

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2019

Public Authority: London Borough of Waltham Forest
Address: Town Hall
Forest Road
London
E17 4JF

Decision (including any steps ordered)

1. The complainant requested a blank copy of the tenancy agreement issued by the London Borough of Waltham Forest (the London Borough) to temporary tenants.
2. The Commissioner's decision is that the London Borough provided the requested information to the complainant within twenty working days, but, in the first instance, failed to provide it in the format specified by the complainant. The Commissioner therefore decides that the London Borough breached section 11(1) of the FOIA.
3. The Commissioner does not require steps to be taken in response to this decision notice.

Request and response

4. On 21 March 2018, the complainant wrote to the London Borough and requested a blank copy of the tenancy agreement issued by the London Borough to temporary tenants. In their request, they specified a preference that this be provided to them in paper format and sent to a stated address.
5. On 16 April 2018, the London Borough wrote to the complainant via email to provide the requested information.
6. The London Borough later provided a hard-copy to the complainant. The complainant stated to the Commissioner that this was received on 21 April 2018 and 21 April 2019.¹
7. The London Borough completed an internal review of the handling of this request on 24 September 2019. The London Borough states that this was in consideration of the complainant's correspondence to the Commissioner. It is not clear to the Commissioner what correspondence this refers to.

Scope of the case

8. The complainant contacted the Commissioner on 27 September 2019 to complain about the London Borough's handling of their request. The complainant identified a breach of section 11 of the FOIA. The complainant also raised a number of complaints about behaviour of the London Borough that would not constitute statutory breaches of the FOIA. These latter complaints are addressed in the 'Other Matters' section of this notice.
9. For reasons set out in the 'Other Matters' section of this notice, the Commissioner has elected to issue a decision notice in respect of this complaint.

Reasons for decision

Timeliness

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

¹ Whilst this appears to have been stated to the Commissioner in error, her decision would be unchanged were either of these dates determined to be the correct one.

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.*

11. Section 10 of the FOIA states the public authority "*must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.*"
12. Having provided the requested information to the complainant on 16 April 2018, the Commissioner considers that the London Borough complied with section 1(1) within twenty working days and thus discharged its obligations under section 10 of the FOIA.

Form and format

13. Section 11(1) of the FOIA states that:

Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely—

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,*
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and*
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,*

the public authority shall so far as reasonably practicable give effect to that preference.

14. In determining whether, having failed to provide requested information to a complainant in a requested format, a public authority has breached section 11(1) of the FOIA, the Commissioner must consider whether it was "*reasonably practicable*" for the public authority to give effect to the complainant's stated preference.
15. Whilst the Commissioner has not had sight of the requested information, she notes the following comment in the London Borough's internal review:

"Having reviewed the document requested I am of the view that printing a 20 page document would not result in a cost that would render the request unreasonable. The service has arranged for this to be sent to you by post."

16. As it is clear that the London Borough *itself* considers that the complainant's preference for a hard-copy was not unreasonable, the Commissioner has no reason to doubt that it was in fact reasonably practicable to give effect to the complainant's stated preference.
17. Therefore, in failing to give effect to this preference in its initial 16 April 2018 response to the request, the Commissioner considers that the London Borough breached section 11(1) of the FOIA.
18. Having now provided the complainant with a hard-copy of the requested information, the Commissioner considers that there are no appropriate steps to order in response to this notice.

Other matters

Issuing of a Decision Notice

19. Under section 50 of the FOIA and Regulation 18 of the EIR, anyone may complain to the Commissioner regarding a public authority's response to their information request. However, section 50(2)(b) of the FOIA sets out that the Commissioner is under no duty to deal with a complaint if she considers that there has been undue delay in bringing it to her attention. The Commissioner expects complaints to be submitted to her within three months of a public authority's refusal of, or failure to respond to, an information request.
20. Given the age of the request, the age of the London Borough's response, and the significant delay between this response and the apparently unsolicited internal review, the Commissioner considered that undue delay had occurred in bringing this matter to her attention.
21. However, the provisions of section 50(2) do not *preclude* the Commissioner from reaching a decision where she is otherwise not obligated to do so.²
22. Given the usual circumstances surrounding the completion of an internal review in this case, the Commissioner has elected to, as an exception, issue a decision notice in this case.

