

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 9 March 2020

Public Authority: London Borough of Waltham Forest

Address: Corporate Legal Services

Town Hall

Forest Road

London

E17 4JF

Decision (including any steps ordered)

1. The complainant has requested information on income and expenditure regarding specified properties.
2. The Commissioner's decision is that the London Borough of Waltham Forest (the Council) is not entitled to rely on section 12 to refuse to comply with this request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response that does not rely on section 12.
4. 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.

Request and response

5. On 14 June 2019, the complainant wrote to the Council and requested information in the following terms:

"I am writing to make an open government request for all the information to which I am entitled under the Freedom of Information Act 2000. Please provide me with the following:-

- 1) The income received in rent and service charges from homes and businesses in the Wood Street area (including the Marlowe Road Estate)*
 - 2) The expenditure on repairs and maintenance for the Marlowe Road Estate for the period 2010 – 2016."*
6. The complainant requested that the information be provided in paper format to her home address.
 7. The Council acknowledged the request on 15 July 2019 but failed to provide a substantive response within the statutory timeframe.
 8. On 2 September 2019, the Commissioner issued a decision notice requiring the Council to provide a substantive response under the Act.
 9. The Council responded in a letter dated 3 September 2019. It provided information within the scope of request 1 but withheld the information within the scope of request 2 citing the "cost threshold".
 10. On 6 September 2019, the complainant wrote to the Council and requested an internal review of the handling of her request for information. The complainant's reasons for requesting an internal review included:
 - The Council's breach of section 10
 - The lack of a cited exemption
 - The lack of advice and assistance as required under section 16
 11. In a letter dated 5 September 2019 (received 13 September 2019), the Council provided the outcome of its internal review.
 12. The Council claimed a response had been provided on 30 July 2019 by email and a paper copy provided on 3 September 2019. The Council also claimed that the complainant had requested a paper copy of its response in addition to the electronic copy provided.
 13. The Council explained that it had experienced difficulties with staffing and technical problems and that both of these were in the process of being improved.

14. The Council did not address the complainant's concerns regarding the lack of exemption and advice and assistance in the refusal notice dated 3 September 2019.

Scope of the case

15. The complainant contacted the Commissioner on 17 September 2019 to complain about the way her request for information had been handled.
16. The Council confirmed to the Commissioner that it was relying on section 12(1) to refuse to comply with the request.
17. As the Council has provided the information within the scope of the first request. The Commissioner considers that the scope of this investigation is to determine whether the Council is entitled to rely on section 12 to refuse to comply with the second request.
18. The Commissioner will also consider the Council's procedural breaches in responding to this request. As set out above, the Commissioner has also issued a decision notice¹ finding that the Council breached section 10 by not complying with section 1 of the Act within the statutory time frame.

Reasons for decision

Section 12: Cost of compliance exceeds appropriate limit

19. Section 12(1) of the Act states:

"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."

20. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004² (the Fees Regulations) at £600 for central government departments and £450 for all other public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per

¹ FS50860466

² <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

hour. This means that the Council may refuse to comply with a request for information if it estimates that it will take longer than 18 hours to comply.

21. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take in account the costs it reasonable expects to incur in;
- a. determining whether it holds the information;
 - b. locating the information, or a document containing it;
 - c. retrieving the information, or a document containing it; and
 - d. extracting the information, or a document containing it.
22. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation, however, the Commissioner considers that the estimate must be reasonable. The Commissioner follows the approach set out by the Information Tribunal in the case of *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency (EA/2006/0004, 30 October 2007)* which stated that a reasonable estimate is one that is "...sensible, realistic and supported by cogent evidence".

The Council's position

23. The Council's submission consisted solely of the below table:

	Describe the work required to undertake this activity	Estimated number of hours to conduct this activity	Total cost (£25 x no of hours)
determining whether the information is held;	Archive information will need to be located and the relevant information obtained	10	£250
locating the information, or a document which may contain the information,	Having identified the relevant information each document will need to be reviewed and referenced	40	£1000

retrieving the information, or a document which may contain the information;	As above		
extracting the information from a document containing it.	As above		
Total		50	£1,250.00

The Commissioner's position

24. The Commissioner is disappointed and concerned at the quality of the Council's submission. The Commissioner considers that the level of information required to justify a public authority's reliance on section 12(1) is well established. The Commissioner has issued detailed guidance on section 12 and there are currently more than 500 decision notices setting out the Commissioner's position on section 12 on her website³. In addition, the Act has been in force for 15 years and she would consider that a large Council should be aware of the procedural basics of the Act. However, as set out above, the Council has simply stated a number of hours as the section 12 estimate.
25. As set out in paragraph 22 of this notice, the Tribunal has set out that estimates should be "*...sensible, realistic and supported by cogent evidence*".
26. The Council has not provided any information regarding why it would take 50 hours to extract the requested information and without any explanation as to how the Council's has calculated this estimate, the Commissioner cannot find that this is a reasonable estimate of the time required.
27. The Council also failed to provide details of its sampling exercise despite being explicitly asked to do so. The Commissioner therefore considers that she has not been provided with cogent evidence to support the Council's reliance on section 12.

³ <https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=decisions&query>

28. For the reasons above, the Commissioner is not satisfied that the appropriate limit will be exceeded by complying with the request.
29. The Commissioner's decision is that the Council is not entitled to rely on section 12(1) to refuse to comply with the complainant's request.
30. The Commissioner requires the Council to provide the complainant with a fresh response which does not rely on section 12 of the Act.

Section 16: Duty to provide advice and assistance

31. Section 16 of the Act states:

"(1) 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.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

32. The Commissioner's guidance on section 12 of the Act explains that:

"In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

- *either indicate if it is not able to provide any information at all within the appropriate limit; or*
- *provide an indication of what information could be provided within the appropriate limit; and*
- *provide advice and assistance to enable the requestor to make a refined request."*

33. The Commissioner considers that despite her decision that section 12 is not engaged in this case, at the time of issuing the refusal notice the Council were obliged to provide advice and assistance to the complainant. Having reviewed the refusal notice, it is clear that the Council did not provide any advice and assistance to the complainant to aid her in refining her request.
34. The Commissioner therefore considers that the Council breached section 16 by not providing advice and assistance in its refusal notice.

Section 17: Refusal of request

35. Section 17(5) of the Act states:

"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."

36. The Council did not provide its refusal notice within the statutory timeframe and the refusal notice did not confirm to the complainant that it was relying on section 12(1) to refuse to comply with her request.
37. The Commissioner therefore finds that the Council breached section 17 by not complying with the requirements of a refusal notice.

Other matters

38. The Council stated that it did provide the complainant with a response by email prior to the Commissioner's decision notice but outside of the statutory timeframe. The complainant has confirmed that she did not receive this email.
39. The Commissioner would therefore recommend that the Council checks that the email response was sent to the correct email address and that an inappropriate disclosure has not occurred.

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

Victoria Parkinson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF