

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 August 2019

Public Authority: Homes & Communities Agency (trading as Homes England)

Address: Windsor House
45-50 Victoria Street
Westminster
London
SW1H 0TL

Decision (including any steps ordered)

1. The complainant submitted two requests about leases. The Homes & Communities Agency ("Homes England") originally refused the requests because it claimed that the cost of compliance would exceed the appropriate limit. The complainant then refined both requests and, once clarified, all the requested information was supplied.
2. The Commissioner's decision is that the Homes & Communities Agency ("Homes England") issued a refusal notice, which complied with section 17 of the FOIA, within 20 working days of the both requests having been made. It was entitled to treat both refined requests as fresh requests, entitled to seek clarification in respect of both requests and responded to both clarified requests within 20 working days – thus complying with its duties under section 10 of the FOIA.
3. The Commissioner does not require any further steps.

Request and response

Request 1

4. On 11 February 2019, the complainant wrote to Homes England and requested information in the following terms:

"[1] Are there any circumstances whereby Homes England/HCA would deem it appropriate to lease a property to a third party without entering into a signed lease agreement?"

[2] If there are any circumstances, does Homes England/HCA carry out any form of risk assessment to ensure their assets and responsibilities are not compromised?

[3] Is there an existing risk assessment policy? If so, when was it last updated and what amendments were made?"

5. Homes England responded on 19 February 2019. It aggregated the above request with five other requests that the complainant had made and refused the aggregated requests under section 12 of the FOIA (cost of compliance exceeds appropriate limit).
6. The complainant then contacted Homes England on the same day to ask that it respond only to the request outlined above. Homes England responded on 20 February 2019 to say that it was treating the correspondence as a fresh request for information.
7. On 26 February 2019, Homes England contacted the complainant to say that it did not consider the wording of elements [1] and [2] to meet the definition of valid requests and that it required clarification of element [3] before it could respond. The complainant provided clarification in respect of all three elements on 26 February 2019 and Homes England responded to the request on 28 February 2019.

Request 2

8. On 8 February 2019, the complainant submitted a request for information in the following terms:

"With regard to the property at the following address;

[redacted]

"It is my understanding Homes England (previously Homes and Communities Agency) lease the property from Derby City Council. I would be grateful if you can confirm the following;

- The dates and amounts of all rental payments received between 01 January 2017 and 07 February 2019."

9. This request was one of the six requests (including Request 1) which Homes England aggregated and refused under section 12 on 19 February 2019.
10. On 27 February 2019, the complainant contacted Homes England again:
"Please re-open and process the attached request numbered [Request 2]."

"Please let me know if there is any reason why you are unable to reopen my request."

11. Homes England acknowledged a fresh request the following day, but wrote to the complainant on 11 March 2019 in the following terms:

"Your request stated that Homes England leases the property from Derby City Council and your request asks for rental payments received. We would not receive payments from the Council if we lease the property from them. Please therefore clarify the wording of your request."

12. The complainant replied the same day to state that he wanted payments made to the Council and not payments received. Homes England responded on 4 April 2019 and provided the requested information.

Scope of the case

13. The complainant first contacted the Commissioner on 27 February 2019 to complain about the way Request 1 had been handled. He subsequently asked the Commissioner to expand the scope of her investigation to include Request 2 as well.
14. The complainant was unhappy with the decision to aggregate his requests but was happy to pursue that matter via an internal review. However he was also unhappy that Homes England had treated his correspondence of 19 February and 27 February 2019 as fresh information requests and therefore given itself an additional 20 working days in which to respond in both cases. He argued that this had been done to circumvent the requirements of section 10 and was in violation of the spirit of the legislation if not the legislation itself.
15. The Commissioner considers that the scope of her investigation is to consider whether Homes England:
- a. responded to either or both original requests.
 - b. was correct to treat either or both of the complainant's correspondence of 19 February and 27 February 2019 as fresh requests for information.
 - c. answered those fresh requests within the statutory timescale.

Reasons for decision

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

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

17. Section 12 of the FOIA states that:

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Minister for the Cabinet Office may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Minister for the Cabinet Office may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

18. Section 17(5) of the FOIA states that:

A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

19. When a public authority receives a valid request under the FOIA. It must normally comply with the requirements of section 1(1) of the FOIA. There are exceptions to this rule, one of which is where the cost of complying with the request(s) would exceed the appropriate limit (which, in the case of Homes England is £450 – or the equivalent of 18 hours of staff time). However, where a public authority wishes to rely on section 12 of the FOIA to refuse the request, it must still issue a refusal notice within 20 working days.

