

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2020

Public Authority: Charnwood Borough Council
Address: Southfield Road
Loughborough
LE11 2TN

Decision (including any steps ordered)

1. The complainant has requested information with regards to property lettings. The council provided some information but refused to provide the remaining information relying on section 12 of the FOIA as it determined it would take over the appropriate limit.
2. The Commissioner's decision is that section 12 of the FOIA is engaged. She has also found that the council has breached section 16 of the FOIA in not providing appropriate advice and assistance to the complainant.
3. However, as section 12 of the FOIA is engaged in respect of the core information of interest, the Commissioner does not require the council to take any steps.

Request and response

4. On 7 March 2019 the complainant made the following information request to the council with regards to housing:

"I request the Previous policy not amended (new policy). For nominations and allocations Also a foi. For All 2-3 bed property's [sic] advertised on cbl including individual references no to these property's since 16/4/18

And band effective date to match each property allocated."

5. The council responded on the 20 March 2019 attaching a copy of the previous Allocations Policy and advised that the remaining requested information will be provided within the 20 working day timescale.
6. The complainant contacted the council on 5 April 2019 as she had not received the remaining response.
7. On 11 April 2019, whilst responding to a different information request, the council responded to the remaining part of the above request regarding the list of all 2 and 3 bed properties advertised on the Choice Based Lettings system (CBL).
8. The council advised that providing this information has required officers to do a manual exercise to collate the information, and it has therefore not been able to go back as far as 2016.
9. The council explained that the FOIA only requires the council to carry out up to 18 hours of work on a request and so the amount of data it has managed to collate in this timeframe is a list of adverts between 16 April 2018 and 19 March 2019.
10. The council advised the complainant that the first attached list shows the reference number, landlord, date and number of bedrooms. The second list only shows Charnwood Borough Council adverts for the same period, but also includes the banding of the household who the property was allocated to, and the effective date that that household received the banding.
11. The council pointed out that not everyone on the waiting list would have been eligible to bid on all properties displayed on the spreadsheets. It stated that this may have been because there were minimum age requirements, minimum or maximum occupancy or other specialist eligibility criteria such as adaptations.
12. The council further explained that when properties are advertised on multiple adverts, the adverts often need to be split to enable shortlisting to be completed and when this is done the system generates additional reference numbers.
13. On the same day, the complainant contacted the council stating that it had failed to provide the 'banding effective dates' and what priority these people were in.
14. The council responded that same day to explain that the banding and effective dates for the council properties were able to be included within the time limit. But it was not able to provide all the housing associations effective from dates in the attachment titled 'CBL adverts' because it would need to collate these manually which would exceed the 18 hours.

15. The council carried out an internal review on the 13 May 2019 upholding its application of section 12 of the FOIA.

Scope of the case

16. The complainant contacted the Commissioner as she was not satisfied with the council refusing to provide the remaining information.
17. The Commissioner considers the scope of the case is to determine whether the council can rely on section 12 of the FOIA to refuse to provide the rest of the information held. The requestor has reiterated that the information of principal interest is the 'band effective date' for the properties of interest and this is where the Commissioner's consideration will focus initially.

Reasons for decision

Section 12 of the FOIA – Appropriate Limit

18. Section 12 of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
19. The Freedom of Information and Data Protection (Appropriate Limit and Fees) regulations 2004 ("the Fees Regulations") sets the appropriate limit at £450 for the council.
20. A public authority can charge £25 per hour of staff time for work undertaken to comply with a request in accordance with the appropriate limit set out above. This equates to 18 hours of officer time. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider time taken in:
 - a) Determining whether it holds the information;
 - b) Locating the information of a document which may contain the information;
 - c) Retrieving the information, or a document which may contain the information, and
 - d) Extracting the information from a document containing it.
21. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner asked the council, with

reference to the four activities above, to provide a detailed estimate of the time/cost it would take for it to provide the information, to clarify whether a sampling exercise has been undertaken and confirm that the estimate has been based upon the quickest method for gathering the information.

