

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 9 May 2023

**Public Authority:** London Borough of Croydon  
**Address:** Bernard Weatherill House  
8 Mint Walk  
Croydon  
CR0 1EA

#### **Decision (including any steps ordered)**

---

1. The complainant requested information from the London Borough of Croydon ("the public authority"). The Commissioner's decision is that the public authority was entitled to refuse to comply with the request in accordance with section 12(1) (cost limit) of FOIA. The Commissioner also finds that the public authority complied with its obligations under section 16 of FOIA to offer advice and assistance.
2. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

---

3. On 1 April 2022, the complainant made the following request for information to the public authority:

"I understand that Councillors to refer an application to Planning Committee must email the Development Management email address setting out their preferences.

For the 2018-22 term (or for 2021-22 if cost becomes a consideration) could you please in a simple table list every member and the amount of times they have referred applications to Committee regardless of if the application ever made it to Committee or not."

4. The public authority refused to provide the requested information citing section 12 (cost limit) of FOIA as its basis for doing so.

## **Reasons for decision**

---

### **Section 12 – cost of compliance**

5. This reasoning covers whether the public authority is correct to apply section 12(1) (cost limit) of FOIA to the request.<sup>1</sup> The appropriate limit<sup>2</sup> for the public authority in this case is £450.
6. The public authority considers that the cost of complying with this request would exceed the appropriate limit under FOIA. It has explained that, although it holds information within scope of the request, it does not hold it in a readily accessible format and would therefore need to manually review an extensive number of files.
7. The public authority explained that there had been in excess of 5000 planning decisions made in the previous financial year and each file would need to be checked to see if it fell within scope of the request. The public authority estimated that it would take an average of two minutes per file and, due to the large number of files, this would exceed the cost limit.
8. Although electronic files are kept, the public authority explained that some applications may have received a referral but they may not have been presented to planning committee because the officer recommendation was for refusal. It therefore considered that the requested information could not be retrieved by way of a reasonable search in the relevant electronic databases.
9. In their request for internal review, the complainant suggested that the public authority could simply run a search on the "Development Management" email account but the public authority explained that the email account receives correspondence from Councillors on a number of different subjects and the searches required to identify the relevant emails would also exceed the cost limit.

---

<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/36/section/12>

<sup>2</sup> <https://www.legislation.gov.uk/uksi/2004/3244/regulation/4/made>

10. The Commissioner is satisfied that the public authority's arguments above are justified, because it has explained that it could not easily identify the relevant information falling within scope of the request without having to carry out lengthy manual searches.
11. The Commissioner's decision is that the public authority was correct to apply section 12(1) of FOIA to the request.

### **Section 16(1) – The duty to provide advice and assistance**

12. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>3</sup> in providing advice and assistance, it will have complied with section 16(1).
13. The Commissioner notes that the public authority advised the complainant that if they wished they could undertake their own search for the requested information as the relevant planning committee reports were available on its website and provided the link. The Commissioner is therefore satisfied that the public authority met its obligations under section 16 of FOIA.

### **Regulation 12(4)(b) of the EIR**

14. The Commissioner notes that some elements of the information within scope may fall under the Environmental Information Regulations 2004 (EIR). To this end, he is satisfied that the request would be exempt under the exception 12(4)(b) of the EIR (manifestly unreasonable) based on its burden, in the alternative to section 12 of FOIA.

### **Other Matters**

---

---

<sup>3</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

15. The Commissioner is disappointed in the quality of the engagement the public authority has had with his office. Whilst the Commissioner attempts to restrict the information required to that necessary to reach a decision, he expects public authorities to provide comprehensive answers to all of his questions and to provide the necessary evidence to back up any assertions within the given timescales. The Commissioner has had to prompt the public authority for the more detailed information and for a late response to his questions.
16. The above concerns will be logged and used by the Commissioner when considering the overall compliance of the public authority.

## Right of appeal

---

17. 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)

18. 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.
19. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**