

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 October 2018

**Public Authority:** London Borough of Barking and Dagenham

**Address:** Barking Town Hall

1 Town Square

Barking

IG11 7LU

### **Decision (including any steps ordered)**

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1. The complainants have made two requests for information from The London Borough of Barking and Dagenham (LBBD) about electricity supplied by the Landlord Controlled system. LBBD has refused to comply with the requests relying on section 14(1) – vexatious requests.
  2. The Commissioner's decision is that LBBD is not entitled to rely on section 14(1) to refuse the requests and that having failed to respond to the request submitted on 15 February 2018 within 20 working days, LBBD has breached section 10 of the FOIA. She requires the public authority to take the following steps to ensure compliance with the legislation.
    - Issue a fresh response to both requests submitted by the complainant which do not rely on section 14
  3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.
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## Request and response

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4. On 15 February 2018, the complainant wrote to LBBB and requested information in the following terms:

*"In respect of Peverel House, Stour Road, Dagenham RM10 7H for the year 01 April 2017- 31 March 2018 for the electricity supplied for the Landlord Controlled Heating Hot water system::*

- a) The Standing Charge for each meter excluding vat. With clarification of the standing charge period eg per day or whichever is applicable*
- b) The date/ dates that any changes to the Standing Charge/ Charges was/ were applied.*
- c) The unit cost per Kilo Watt Hour excluding vat for each rate.*
- d) The date/ dates that the Charge/ Charges was/ were applied. i.e. The dates that any changes were made to the unit costs.*

*As this is a straightforward request for information we do not agree to any extension to the Statutory Timescale."*

This request was given the reference number 5730938 and acknowledged on 16 February 2018.

5. On 15 March 2018 LBBB set out that it could not respond to the request held under its reference 5730938 within the statutory time frame of 20 working days and advised that it hoped to respond to the request by 5 April 2018.
6. On the same date, the complainants wrote to LBBB expressing concern about the delay and asking for a review. It appears that LBBB did not respond.
7. On 9 April 2018, the complainants wrote to LBBB, again setting out their concern about the delay given that the request was a simple one and again they requested a review.
8. On 11 April 2018, LBBB advised that the case was proving complex due to a number of changes made to meters, timers and suppliers which was making it difficult for LBBB to "ascertain" the requested information.
9. LBBB further asserted that it would need to inspect the supply inside the property in order to comply with the request.
10. The complainants replied on the same date, 11 April 2018. They set out that on 29 August 2017, LBBB had written to them under reference

4591333 confirming that the electricity supply had been provided by Npower since 1 October 2009 and their request related to the period 1 April 2017 to 31 March 2018 only. They disputed the need for access to the property in order to comply with the request.

11. The complainants referred LBBB to its internal review response to a previous FOIA request for the same information (provided in advance of any actual billing) held under LBBB reference 4200737. That review concluded by disclosing the requested information.

12. The review response set out that the request was for information of the following description:

*"the current serial number of the meter and the price per kWh for consumption of the three tariffs that the meter has and its daily standing charge for the year 1 April 2017 – 31 March 2018"*

13. The complainants explained that there had been no need to access the property on that occasion and the purpose of their request dated 15 February 2018, reference 5730938, was to be able to confirm that the rates disclosed on 1 August 2017 are the rates that were actually charged during the billing period. They set out that the request was for the general unit cost of electricity and for standing charges. The Commissioner notes that the complainants have now received the information from a third party and that there was no access required to the property.

14. The complainants asserted that LBBB had grossly misunderstood the scope of the request and again asked that a review be conducted.

