

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 2022

Public Authority: Leeds City Council
Address: Civic Hall
Leeds
LS1 1UR

Decision (including any steps ordered)

1. On behalf of their parent, the complainant has requested information about properties to let through a series of requests. Leeds City Council ('the Council') released some relevant information. The complainant is generally dissatisfied with how the Council has managed their requests.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, the Council has disclosed all the information it holds that is relevant to Request 3 and Request 4 and has complied with section 1(1) of FOIA.
 - The Council did not comply with section 10(1) as it did not communicate all the relevant information it holds within the required timescale.
3. The Commissioner does not require the Council to take any remedial steps.

Requests and response

Request 1

4. Through their MP, on 14 August 2020 the complainant requested information of the following description on their parent's behalf:

- “1. How many 1 bed properties, including non-sheltered bungalows and those with an age limit have been let in Outer East Leeds since the housing paper moved online? The areas we want included are Garforth, Whitkirk, Swillington, Crossgates, Kippax, Colton, Halton, Micklefield, Barwick in Elmet, Aberford and Woodlesford. We would like the figures to be broken up into types of properties I.e. 50 non-sheltered bungalows in Garforth, 12 1 bed flats in Halton, 25 for over 55s etc.
 2. We would also like to know how many of the above properties were shown on my [redacted] list during this time.
 3. How many direct lets were given since the paper moved online in the above areas?
 4. What was the youngest age of someone let an over 55's property in Leeds in the last year?
 5. What is the level of input that the algorithm requires to create these lists? Are they updated with details by humans regularly or were they updated once by humans initially and have not been manipulated since?”
5. On 7 September 2020 the Council responded. It handled the request under the Environmental Information Regulations (EIR), addressing the five parts of the request. With regard to question 1, the Council disclosed information in the form of two tables.

Request 2

6. On 22 September 2020 the MP wrote to the Council and requested the following information:
- “Further to the recent response to the FOI request that I made on behalf of my constituent, I would be most grateful if the following three questions could also be answered:
1. Please provide addresses of the properties which came up on [redacted] Leeds Homes on-line profile?
 2. How many direct lets have been made in the areas identified (Garforth, Whitkirk, Swillington, Crossgates, Kippax, Colton, Halton, Micklefield, Barwick in Elmet, Aberford and Woodlesford) since the date that was awarded the Direct Let status?
 3. How may over-55s properties were let to under 55 in the last year?”

7. On 19 October 2020 the Council provided the MP with a response to the second request of 22 September 2020. The Council refused the information requested in questions 1 and 2 under section 40(2) of FOIA as it considered it to be the personal data of third persons.
8. The Council addressed question 3 of that request.
9. Finally, the Council did then disclose information within scope of parts 1 and 2 under data protection legislation and a Member's 'need to know' rights, rather than under FOIA/EIR.
10. The complainant wrote to their MP on 4 November 2020 as they were not satisfied with the response to questions 1 and 2, which the Council had provided under data protection legislation.
11. The complainant told their MP that in the circumstances "**... it would be best to issue a completely new**" request [the Commissioner's emphasis] and they detailed a new two part request and the format in which they expected to receive the information.
12. The complainant's MP wrote to the complainant on 24 November 2020, confirming the scope of the new request in light of their correspondence of 4 November 2020 and a phone conversation they appear to have had with the complainant.
13. It is not clear from the material the complainant has provided to the Commissioner that that MP submitted the new request to the Council or when that MP submitted it. But the complainant did not receive a response to the request and chased the Council during February 2021. The Council said it was unable to find a record of the request and on 22 February 2021 the complainant advised the Council that they had submitted the request through their MP. However, the MP they named was a different MP from the one they had corresponded with on 4 November 2020.

Request 3

14. However, on 24 February 2021 the Council sent a response to the new request to the second MP. The Council's response included the complainant's request, as communicated to their MP, as follows:

"...For reference again [redacted]'s areas of choice include: Garforth, Crossgates (not Seacroft), Halton (not Halton Moor), Micklegate, Kippax, Barwick in Elmet, Scholes, Aberford, Swillington, Oulton, Woodlesford, Rothwell, Colton and Whitkirk.

1) How many 1 bed category non-sheltered bungalows and 1 bed over-55s flats have been let in [redacted]'s areas since the bidding list went online?

[a]	[b]	[c]	[d]	[e]	[f]
W/E shown in paper	Property Type	Age of new tenant at time of let	Method of let	Address of property including area	Did it appear on [redacted]'s list
	e.g. 1 bed flat		e.g. direct let or bidding/other		e.g. YES/NO
	e.g. 1 bed bungalow				

2) How many 1 bed category 1 non-sheltered bungalows and 1 bed over-55s flats have appeared on my [redacted] personalised bidding list, in [redacted] chosen areas seen above, since the bidding list went on line?"

W/E shown in paper	Property type	Age of new tenant at time of let	Method of let	Address of property including area

15. In its response of 24 February 2021, the Council disclosed information within scope of question 1; namely a list of properties with 'Property type', 'Age at time of let' (giving 'Between 36-78' for all the properties listed), 'Quota' (giving either 'Housing need quota', 'Direct let' or 'Tenant transfer housing need' for the properties listed), and the address against each property.
16. The Council advised that information relevant to question 2 was published on the 'Leeds Homes' website.

17. The complainant wrote to the Council on 21 March 2021 as they were not satisfied with the response they had received. They were dissatisfied that the Council's responses had not provided "full information" including that dates were missing. They also appear to have considered that the Council had not provided an adequate response to question 2 of the request. In this correspondence the complainant also requested further information, as follows:

Request 4

"...and please provide the information going back the period of 4 years which is one of the few changes we have made to our latest request."

18. On 24 May 2021 the Council provided an internal review.
19. Regarding Request 3, the Council acknowledged that the information it had provided had not included the dates when the properties became available – column [a] of question 1 - and it provided this information.
20. Regarding column [c], the Council acknowledged that it had not addressed the request for the ages of new tenants. It advised that it could not provide "actual age" information as this was personal data but provided ages against the properties listed from 50+ to 75+ in five year increments.
21. Regarding column [f] - whether properties had come on to their parent's list - the Council said it was not able to provide this information as its case management system would not allow it to check retrospectively if an applicant would have been eligible for a property after a tenancy has started. The Council provided other information which it considered the complainant could find helpful.
22. The Council acknowledged that it had erroneously provided information on bedsits, which had not been requested.
23. Regarding Request 4, the Council advised it was only able to provide the information requested in Request 3 for two years. This was because a new case management system had been introduced two years previously and it was not possible to retrieve data from the decommissioned system.
24. The complainant submitted a complaint to the Council on 7 June 2021. On 8 June 2021 the complainant submitted their FOIA complaint to the Commissioner.
25. On 17 June 2021 the Council advised the complainant to contact the Information Commissioner (which they had already done by that point). Correspondence between the complainant and the Council continued

however and, on 24 August 2021, the Council asked the complainant to confirm what information they considered remained outstanding.

26. The complainant summarised their communications with the Council in correspondence dated 10 September 2021, outlining various dissatisfactions with its handling of their requests.

Scope of the case

27. The complainant first contacted the Commissioner on 8 June 2021 to complain about the way their requests for information had been handled.
28. The Commissioner has reviewed the complainant's correspondence to the Council of 10 September 2021. He notes this includes reference to Request 1 and Request 2. However, the complainant had advised their MP that they considered it best to issue a completely new request, and Request 3 was submitted (and subsequently Request 4). In the Commissioner's view, Requests 3 and 4 supersede Requests 1 and 2. His investigation will therefore focus on the Council's response to Requests 3 and 4.
29. The Commissioner will first consider whether the Council was correct to manage the requests under the EIR. He will then consider whether the Council has provided all the information it holds that is relevant to Requests 3 and 4, and the timeliness of the Council's response.

Reasons for decision

Is the request a request for environmental information?

30. Information is 'environmental information' and must be considered for disclosure, if held, under the terms of the EIR rather than the FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.
31. Regulation 2(1)(a) defines environmental information as information that concerns the state of the elements of the environment, such as water, soil or landscape.
32. Regulation 2(1)(c) defines environmental information as information on measures affecting or likely to affect the elements and factors referred to in (a).
33. The requested information in this case concerns a housing application.

34. The Commissioner does not consider that there is a sufficiently close link between information about a housing application and the elements of the environment, such that the requested information could be categorised as environmental information. The Commissioner therefore finds that the information cannot be categorised as environmental information under regulation 2(1) of the EIR and the Council was incorrect to cite that legislation. The Council should have managed the complainant's requests under FOIA.

**Section 1 – right of access to information held by public authorities /
Section 10 – time for compliance**

35. Under section 1(1) of FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.

36. Under section 10(1), a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.

37. At the point that the complainant submitted their complaint to the Commissioner, the Council had provided a response to the following elements of Request 3:

- Question 1 (for the period “since the bidding list went online”)
 - Column a – dates when properties became available
 - Column b – property type
 - Column c - age of tenants at the time of let in five year increments
 - Column d – method of let
 - Column e – property address

38. The Council had not provided a response to column f, or to Question 2.

39. With regard to Request 4 – the information requested in Request 3 for the previous four years - the Council had provided the information for the previous two years.

40. In its submission to the Commissioner dated 1 June 2022, the Council has reviewed its handling of all four of the requests, noting where there had been shortcomings.

41. With regard to Question 1 of Request 3, the Council says it does not hold the information requested in column f, namely whether a property appeared on the complainant's parent's eligible list. It acknowledges that it could have provided more explanation on why it appeared to have provided a response to this question in its responses to the earlier requests. This will be discussed further below.
42. The Council has told the Commissioner that in order to provide the complainant with reassurance that any one bedroom properties were appearing on their parent's eligible list when they logged on to their Leeds Homes account, it robustly tested their housing application to ensure everything was working as it should. A test was carried out which involved test adverts created to replicate the complainant's parent's required property types in the areas in which they have expressed an interest. While the test adverts were live, the Council says it was able to determine and capture that they did appear on their eligible list.
43. The Council has clarified that the system does not allow any manual intervention regarding what available properties appear on an applicant's list. It is an automated process with pre-set algorithms ie the system matches eligible applicants against information inputted in an advert. Also, if there is doubt regarding what is appearing on an applicant's eligible list once they have logged in to their Leeds Homes account, an applicant has the option to conduct a wider search on the Leeds Homes website of current advertised properties irrespective of eligibility. This function would allow an applicant to identify any advertised property on the Leeds Homes website that was or was not appearing on their eligible list.
44. With regard to Question 2 of Request 3, the Council has acknowledged that its response to this question - directing the complainant to a website where current advertised properties are shown - was not correct as, in fact, the Council does not hold the information requested in Question 2 and again, this will be discussed below.
45. Moving on to Request 4, the Council has acknowledged that it did not fully explain to the complainant why it was unable to supply the data for the last four years. The Council said it was also unable to confirm that it explored all possible avenues to ensure this information was not available, at the time. This is because the Council migrated to a new case management system at the time and the reporting functionality that it used to draw down reports to the level of detail requested was not fully available to colleagues in the service at the time.
46. Due to staff changes at the time the Council says it is unable to confirm that a thorough investigation took place to ensure the data could not be drawn from the previous system with the support of colleagues within its

IT Services. But it says it is aware that colleagues within the housing team did not have the ability to extract the requested information, or to state whether it could have been collated in a reliable and accurate way, within a reasonable timeframe. The Council provided the information for the previous two years as that information was available.

47. The Council went on to say that it was undertaking checks with its IT department to see if it was possible to draw down reports from the decommissioned system. In subsequent correspondence to the Commissioner on 13 June 2022, the Council advised that, having checked, it was now able to provide the information [requested in Request 3] for 2017 and 2018 and that it would write to the complainant and provide this information to them, before 10 June 2022. The Council noted that the 2017/2018 data had been collated from archive information from its old system. Whilst it had completed a quality check of the data the Council said there may be unknown discrepancies in the data that it would not be able to identify given the time lapse.
48. Returning to its 1 June 2022 submission, the Council confirmed that, with the exception of the 2017/2018 data discussed above, it had provided all the information it holds that is relevant to the complainant's requests. It has acknowledged that some information it had provided to the complainant to comply with the duty under section 16 of FOIA to offer advice and assistance, had, with hindsight, misled the complainant. This was because the Council had not provided sufficient explanation to help the complainant understand and interpret the information it had provided.
49. The Council says that to provide the relevant information, it has interrogated its housing management systems for information on the re-letting of Council properties under the categories the complainant requested. The Council has also used information available through the complainant's housing application. This will have provided relevant information as the application holds reporting information that outlines detail on the lets of all the Council properties, how they were allocated and the reason why they were allocated.
50. The information that the Council has provided to the complainant is based on lettings information about properties that have been re-let, and in what areas. This information can be retrieved from its current systems based on the property type that has been let, the local area, bedroom size etc. Whilst a property is still either being advertised, or in the process of being allocated, it would also show on an applicant's 'eligible list'. This is a list of properties that they could bid on should they choose.

51. However, the Council has explained, this is a 'live' system and only shows properties that they were eligible for that are still going through the allocation process. Once a new tenancy has started at a particular property, it will no longer show on an applicant's eligible list. These eligibility lists are not recorded because it is a live dynamic list, constantly being updated. The Council has confirmed that it does not hold a historical record of which properties have shown as available on each applicant's housing application. Applicants are able to self-serve this live information by regularly checking their housing application and homes to let on the Leeds Homes Website. Therefore, the Council advises applicants to monitor their housing application on a regular basis and express their interests on properties in which they are interested. The Council also offers applicants the opportunity for 'assisted bidding' whereby the local housing team would assist an applicant and place bids on suitable properties on their behalf should they so choose.
52. The Council's submission goes on to say that in order to provide the requested information, colleagues within the Housing service filtered information on properties that had been let according to the criteria that the complainant requested at the time. The team that provided the information is the team who provided the Council's reporting and performance information, and it has a good understanding of the type of data requested and how to use the Council's systems. As discussed, to make sure that there were no anomalies regarding the application for the complainant's parent, the same team conducted a test of the application, whereby test adverts were created to show that the appropriate properties would appear live on the complainant's parent's eligible list. The testing found there were no anomalies and therefore the correct eligible properties were available for the complainant's parent to place a bid on at the point of time they are available.
53. The Council has confirmed that the search terms it used were based on the complainant's specific requests, for each of the criteria specified. Application details and re-let information are found on the Housing IT systems from which reports are drawn. Data is transferred to Excel format so that it can be interrogated as required. The reports are saved in a networked system rather than on personal computers. Finally, the Council's retention schedule sets the retention period at six years from end of a tenancy for allocations information. which is industry best practice.
54. The Council concluded its 1 June 2022 submission by noting that it has previously undertaken a review of its handling of the complainant's requests and has apologised directly to the complainant for the poor service they have received from the Council in relation to these requests. Having reviewed their case, the Council says its request

handling processes at that time were in part to blame for the mistakes it made, in addition to other errors made by the service that handled their requests. There was a lack of case ownership within the Council's Information Management and Governance service during that period which led to different staff across the service dealing with the complainant's many emails. There were also delays caused by assigning requests to the wrong service. Decisions were made to 'merge' requests due to the volume of contact received from the complainant, but this confused matters and led to requests being overlooked and not managed properly.

55. The Council says that in the summer of 2021, its Information Management and Governance service, which is responsible for coordinating statutory information requests, underwent a restructure and service redesign. As part of this service redesign the Council has undertaken a top to bottom review of its requests processes. The recommendations from these reviews are in the final stages of implementation. They include a workforce development program for all staff within the service.

The Commissioner's conclusion

56. The Commissioner notes and appreciates that the Council has acknowledged that there were shortcomings in its handling of the complainant's requests. He notes too that the Council has reflected on why problems arose and, as a result, has undertaken a complete review of how it will manage requests for information in the future; this includes a 'workforce development' program for the relevant staff.
57. With regards to Requests 3 and 4 in this case, the Commissioner has considered the Council's submissions; what and how information is held, and the searches that it has conducted for relevant information. This has included asking its IT team to work on a decommissioned system to retrieve data for 2017 and 2018. At this point the Commissioner considers that the Council's searches have been appropriate and adequate and that, on the balance of probabilities, it has now disclosed all information it holds within scope of Requests 3 and 4.
58. The Council's responses to Requests 3 and 4 were not provided within the required 20 working day timescale, however, and the Council therefore breached section 10(1) of FOIA.

Right of appeal

59. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

60. 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.
61. 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

Cressida Woodall
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