a series of sub folders, in some cases going down many levels. Within each folder, files are held

in a variety of formats e.g. MS Office, pdfs and emails. Global searches of the entire drive are time consuming given the large number of folders and files held. This means searches need to be narrow and targeted on particular areas where information is likely to be held.

21. On 18 January 2017, the Council's Property Valuer advised the Information Management Team in an email that, with regard to a response to the first part of the request: *"This would be an intensive investigation exercise that would require time looking through shared drives and the internal resources database and trying to unravel which papers were collated and used to create the final document of Management of Assets, Property and Land Rules. I estimate this would take at least 8 hours."*
22. In respect of the second part, the Council considers that this is a wide ranging complex question made up of several separate parts, which are effectively separate requests. It says the documents requested [if held] are not held in one single place and it has explained that it does not currently have a comprehensive electronic document management system.
23. The Property Valuer advised: *"This would also be an intensive investigation exercise that would require time looking through shared drives and the internal resources database. It would also require time spent with the Governance team to trace documents and would take up their time also. I estimate this at a further 8 hours of my time and Governance time altogether."*
24. *I also would need to research various Royal Institution of Chartered Surveyors papers to respond properly, as Marriage Value/Synergistic Value (what is referred to above as 'enhanced valuation'). Much of what we do as surveyors is governed by the RICS, which is our professional body and does not necessarily match up with Council guidelines. I estimate this would take 4.5 hours."*
25. The Council has told the Commissioner that initial attempts to carry out global searches of information holdings using 'keywords' were not successful in locating any information of interest. Therefore it was necessary to carry out more specific targeted manual trawls through a series of emails and documents stored in a number of different areas of the relevant server.
26. It has advised that responding to a separate subject access request (SAR) that the complainant had submitted under the Data Protection Act enabled more 'deep dives' to be carried out and that the Property Valuer was also the officer responsible for handling the complainant's SAR. The searches undertaken to respond to the SAR identified some further

information that it could release to the requestor than otherwise would have been made available under an FOIA request. During her investigation, the Council confirmed to the Commissioner that the information it had identified and released had fallen within the scope of a separate request for information that the complainant had submitted and which had been handled under the Environmental Information Regulations. The complainant subsequently submitted a complaint about this response, which the Commissioner has considered under FER0724242.

27. It appears to the Commissioner that the Council does not know what information it holds that may fall within the scope of the complainant's request and that the searches it has so far undertaken, and the further searches it would need to undertake, are in order only to determine at this stage, what, if any, relevant information is held.
28. The complainant has told the Commissioner that the core of this request is to access documents specifically referenced in the Council Constitution. He says that it is the view of the Council that these procedures do not exist and including the reference was an oversight. The Council has acknowledged to the Commissioner that it is unusual that it cannot identify these particular documents which have been referred to in the request. It has hypothesised that, if held, this information may have been mis-filed or mis-labelled.
29. The Council has, however, confirmed that it has spent a considerable amount of time trying to locate any information that falls within the scope of the complainant's request. It has explained that because of changes, ie the move of some functions to Capita, 'corporate memory' has been lost; that is there is no officer available who is familiar with the background to the request and who might know where relevant information might have been stored or what it might have been labelled. The Council described trying to ascertain now whether it holds any relevant information is like "looking for a needle in a haystack".
30. The Commissioner has reviewed the substantive element of the complainant's request; namely:  
  
*"Please provide copies of All Procedures, Rules and documentation historically used (since Jan 2012) to guide the administration of the Estate Management and Valuation function of Barnet Council (or relevant departments prior to any organisational change"*
31. This not a straightforward request ie for one particular, named document. Addressing this broad and general request – including all the elements that the complainant has referred to in the further two parts of the request – would, in the Commissioner's view, be a time consuming

process of both identifying exactly what procedures, rules and documents had guided the named function of the Council from 2012 to 3 January 2017, establishing whether these were held and then locating them.

32. She has noted that the Council has attempted to locate whether it holds relevant information electronically by carrying out global searches of the relevant server. It has estimated that more detailed searches of a considerable number (at least in the 100s) of individual folders, in order to address the first element of the request would take at least 8 hours. To address the second element would likewise take at least 12.5 hours.
33. The search of current electronic records alone would, the Council has estimated, exceed the 18 hours provided by the Act. However, the request is for information from 2012. Searching the semi-current paper records held off-site in approximately 3,000 files would take further time to search and, given the volume of material and the way these records are stored, it is likely that the amount of time this search would take would be considerable.
34. From its submission and a subsequent conversation with her, the Commissioner is satisfied that the Council has invested time in considering whether it holds information that would address the complainant's request and, if held, where this might be held. The Commissioner has taken account of the scope of the request, the structural changes the Council has undergone, how the Council keeps some of its records, the volume of records stored, the initial searches it has carried out and the time it has estimated it would take to carry out further electronic searches, which the Commissioner considers are reasonable. In the circumstances, the Commissioner is satisfied that it would take more than 18 hours to comply with the complainant's request as it is expressed and that the Council is therefore entitled to rely on the provision under section 12(1) of the FOIA.

### **Section 16 – advice and assistance**

35. Section 16(1) says that a public authority has a duty to provide advice and assistance to an applicant, so far as it would be reasonable to expect the authority to do so.
36. In this case, the Council advised the complainant that, given the background to the request, it would not offer advice and assistance as to how he might refine the request to bring it within the cost limit. The Commissioner understands that 'background' refers to its long correspondence with the complainant (over a number of years). This resulted in it advising him that it was considering categorising further



requests from him on the same subject as vexatious under section 14(1) of the FOIA.

37. The Code of Good Practice issued under section 45 of the FOIA says that a public authority is not expected to provide assistance to applicants whose requests are vexatious within the meaning of section 14. However the Council had not categorised this particular request as vexatious but did not elaborate (for the complainant or the Commissioner) on why it was not offering advice and assistance on this occasion. The Council may, the Commissioner assumes, have anticipated receiving further requests from the complainant if it had advised him how he might refine the current request.
38. The Commissioner finds that the Council might reasonably have considered any advice and assistance it could have offered the complainant and because it refused to do so, she considers the Council breached section 16(1). That said, given the factors at paragraph 34, the Commissioner considers that it would not have been possible to meaningfully refine the request to bring complying with it within the cost limit.

## Right of appeal

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39. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. 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.
41. 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** .....

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**Cheshire**  
**SK9 5AF**