15. On 20 April 2018 the complainants then made the following request for information:

*"Under the provisions of the Freedom of Information Act we require the London Borough of Barking & Dagenham to provide the following information within the statutory timescale:-*

*1) In respect of the Landlord Controlled Heating / Hot Water System for Pevel House all actual Electricity Supplier Bills (not summary spreadsheets) for all system meters covering the periods:*

*a) 01 April 2015- 31 March 2016*

*b) 01 April 2016- 31 March 2017*

*c) 01 April 2017- 31 March 2018*

*2) In respect of the Landlords Communal Electricity Supply for Peverel House all actual Electricity Supplier Bills (not summary spreadsheets) for all system meters covering the periods:  
a) 01 April 2015- 31 March 2016  
b) 01 April 2016- 31 March 2017  
c) 01 April 2017- 31 March 2018"*

16. On the same date, LBBB responded under reference 6285834, refusing the request relying on section 14(2) – repeat request.
17. LBBB wrote again to the complainants, three days later on 23 April 2018. This letter referenced both requests held under references 5730938 and 6285834.
18. It stated that the complainants' refusal to allow access to their property had hindered a full collaboration to resolve the outstanding issues regarding the electricity supply. In these circumstances, LBBB set out that it considered the requests to be vexatious and relied on section 14(1). It set out its reasons for that decision.
19. It is clear from this response that LBBB had reviewed its position and now relied on section 14(1) to refuse to comply with both requests, rather than section 14(2) for the request dated 20 April 2018.
20. On 24 April 2018, the complainants requested a review of the response to both requests.
21. Following an internal review, which this time cited three reference numbers, LBBB wrote to the complainant on 24 May 2018. It maintained its reliance on section 14(1).
22. During the course of the Commissioner's investigation, the complainants advised that in relation to request 5730938 they had now received the information requested from a different source.

### **Scope of the case**

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23. The complainants contacted the Commissioner on 13 April 2018 to complain about the way their request for information had been handled and specifically about the delay in relation to 5730938. Following the Commissioner's intervention, a response was issued and following completion of the internal reviews, the complainants asked the Commissioner to investigate LBBB's reliance on section 14(1) in relation to both requests detailed above.

24. The Commissioner considers that the scope of her investigation is to consider whether or not LBBD was entitled to rely on section 14(1) to refuse the requests. Although the complainant has now received the information requested under reference 5730938 from a different source, the Commissioner considers that the request should still form part of the investigation.

## Reasons for decision

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25. Section 14(1) FOIA allows a public authority to refuse a request if it is vexatious.
26. In the Commissioner's view, section 14(1) FOIA is designed to protect public authorities from requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the authority.

### LBBD's position

27. LBBD has provided the Commissioner with a detailed submission in relation to the application of section 14(1) FOIA and has provided documents it considers pertinent.
28. In its submission, LBBD has set out that it was appropriate to consider the history and nature of the complainants' contact with the council. It has explained that whilst it considers the complainants' requests to be reasonable on face value, when viewed in the wider context of correspondence and interactions with LBBD, they are vexatious and have had a significant impact on its ability to comply with the FOIA and "*other council information requests*".
29. Under the heading 'history', LBBD has explained that the complainants first came to its attention in 2015 and have made more complaints and information requests to it than any other private individual. At the time of providing the submission to the Commissioner, LBBD asserted that the complainants had made 11 information requests to it and had submitted 42 complaints, with these frequently overlapping.
30. Under the heading 'burden', LBBD has stated that between the dates 3 January 2017 and 31 August 2018, LBBD has received 332 emails which, LBBD has set out it considers to be an unreasonable level of contact, a drain on resources and wasteful of public funds.

31. The submission sets out that since April 2016, the complainants have submitted 11 FOIA requests which is the most that LBBB has received from any individual. Three of those requests relate to heating, lighting and/or power.
32. It is LBBB's position that it is spending increasingly high levels of resource in managing the contact and behaviour. It has set out that it aims to provide a service to all its residents but that it spends disproportionately in relation to a small number of residents. It has explained that it refers to this situation as the "80/20 rule" and that the complainants are one of the 20% of residents who take up 80% of LBBB's time and resource and that this is not sustainable given that they are not known to be vulnerable service users in need of additional, specialised or targeted support.
33. Under the heading "futile requests", LBBB has set out that the complainants submitted a request which was logged by LBBB on 3 August 2018 at 08:32. The request was for photographs and an engineer's report on their flat following a claim for water damage. The information was disclosed on 4 September 2018. It is LBBB's position that this request followed correspondence with officers in relation to a complaint and that the photographs had been previously provided.
34. LBBB asserts that on the same date, at 18:52, the complainants made a request to the Housing Repairs Team for the same material. LBBB has explained to the Commissioner that it has a 10 day response time for requests/complaints but that on 29 August 2018, 4 days before the FOI response time would expire, the complainants made a complaint that the material had not been provided.
35. At this point, LBBB wrote to the complainants advising that their complaint would not be accepted as they had already submitted the request via FOIA. LBBB has advised the Commissioner that it considers this approach to be unreasonable and, given its scattergun nature, likely designed to cause disruption and distress.
36. LBBB has also asserted that the complainants at one point made a complaint about a fire door in need of repair which was repaired on the same day but the complainants then complained that they had not received a reference number for the repair. LBBB asserts that this is clearly a waste of resources and further evidence of a futile request. LBBB has provided copies of the relevant correspondence from the complainants. The Commissioner notes there are three emails, the original request for repair dated 10 August 2017, an email dated 14 August 2017 submitting a formal complaint about the lack of job number which again requests a job number and completion date for the