22. The Commissioner also asked the council, when providing these calculations, to include a description of the nature of work that would need to be undertaken, explaining that an estimate for the purposes of section 12 has to be 'reasonable'. Thus, it is not sufficient for a public authority to simply assert that the appropriate limit has been met; rather the estimate should be realistic, sensible and supported by cogent evidence.
23. The information that has not been provided in this request is the 'banding effective dates' and what priority these people were in.
24. The council has told the Commissioner that it obtained a list of all property adverts from the Abrisas/Civica Choice Based Lettings system that were created for lettings cycles that ended between 16 April 2018 and 18 March 2019.
25. There was also a QL system, used to manage housing applications and council tenancies. The council has told the Commissioner that the QL and Abrisas/ Civica systems had a limited interface between them, but the interface would not allow the collation of the information requested by the complainant.
26. In order for the council to provide the information, the list from the Abrisas/ Civica Choice Based Lettings system firstly needed to be filtered in order to exclude the adverts that were created but did not actually go live on the customer bidding system, such as adverts created in error or withdrawn by a landlord due to the property no longer being available.
27. This produced a list of 346 2/3 bedroom properties that were advertised between the search dates. 176 of these were Registered Provider properties and 170 were council properties. This list did not detail the successful applicants or the banding/ banding effective dates for these applicants.
28. The council would need to manually check system records to confirm and add in the missing information.
29. The council has advised the Commissioner that, for all properties, it takes approximately one minute to look at each entry on the spreadsheet, search for and locate the relevant advert record on the Abrisas/ Civica system, then a further minute to review each advert to confirm whether the advert went live and whether the property was let.

30. Once a successful applicant had been identified, the council states it would then have to search for and check the successful applicant's application record on the QL system to confirm their banding and effective date, which again was estimated to take approximately 1 minute per record.
31. In addition to this the council has told the Commissioner that for the 176 properties managed by registered provider, the process for selecting successful applicants from the shortlist is fully managed by the registered providers, not the council. There is often a significant delay in the registered providers updating the Abrisas/Civica system, and so the council would not be able to see whether the property was let or who the successful applicant was. For these cases the council says it would have to contact the registered providers and ask them to confirm whether the property was let and which applicant it was let to. For this, the council has estimated would take approximately five minutes per case to contact and confirm the details with the registered providers.
32. The council has estimated that even if all the data, including that of the registered providers, was all up to date on the Abrisas/Civica system it would take approximately 5 minutes per property to collate the information in order to provide the banding effective dates for each property.
33. 5 minutes for each of the 346 properties would take over 28 hours of officer time. However, as explained above, due to the delays with registered providers updating the system this estimate would significantly increase where its officers would have to spend the further 5 minutes for each of the 176 registered providers properties.
34. The council therefore only provided the complainant with the banding effective dates for its 170 properties which it says took 15 hours (approx. 5 minutes 30 seconds per property) to provide. Anything further, i.e. providing the registered providers banding effective dates, it determined would have taken matters over the appropriate limit.
35. The Commissioner on review of the above, has considered the council's submissions and explanations for the time it would take to provide the information. She is satisfied with how the estimates have been explained and is supported by the fact that it took the council 15 hours to provide the information for its own 170 properties. (Taking approximately 5 minutes 30 seconds per property.)
36. Providing the registered providers 176 property effective banding dates would take at least a further 15 hours plus the time it would take the council to contact them about each of these properties.

37. The Commissioner therefore finds that it would take over the appropriate limit of 18 hours for the council to provide the information and finds section 12 of the FOIA is engaged.

Section 16 of the FOIA – Advice and Assistance

38. Section 16 of the FOIA imposes an obligation on public authorities to provide advice and assistance to a person making a request, so far as it is reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in section 45 of the Code of Practice¹ in relation to the provision of advice and assistance.

39. Paragraph 14 of Section 45 of the Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or refocusing their request, information may be able to be supplied for a lower, or no, fee."

40. In this case, the council worked up to the appropriate limit of 18 hours and provided the information it had managed to obtain and applied section 12 of the FOIA to provide the outstanding information.
41. Essentially the council refined the complainant's request without confirming with the complainant whether or not she wanted to refine the request.
42. Under section 16 of the FOIA, a public authority should provide advice and assistance, where appropriate, to help the requestor refine the request, not simply go ahead and refine the request for the requestor.
43. The Commissioner therefore finds that the council has breached section 16 of the FOIA.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

44. Paragraph 63 of the Commissioner guidance² to section 12 of the FOIA states:

... "failure to provide advice and assistance does not invalidate the original cost estimate. Although such a failure may of course mean that the public authority have breached section 16."

45. Therefore, even though the Commissioner has found that the council breached section 16 of the FOIA in not providing advice and assistance to the complainant, section 12 of the FOIA is still engaged to the complainant's request.
46. The Commissioner in this instance does not require the council to take any steps as it is found that a refinement would still engage section 12 due to the circumstances described above, but she does recommend that the council takes note of its obligations under section 16 of the FOIA for any future request it may receive.

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Right of appeal

47. 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

48. 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.
49. 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

Andrew White
Group Manager
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