² <http://www.legislation.gov.uk/ukpga/2000/36/notes/division/4/4/1>

Re-delivery of a hard-copy of the requested information

23. In their correspondence to the Commissioner, the complainant stated that *"On page 2 of the FOI Review, the LBWF continue to demonstrate their poor case handling and inaccuracies. They state "the service has arranged for this to be sent to you by post" in relation to the requested information. The "service" already hand-delivered the document [...]"*
24. Whilst the Commissioner *is* concerned by the London Borough's apparent inability to identify if the requested information had been provided to the complainant at the time of the internal review, the provision of a surplus copy of the requested information would not amount any statutory breach of the FOIA. It would be counter-intuitive to find that a public authority breached the FOIA by *twice* discharging its obligations to provide the requested information to the complainant.

"Medical reasons" for the use of a particular service

25. The Commissioner understands that the London Borough offers an online portal which provides requestors with the ability to submit requests online and access to information relevant to their request, including the London Borough's responses.
26. In its 24 September 2019 internal review, the London Borough invited the complainant to provide any *"medical reasons"* why they would be unable to use this portal. The London Borough stated that such an explanation could be considered as grounds for an *"exception to your ongoing requests for the information to be provided to you in a printed format."*
27. Having already communicated her concerns to the London Borough directly, the Commissioner would reiterate her advice that they *"cease asking requestors if there is any medical reason why they could not comply with the [London Borough's] preferences for the submission of requests for information."*
28. Whilst it is not within the scope of the foregoing notice to reach a formal decision on the proportionality of the processing of a person's personal data, the Commissioner believes that it is unlikely that such requests for sensitive personal data are proportionate to their aims. She again reminds the London Borough of its obligations under the GDPR and Data Protection Act 2018 in regards to Special Category data (which would include medical data).

The London Borough's processing of FOIA requests

29. The complainant also wrote that *"I would like the ICO to carry out an investigation into the internal practices of the public authority. On page*

2 of the FOI Review, they state that FOIAs are processed through some type of unknown external link. That is an untruth. [...] Suggesting otherwise might be the council's underhanded way of getting me/other requesters to use a [particular] method; which I am under no obligation to do."

30. The complainant went on to say "On page 2 of the FOI Review, they state that "I recognise that you are aware of this service³ having utilised it previously..." This is a false claim. I have never used any unknown external link."
31. The Commissioner would agree with the complainant that they are under no obligation to submit their requests to the London Borough via any particular online portal. However, she would remind the complainant that her remit is to consider whether or not public authorities have complied with their obligations under the FOIA. She is therefore unable to adjudicate claims about whether a complainant has or has not made use of a service previously.
32. Further, as there are no obligation under the FOIA for public authorities to process requests – internally – in one way or another, the Commissioner is unable to adjudicate on questions around the London Borough's internal processing activities.
33. However, whilst the Commissioner notes that public authorities *are* entitled to encourage requestors to use particular methods for making requests, she would repeat advice previously communicated to the London Borough: "*whilst the [London Borough] can express a preference for the manner in which requests are made, it **cannot require** that requests are made in their preferred format, assuming that these requests otherwise meet the criteria of a valid request [under section 8 of the FOIA]."* [emphasis added]
34. Lastly, whilst the FOIA does not oblige public authorities to process requests – internally – in one way or another, the manner in which a public authority chooses to process requests for information must not result, as a matter of course, in repeated contraventions of section 11 of the Act, including section 11(1).

³ The London Borough's aforementioned online portal

Right of appeal

35. 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

36. 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.
37. 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

Phillip Angell
Group Manager
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Wycliffe House
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