complaint. The final email is dated 22 August 2017 and requests a reference number for the complaint and a completion date. There is no indication as to whether and how this complaint was resolved.

37. In its submission to the Commissioner, LBBB has explained that it considers that the complainants have made unfounded accusations. This time, rather than provide the entire correspondence, LBBB has provided a verbatim extract. This sets out the complainants' concerns regarding the refurbishment of their flat and sets out that they *"are beginning to form the opinion that the damage to our flat could have been deliberate"*. The extract shows that the complainants link this to LBBB's efforts to gain access to their flat on the *"flimsy pretense"* of needing to inspect the landlord controlled heating and hot water electrical installation. They also link it to the fact that LBBB was being investigated by the Housing Ombudsman. The complainants refer to LBBB's *"obstructiveness and attempts to wriggle out of fully restoring the damage"*. The council has selected this extract from fuller correspondence to support its position that there have been unfounded allegations made.
38. Under the heading 'unreasonable persistence and intransigence', LBBB has set out its view that the complainants seem to have unreasonable expectations of what a council is and how it engages with its residents/customers. LBBB has stated that they often demand that things are done as they want them done and when LBBB cannot oblige, staff are accused of failing, demands are made for redress and further complaints and FOI requests are submitted together with demands that someone is disciplined.
39. In order to support this position LBBB has detailed one instance where one of the complainants raised concerns about a council employee arriving at his (the employee's) home address in a vehicle with LBBB branding. The complainant was concerned about the use of the vehicle which the complainant felt suggested an inappropriate use of public funds.
40. This led to police involvement as the Police had received a report about the complainant. A letter was sent from the Police to the complainant explaining that it was aware that he had been reporting the employee's movements to his employer and that this should cease. The complainant was advised that if such action were to continue, it could be considered harassment or indirect harassment. Failure to cease, the letter set out, could result in further police action.
41. The concern appears to have first been raised in 2015 when one of the complainants wrote to LBBB referencing a particular vehicle and asking about the policy in relation to private use of official vehicles by council staff and also sought confirmation that the cost of journeys made



between LBBB and another location some distance from LBBB, were not financed from public funds.

42. Although the Commissioner has not seen the original letter from the complainants, LBBB has provided a copy of its response which sets out its position.
43. Subsequent to this correspondence, the police became involved as set out at paragraph 40.
44. As a result of the police involvement, the complainant alleged that LBBB had committed a data breach by passing his details to the police. LBBB insisted it had not been responsible for any data breach and there was no evidence to suggest otherwise; the ensuing correspondence lasted over a month and the complainant was advised on more than one occasion to bring his concerns about any data breach to the Commissioner.
45. LBBB has provided correspondence to support this position and has selected two extracts which it considers demonstrates the complainant's unreasonable behaviour, overly persistent approach, intransigence and threatening behaviour. Those extracts are as follows:

*"This isn't going to go away and I look forward to hearing from you when you have something substantial to report to me."*

*"In my correspondence with you this afternoon I feel that you have been obstructive and this leads me to believe that the Council has something to hide."*
46. LBBB has also provided correspondence where the Police Community Support Officer (PCSO) involved in the matter had corresponded with the complainant who then provided that correspondence to LBBB to support his assertion about the potential data protection breach. It is clear from that correspondence that the PCSO told the complainant that his details had been ascertained from the victim who, the PCSO believed, had been copied into an email from his union.
47. In an email dated 5 May 2016, provided to the Commissioner by LBBB, there is a suggestion that an investigation into the potential data breach would be undertaken and a request for a meeting was made to the complainant. He declined setting out that he wanted to correspond in writing due to a lack of trust in LBBB.
48. On 10 May 2016 LBBB asserted that it could find no evidence that the complainant's data was leaked or shared and he was advised to approach the Commissioner's office.