20. In a case such as this, where multiple requests are aggregated for the purposes of a section 12 refusal, the public authority will have breached section 17(5) of the FOIA if it has not issued its refusal notice within 20 working days of the earliest request being submitted.

21. In the present case, Homes England received the complainant's first request (Request 2) on 8 February 2019 and responded seven working days later: within the time limit.

22. Section 17(7) of the FOIA states that:

A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

23. The Commissioner notes that Homes England's refusal notice of 19 February 2019 informed the complainant that it was relying on section 12 to refuse the requests. The refusal notice also provided details of Homes England's internal complaints process and informed the complainant of his right to complain to the Commissioner.

24. The Commissioner therefore concludes that Homes England issued a refusal notice, which complied with all the requirements of section 17, within 20 working days. Homes England therefore did not breach the FOIA in the way it responded to either Request 1 or Request 2 as they were originally submitted.

Section 16 – Advice and Assistance

25. 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.

26. In cases where a public authority is relying on section 12 of the FOIA to refuse requests, the Commissioner expects the requestor to be provided with advice and assistance to help them refine their request such that it will fall within the cost limits.

27. In the case of the above request, when refusing his request, Homes England informed the complainant that:

"you may wish to consider narrowing the scope of your requests and/or only submitting one request at one time."

28. Whilst the Commissioner does not consider informing a requestor that they "may wish to refine their request" to be adequate advice and assistance – as it does not indicate *how* the request might be brought within the cost limit – Homes England did suggest that the complainant might wish to focus on only one of his requests – which the Commissioner does consider to be reasonable advice and assistance. She therefore concludes that Homes England did discharge its section 16 duty.

The refined requests

29. Section 1(3) of the FOIA states that:

Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

30. Section 10(1) of the FOIA states that a public authority must comply with respond to a request "promptly and within 20 working days of the date of receipt."

31. Following Homes England issuing its refusal notice, in which it aggregated the six requests, the complainant asked Homes England to

process Request 1 alone. Homes England chose to process this as a fresh request. The complainant then chose to re-submit Request 2 and Homes England treated that as a fresh request too.

32. The complainant felt that this was contrary to the spirit of the legislation because it allowed a public authority to extend the time for compliance. He argued that Homes England should have "reopened" both original requests and answered them within 20 working days of them first having been submitted.
33. This argument is misconceived as Homes England *did* respond to the original requests: by issuing a refusal notice relying on section 12. The complainant thus had two options. He could either submit a different request or he could clarify elements of his previous request such that it could be dealt with within the cost limit. Either way, because the original requests had been *responded to*, any refinement would have to be a fresh request.
34. In essence it would be immaterial which course of action the complainant chose as, regardless, the public authority would have twenty working days in which to process any further request which it received.
35. The Commissioner considers that it was reasonable for Homes England to seek clarification in relation to both requests to ensure that it would be providing the complainant with the information that he was seeking.
36. Where a public authority is unclear on the scope of an information request, it is obliged to seek clarification from the requester. In that situation, because the clarified request is effectively a new request, the public authority has 20 working days to respond to the request from the date that the clarification is provided. However, she does consider that when a public authority exercises its right to request clarification, it should do so promptly and well in advance of the 20 working days.
37. In the case of Request 1, the Commissioner considers that the complainant's email of 19 February 2019 was a fresh request for information. Homes England responded to that request within 20 working days and thus complied with section 10 – the Commissioner also notes that the response was provided within 20 working days of the original request being made.
38. In the case of Request 2, the Commissioner considers that the complainant's email of 27 February 2019 was a fresh request for information. Homes England was correct to seek clarification of the request. The complainant provided clarification on 11 March 2019 and

Homes England responded within 20 working days of the request being clarified. It thus complied with its section 10 duties.

Other matters

39. Finally the complainant has invited the Commissioner to reconsider the amount of time allowed for a public authority to comply with requests where clarifications are sought. The Commissioner has no powers to do so. The various deadlines are set down in law, which can only be altered by Parliament.

Right of appeal

40. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.
42. 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

**Ben Tomes
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