

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 February 2020

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

#### Decision (including any steps ordered)

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1. The complainant requested copies of information about energy charges provided to new residents of specific properties. The London Borough of Waltham Forest ("the London Borough") provided all the information it held within the scope of the request.
2. The Commissioner's decision is that London Borough complied with its duty under section 1(1) of the FOIA within 20 working days. It also complied with its section 11 duty to communicate the information it held in the format the complainant had requested. The Commissioner therefore finds that the London Borough did not breach either aspect of the FOIA in responding to the request. However she has made some more general comments in the "Other Matters" section of this notice.
3. As no breach of the Act has occurred, the Commissioner does not require any remedial steps to be taken.

#### Request and response

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4. On 11 April 2019, the complainant wrote to the London Borough and requested information in the following terms:

*"Please will you provide me with the following:-*

*[1] A statement of energy and charges (KWH, standing charges etc) relating to Moreno House, Buchanan House and Hopson House.*

*[2] Copies of all correspondence sent to the residents of the aforementioned tower blocks notifying them of their energy and charges.*

*"I would like the above information to be provided to me in paper format and sent to the following address as per below:-"*

5. The London Borough responded by email on 14 May 2019. It provided the complainant with the information it held within the scope of element [1] and stated that *"no other related documents have been sent to residents of these blocks."* A hard copy of these documents appears to have been dispatched the same day but did not reach the complainant until 16 May 2019.
6. The complainant sought an internal review on 29 August 2019. She did not consider that the London Borough had responded to both elements of the request and considered that, by responding via email, it had breached section 11 of the FOIA.
7. The London Borough completed its internal review on 25 September 2019. It upheld its original response but provided some further explanation as to why it did not hold information within the scope of element [2]. It also provided a fresh hard copy of the information it had disclosed when it first responded to the request.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 28 September 2019 to complain about the way that the London Borough had responded to the request.
9. At the outset of her investigation, the Commissioner wrote to the complainant, explaining that, based on the evidence in front of her, it seemed likely that the London Borough would have breached section 11 of the FOIA by responding to the request by email. However, following an exchange of correspondence with the complainant, it became clear that the London Borough had also posted a hard copy of the requested information, which was apparently received by the complainant on 16 May 2019.
10. The complainant was also unhappy that the additional explanations that the London Borough had offered did not accord with the anecdotal

evidence she had received from residents of the blocks and she wanted a decision notice to address this.<sup>1</sup> The Commissioner noted the concerns but pointed out that her investigation was restricted to determining whether the London Borough had complied with section 1(1) of the FOIA. Determining whether the London Borough had followed appropriate processes for dealing with residents (and the Commissioner expresses no view on the matter) would be beyond the Commissioner's jurisdiction and should be dealt with via other means.

11. Having reconsidered the matter, the Commissioner informed the complainant that she no longer considered that a breach of the FOIA had occurred and thus issuing a decision notice would serve no useful purpose. She therefore advised the complainant that, in the absence of direct request for a decision notice, she would consider the complaint to have been resolved informally and would not issue a decision notice. The complainant did not respond to this invitation directly, but drew attention to further perceived issues in the Council's information request handling through a number of other issues brought before the Commissioner. The Commissioner will address this point further under Other Matters.
12. As no specific agreement to withdraw the complaint has been received by the Commissioner, she will proceed to a decision notice as per the original grounds of complaint, the scope of which was to consider whether the London Borough has complied with section 10 and section 11 of the FOIA.

## Reasons for decision

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13. 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*

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<sup>1</sup> The London Borough explained that the reason it did not hold information in recorded form was because its staff had explained the energy charges verbally to residents when they moved in. The complainant argued that residents could not have been properly consulted in this way as the relevant agreement had not been finalised at the time these discussions were supposed to have taken place.

*(b) if that is the case, to have that information communicated to him.*

14. Section 8(1) of the FOIA states:

*In this Act any reference to a "request for information" is a reference to such a request which –*

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

15. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

16. Section 10 of the FOIA states that a public authority must discharge its duty under section 1(1) of the FOIA *"promptly and in any event not later than the twentieth working day following the date of receipt."*

17. The complainant is clearly dissatisfied with the process that the London Borough used to inform its residents about energy charges, however she has not disputed or provided any evidence which would suggest that the London Borough does hold additional information in recorded form. The Commissioner is therefore satisfied that the London Borough has complied with its section 1(1) duty and did so when it initially responded: stating that it held no further information.

18. Because of the bank holidays over Easter, the 20<sup>th</sup> working day after 11 April 2019 was 14 May 2019. A public authority is taken to have "complied" with the request at the point at which the response is sent, not the point at which that response is received. Clearly with electronic communications, both events will happen almost simultaneously – but when a response is sent by post, there will be a time lag. As the complainant received the hard copy two days after the twentieth working day, it seems logical to assume that the electronic and hard copy responses were dispatched on the same day, but the hard copy took two additional days to arrive by post. The Commissioner is therefore satisfied that the London Borough complied with the request within 20 working days. She thus finds no breach of section 10 of the FOIA in the way the London Borough responded.