49. Email evidence provided by LBBB shows that the complainant continued to pursue the matter as LBBB had not, the complainant asserted, set out that its position was final. The complainant asked LBBB to consider the PCSO's email which he had provided. He also set out his position that LBBB had shown itself to be previously 'loose lipped' by needlessly disclosing information about an employee in a letter to the complainant. He provided evidence of that 'needless disclosure'; the Commissioner has seen this evidence as part of this complaint.
50. LBBB has not provided the Commissioner of any evidence of how or if the issue of the potential data protection breach was resolved. The complainant did not bring his concern to the Commissioner.
51. LBBB has asserted that the same issue of the council vehicle continues to cause the complainant consternation and that as recently as 10 September 2018, he attempted to re-engage LBBB on the issue by writing to his MP. LBBB has provided the Commissioner with a copy of the email sent to the complainant's MP which sets out his concern that a vehicle from LBBB's fleet can be parked some 70 miles away from LBBB for a period of two to three months and therefore unavailable to LBBB. He set out that his concern related to fleet management rather than any individual responsible for the vehicle. Of significant concern this time was the unavailability of the vehicle whilst previously his concern had been about the cost to LBBB of allowing employees to use vehicles to travel to and from work.
52. The MP requested LBBB undertake an investigation into the matters raised by the complainant but in a response to the complainant, the MP's office set out that LBBB had advised that it had dealt with the issue and that the matter was closed. It was suggested that the complainant approach the Local Government Ombudsman. LBBB has provided the Commissioner with emails showing that the complainant responded to the MP's office on 12 September 2018 noting the suggestion that he approach the LGO but that he was first considering an approach to the press. It is not clear how LBBB obtained the email referring to the possibility of approaching the press as it appears to be correspondence between the complainant and his MP's office.
53. It is LBBB's position that rather than follow the correct procedure, let a matter rest or seek redress via the ICO, the complainant wrote to the Leader of the Council and it is LBBB's position that the correspondence is goading in its nature. LBBB has provided the Commissioner with details of an email chain where the complainant received an undated letter from LBBB about the electoral register; the letter mis-spelled the complainant's name and email address. From the correspondence provided by LBBB, it appears that the last email in the short chain is to

the Leader of the Council stating *"Oh look yet another error by Corporate Complaints--- can't even get a person's name and therefore their email address correct. Poor attention to detail. Poor ! Poor ! Poor ! What sort of Organisation are you the leader of ?"*

54. This email was preceded by another email sent by the complainant to the Leader of the Council just under two hours earlier setting out that despite being copied into correspondence, the Leader of the Council had not responded to him once. This email referred to the *"latest error"* on LBBB's part and the poor quality of service the complainant had received. He set out his opinion that LBBB is a failing council which needs to change urgently.
55. Some seven days later, the complainant wrote to the Chief Executive setting out his concerns about the running of LBBB and explaining that he has not seen evidence to suggest that the Chief Executive represents value for money to LBBB. He further explained that the Chief Executive did not appear to be interested in what was being brought to his attention and suggested that he is perhaps not the right person to act as Chief Executive. The email was copied to all ward members and the local MP with a request that the tenure of the Chief Executive be reviewed.
56. LBBB has set out to the Commissioner that the complainants are often keen to blame or accuse staff of various failings and has requested resignations of the Leader of the Council and Chief Executive; he has also requested that an officer be disciplined.
57. The documents relied on in support of this position include correspondence from the ICO in relation to a complaint made by the complainants about a potential data breach by LBBB. The data breach related to LBBB disclosing information to a third party without consent and that the disclosed information was inaccurate. The information related to the complainants' address and the Commissioner's assessment was that it is unlikely that LBBB had complied with the requirements of the Data Protection Act 1998 (DPA).
58. Two days after the assessment was issued, the complainants wrote to LBBB about the matter setting out their belief that the officer responsible for the disclosure should be dealt with under LBBB's disciplinary procedure. It is LBBB's position that correspondence such as this is a nuisance, is vexatious in nature and has no serious value.
59. In support of its position that the complainants demonstrate unreasonable behaviour, LBBB has provided copies of emails relating to water damage to the complainants' flat which appears to have been caused during LBBB's refurbishment of the flat above.

60. Whilst the correspondence relates mainly to the repairs, one email seeks compensation of £1000 in addition to undertaking the repair work which LBBB states will be addressed in its final response.
61. When asked for their availability in order to allow the contractor to prepare a schedule of works, the complainants responded giving their available dates, subject to being given five working days' notice. The complainants' availability was then reduced and they notified LBBB of their reduced availability.
62. LBBB advised the complainants of a date for the visit asking if three people could attend rather than the two which the complainants had asserted was permissible. LBBB provided the names of the officials who would attend. The complainants objected to the attendance of a particular clerk of works as, they explained, he had previously been in their home and had been disrespectful by trying to be dictatorial. They requested that for the forthcoming visit, the clerk of works in question be replaced by a different colleague.
63. In that same email response, the complainants set out that they would not enter into any discussions with the contractors and that any questions should subsequently be put in writing.
64. There is no evidence to demonstrate further correspondence between the parties.
65. Under the heading of no inherent purpose or value, LBBB has set out that in August 2018 the complainants requested the information in their February request from a different source and this was provided within a day. It is unclear how LBBB is aware of this fact.
66. It is LBBB's position that the complainants then sent a further request to LBBB for the same data as requested in their February request but asking also for data relating to 2019. LBBB received a complaint on 4 September 2018 that it had failed to disclose the information. It is not clear what, if anything, was communicated to the complainants about this matter.
67. In its submission, LBBB has set out that this behaviour demonstrates that the complainants have no real interest in the data but are attempting to cause distress and disruption by submitting requests and lodging complaints. It has asserted that the requests and complaints are causing confusion and that it would take two months to go through all bills/invoices which would have a detrimental impact on complying with the request. It has also asserted that it does not hold some of the requested information in relation to this recent request. The request referred to is not under consideration in this notice.

68. Furthermore, LBBB has explained that one of the complainant's was rude to a member of staff during a telephone call and LBBB therefore anticipates that further contact may also be of this nature causing further distress. It is LBBB's position that the complainants are using the FOIA to "*score a point*" rather than pursue a matter which has wider public merit. This, LBBB believes is demonstrated by their persistence in requesting information which they already have.
69. LBBB has set out that in trying to comply with the request, LBBB had realised that it could not identify which meters were controlling the hot water system. Following an electrical engineer's visit to the site, it was deemed necessary to access a flat to determine further information about the wiring in order to respond to the request. In denying LBBB access to their flat, it is LBBB's position that the complainants had no real interest in obtaining an answer to their request and were perhaps more focussed on causing disruption. For this reason, LBBB considered the request to be vexatious.

#### Complainants' position

70. In making their complaint to the Commissioner, the complainants set out that the request was simple and straightforward. The complainant set out that it is the public body who issues bills to the consumer, not the power supplier. He asserted that LBBB was therefore subject to legislation covering the resale of electricity.
71. In addition, the complainants set out their position that there would have been no need to inspect their property as their request was for information on general rates which apply to a service supplied to a number of users and was not information unique to them.
72. The complainants provided a copy of a letter from LBBB dated 1 August 2017 showing that the same information had been provided to them at that point, albeit some of that information was historical with some relating to rates which would be charged in the future.
73. It is the complainants' position that there was no need to enter their property in order to disclose the information as the information is not unique to the complainants nor did anyone have to access the property to provide the same information in August 2017, some seven and a half months earlier. The point of the request now was to check those rates which were provided in August 2017 were in fact the rates which were applied between April 2017 and March 2018. The information has of course now been disclosed by a third party without the need for access to the premises.