## Section 11 – Means of Communication

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

*Where, on making [her] request for information, the applicant expresses a preference for communication by any one or more of the following means...the public authority shall so far as reasonably practicable give effect to that preference.*

20. The London Borough appears to have sent two responses to the request: one in hard copy sent via surface mail and one electronically. Not surprisingly, the hard copy did not arrive until two days after the electronic version – although both versions appear to have been sent on the same day.
21. The complainant argued that because the London Borough had responded electronically (and she received the electronic copy first), it had breached section 11. She also complained that, by sending her a fresh hard copy of the information when providing the outcome of its internal review (in addition to the electronic and hard copy it had already supplied), the London Borough had unnecessarily duplicated its efforts.
22. The complainant clearly specified, when making the request, that she wished to be provided with the information in paper format. The London Borough responded to the request, within 20 working days and provided her with copies of the information it held, in paper format. The fact that, possibly for reasons of convenience, it decided to respond electronically as well does not mean that it did not discharge its duties under section 11 of the FOIA.
23. Whilst the complainant's points about unnecessary duplication of effort are not unreasonable, the Commissioner does not consider that they constitute a statutory breach of the legislation: it is for the London Borough to determine how it deploys its resources. She therefore finds that the London Borough did not breach section 11 of the FOIA in responding to the request.

## Other matters

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### *Online Portals*

24. The Commissioner wishes, once again, to place on record her concern about the London Borough's internal review which asked the complainant to provide "*any medical reasons*" which would prevent her from submitting requests via its online portal "*so that the Council may consider an exception to your ongoing requests for the information to be provided to you in print format.*"
25. The Commissioner recognises that many public authorities do have an online portal for people to submit and manage requests for information. Well-designed portals allow the public authority to respond quickly and effectively to requests for information – which is clearly helpful in promoting access to public information. However, the Commissioner has a number of concerns about the wording of the London Borough's internal review.
26. Firstly, whilst a public authority is entitled to *encourage* would-be requestors to use an online portal, it cannot *compel* them to do so. The wording of section 8 of the FOIA only requires a request to be made in written format in order for it to be valid. If a requestor, for whatever reason, wishes to submit their request via email or via letter, a public authority cannot treat the request as invalid just because it hasn't arrived via the preferred route.
27. Secondly, the wording appears to suggest that the London Borough is somehow "doing the complainant a favour" by offering to provide information in hard copy. In fact, it would merely be complying with its legal obligation under section 11 of the FOIA.
28. It is not within the gift of a public authority to decide, on a whim, whether to give effect to a requestor's preference for receiving information in a particular form or format. The public authority *must* give effect to that preference unless it is not *reasonably practicable* to do so.
29. The Commissioner notes that although the London Borough's online portal provides responses in an electronic format, it is in a format that allows the requestor to download or print the information as necessary. Whilst she accepts that many requestors would be happy to receive information in this way if asked, there is no legal means by which the London Borough can *require* a requestor to receive information in this way and it should avoid suggesting otherwise.

30. Finally, the Commissioner is particularly concerned that the London Borough appears to be giving the impression that it requires would-be requestors to hand over Special Category personal data about themselves in order to have a request fulfilled.
31. Not only is such an activity explicitly *not* required by any provision of the FOIA, but the Commissioner considers that it would potentially be incompatible with Article 5(1)(c) of the General Data Protection Regulation which states that personal data processed by a data controller shall be:

*adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (data minimisation).*

#### *Engagement with the Commissioner*

32. In correspondence with the Commissioner, the complainant expressed her unhappiness at the burden of responding to the Commissioner's requests for documents, clarifications of her grounds of complaint and preferences for resolving some of the various complaints she has pending before the Commissioner. The complainant argued that she could not be expected to respond in a timely fashion because she had "*other commitments and responsibilities.*"
33. The complainant is of course entitled submit as many complaints to the Commissioner as she feels are necessary. However, it should be reasonably obvious that, in order to deal with a complaint, the Commissioner will need a certain amount of input, from the person submitting it, to understand the precise nature of the complaint and what steps might be necessary to resolve it. The Commissioner considers that it should also be reasonably obvious that the higher the volume of complaints submitted, the higher the necessary volume of correspondence from her office there will be.
34. Nonetheless, Section 50 of the Act identifies specific criteria a complaint must satisfy before the Commissioner can consider a complaint to be eligible. In order to comply with these statutory requirements and clarify the scope of any complaint, it is inevitable that the Commissioner will require some levels of engagement with any party bringing a complaint for consideration to ensure that there is a legal basis to proceed.

## Right of appeal

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**