74. The complainants also set out that the electricity charges form part of a resident's service charge with the service charge billing year running from April to March. At the start of a billing year, an estimated service charge bill is produced which includes an estimate of electricity consumption for the heating and hot water system. The complainants have set out that LBBB has a statutory obligation to produce, within 26 weeks of the end of the service charge year, a summary of the actual service charge and is required to provide greater detail if requested to do so by the billed tenant or leaseholder.
75. The complainants also explained their understanding that LBBB was a landlord re-seller of electricity. They went on to explain that they had, since 2015, noticed anomalies in this aspect of the service charge hence their requests for more detailed information so that they could check their bills.
76. It is also the complainants' belief that the energy buying group provides this information to the public authority and that the power supplier issues a bill to the public authority every three months.
77. In bringing their complaint to the Commissioner, the complainants asked that both of their requests be considered as part of the same complaint as LBBB had addressed them together.
78. The complainants have also provided the Commissioner with a report and covering letter from the Housing Ombudsman which addresses, among other things, the issue of their requests for copies of the electricity bills related to their service charge.
79. During the course of this investigation, the complainants advised the Commissioner that they had now received the information requested on 15 February 2018 from another source and would be content for this request to be removed from the scope of the investigation.

#### Commissioner's position

80. Given LBBB's reliance on section 14(1) for both the requests, the Commissioner has considered both despite the disclosure of information by a third party in relation to the request dated 15 February 2018. She considers that removing that request from the investigation would not impact on her decision but that it is pertinent in allowing her to consider the case comprehensively, a process that was almost complete when the information was disclosed by a third party. She also considers that as the information has been disclosed by the third party and not by LBBB, both requests should be considered in this notice.

81. The Commissioner has received a significant amount of information from LBBB regarding its application of section 14 to these requests and notes that despite the provision of this information, some of which quite rightly post-dates both the request and her request for a submission, LBBB has not included a copy of a Housing Ombudsman Service (the Ombudsman) report dated 14 June 2018. The Commissioner considers this document to carry significant weight in terms of her investigation.
82. The Ombudsman had been asked by the complainants to consider three separate issues in relation to LBBB. These were, dissatisfaction with the communal cleaning, the landlord's response to the complainants' concerns about neighbours keeping dogs and the particular issue of relevance to this investigation was the matter of LBBB's (the landlord's) response to the complainants' request for copies of the electricity bills related to their service charge.
83. It is relevant to note here that in respect of the complainants' concerns about the landlord's response to the communal cleaning, the Ombudsman found that there had been no maladministration in the landlord's handling of the complaint. In respect of the complaint about failing to take action in response to complaints about neighbours keeping dogs, the Ombudsman found in the complainants' favour. LBBB was ordered to pay compensation.
84. The Ombudsman found that there had been a service failure in the landlord's response to the request for copies of the bills. Its finding concluded that there was no evidence that the landlord (LBBB) had provided the requested information or explained why it could not provide the information. Furthermore, it found that there was no evidence that LBBB had responded to the formal complaint about the matter. LBBB was ordered to pay compensation for its failure to provide the requested bills.
85. Having considered the report, the Commissioner notes that the Ombudsman sets out that Section 22 of the Landlord and Tenant Act 1985 gives leaseholders the right to inspect the accounts, receipts and other documents relevant to the service charge information in the summary of the service charge and to have them copied.
86. The Ombudsman's report sets out that as these are legal obligations; landlords must ensure that they have processes in place to make sure that requests made are responded to appropriately and that records are being kept of these responses.
87. The report also sets out that it is unclear whether the landlord had provided the complainant with a summary of his service charges as detailed in section 21 of the Landlord and Tenant Act 1985 and that if no



summary had been provided then the legal obligation to provide documents relating to the service charges was not applicable. It is the Ombudsman's position that this does not mean that it was reasonable not to respond to the requests for information.

88. The report acknowledged that the complainant requests a significant amount of information in relation to his service charges but ultimately concludes that providing incomplete information, ignoring information requests and/or not keeping records of the information provided to the complainant is not appropriate.
89. In order to determine whether section 14 has been correctly applied, the Commissioner must consider whether the requests, not the requester, are vexatious.
90. Although it is LBBB's position that rather than have any serious purpose or value the requests are intended to cause distress and disruption and, given that the complainants now have the requested information relating to 15 February 2018 request, LBBB considers that they are certainly without serious purpose or value. The Commissioner considers that the requests in this case do have a serious purpose and value, not least because they will allow the complainants to check that they have been properly billed in their service charge. Although she notes that the requested information has been disclosed to the complainants by a third party, she considers that seeking the information from that third party demonstrates that the information had a serious purpose and value for the complainants.
91. In terms of the requests serving a wider purpose and value, whilst it has been argued that this is limited, the Commissioner considers that the information as it relates to the complainants' own address, may have limited wider value but that the issue of any leaseholder being able to check their actual services charges against their proposed service charges serves the much wider purpose and value of protecting tenants. This position is crystallised by the Ombudsman's finding in this case.
92. The Commissioner considers that there is clearly an onus on a landlord, in this case LBBB, to engage with a leaseholder in relation to clarification of service charges and, where a summary of service charges has been provided in line with section 21 of the Landlord and Tenant Act 1985, there is a statutory obligation on a landlord to allow a tenant to inspect certain documents in relation to the service charges and to have those copied. In these circumstances, the Commissioner does not consider that the requester should have found it necessary to rely on FOIA to request this information as it should be available to him in line with the landlord's statutory duty or in line with good practice as suggested by the Ombudsman's conclusion. It is worth noting here that



although the complainant has requested the information in relation to his entire block of flats, he has not requested personal information, only information in relation to all meters.

93. The Commissioner does not consider that 11 FOIA requests since April 2016 represents an excessive amount of requests and as three relate to the topic under consideration in this notice, the sum total of 'others' is 8. She notes LBBB's assertion that these 11 requests are the most that it has received from any one individual. However, she notes from the What Do They Know website that one requester has made more than 11 requests to LBBB in a shorter space of time and therefore the complainants in this case are not the worst offenders as LBBB claims.
94. The Commissioner notes too that LBBB has advised that it refers to the situation of excessive requests/complaints as the 80/20 rule but has provided no supporting evidence to demonstrate that it spends 80% of its time dealing with 20% of residents. The reference appears to be internally used vernacular referring to those who may be more persistent than others.
95. It is clear that LBBB considers that the position is unsustainable and the Commissioner can see from the correspondence which LBBB has elected to provide that the complainants are tenacious in pursuing complaints and concerns regarding issues about which they feel strongly. Having considered the issues which appear to be of concern to the complainants and which have resulted in complaints to the Commissioner and to the Ombudsman for Housing Services, it is the Commissioner's position that these are not trivial. The concerns about the use of fleet vehicles for travel to and from work is of course pertinent to the use of public money and it appears that the concern particularly relates to the associated costs of a vehicle used to travel a significant distance to and from LBBB. A further concern was raised when the vehicle in question was parked for a lengthy period some distance from LBBB with the complainant concerned that it was not available for council use. As these issues relate to the use of public money, the Commissioner's view is that there is a serious purpose and value in requests which pursue such matters.
96. Regarding the issue of the possible data protection breach, the Commissioner considers that the complainant should have taken LBBB's advice and, at the time, should have brought the concern to the Commissioner's attention for assessment. She accepts that in pursuing this with LBBB, the complainant has demonstrated a degree of intransigence as there was an obvious avenue of redress via her office. Whilst she does not know if or how this was resolved, the Commissioner considers that the PCSO statement was key to any investigation and that it is not unreasonable to pursue the issue but the manner in which

it was pursued did not demonstrate a reasonable approach. It is unclear whether LBBB responded to the complainant on this issue.

97. Regarding a separate instance surrounding data protection concerns, the Commissioner notes that the complainant did approach her office; this resulted in an assessment that compliance with DPA 1998 was unlikely. The Commissioner's assessment included steps for LBBB to take to ensure that the relevant information was accurate and up to date. She agrees with LBBB that following this assessment, seeking disciplinary action against the individual concerned does demonstrate a degree of intransigence on the part of the complainant given that the matter had been addressed through the appropriate channels.
98. Of note is the fact LBBB has provided detail that the complainants submitted a request for photographs and an engineer's report following a claim for water damage. The same request was made later on the same date but to a different department which has a 10 day response time. The complainants complained that the housing department had not responded within the stated time frame but this was before the deadline for response to the FOIA request. The Commissioner again considers that this approach shows unreasonable persistence as the complainant could not reasonably have expected to receive the information from two different departments. The Commissioner notes LBBB's position that the photographs had in fact been provided prior to these requests. If it is the case that the photographs had been previously provided to the complainants then this would certainly support LBBB's position that the complainants display a degree of unreasonable persistence and intransigence. No mention has been made about the previous provision of the report which was also requested.
99. The Commissioner acknowledges LBBB's position that it has received 332 emails over a period of 20 months but considers that without detail relating to the content of the emails, it is difficult to say whether the number is excessive.
100. LBBB has provided the Commissioner with details of correspondence it considers support its reliance on section 14; it has not provided detail of all of the emails, nor even the majority of emails and has not explained why, other than by virtue of the volume, the emails represent a burden or are excessive or unreasonable. The Commissioner does not know whether the emails required a reply and one has been issued or whether certain emails have not received a reply. With the exception of the references at paragraph 53 of this notice, LBBB has not suggested that the tone of the emails is rude, offensive or otherwise unacceptable
101. Having fully and carefully considered all of the information collated as part of this investigation, the Commissioner considers that there is

clearly a significant breakdown in the relationship between LBBB and the complainants. This has potentially impacted on the actions of both parties on this case and has undoubtedly contributed to the frequency of complainants' correspondence with LBBB; it is similarly possible that the relationship breakdown has influenced the way LBBB handles issues raised by the complainants. It appears that the breakdown has created an environment of distrust, intransigence and unwillingness to compromise by both parties which of course will not be resolved by this decision notice.

102. The Commissioner acknowledges the fact that section 14 is designed to protect public authorities from burdensome or vexatious requests but also must consider whether any public authority seeking to rely on section 14 to refuse to comply with a request for information has in fact contributed in any way to the position of having to treat a request as vexatious.
103. The Commissioner considers it possible that LBBB's approach to the complainants and their complaints has in fact contributed to the amount of complaints and requests made; it appears that LBBB does not always respond to the complainants' correspondence or does not always respond appropriately; this was referenced by the Ombudsman in his report. In these circumstances, any public authority should not be surprised if a complainant seeks redress by continuing to engage with it on those issues.
104. In weighing the evidence in this case, the Commissioner considers that any level of disruption, irritation or distress experienced by LBBB is in fact outweighed, not only by the purpose and value of these requests but by the fact that the Ombudsman's report finds that LBBB has not acted appropriately in handling a complaint regarding the same information. She considers that any reasonable person would find that the purpose and value of the requests are enough to justify the impact on the authority.
105. The Commissioner further considers that in relation to these requests, denying the requester access to the FOIA regime, when there is a clear purpose and value to the requests, would be wholly inappropriate and could potentially set a dangerous precedent whereby tenants may be unable to access information via FOIA which would allow them to confirm that projected and actual costs of service charges are one and the same. This was clearly not the intention of the Landlord and Tenant Act 1985 and given that the complainant has not had the information disclosed under that legislation, the Commissioner considers that his requests cannot be deemed vexatious given the significant wider purpose and value in terms of landlord/tenant relationship.

106. In all of the circumstances of this case, the Commissioner cannot reasonably conclude that the requests are vexatious; she considers that LBBB is not entitled to rely on section 14 to refuse the requests detailed in this notice.

### **Other matters**

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107. The Commissioner considers that it may be appropriate in this case for both LBBB and the complainant to seek to resolve their differences given their respective position as tenant and landlord. In the absence of such attempts, she can only envisage a scenario where her office and other regulatory or ombudsman services are involved in potentially avoidable situations brought about by this relationship breakdown.

108. She would note again that it is the request which is considered when section 14 is relied on and a determination in favour of a complainant in one case does not give that complainant carte blanche to behave in a manner which he or she thinks is acceptable simply because of the Commissioner's finding. Should LBBB consider, in the future, that any further requests fall to be considered under section 14 and those cases are brought to her office, she will consider each on merit.

## Right of appeal

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109. 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 7395836

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)

110. 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.

111. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**