

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 January 2023

Public Authority: Hertsmere Borough Council
Address: Elstree Way
Borehamwood
Herts
WD6 1WA

Decision

1. The complainant requested information relating to housing applications. Hertsmere Borough Council (the "council") refused the request, citing section 14 (vexatious and repeated requests) of the FOIA.
2. The Commissioner's decision is that the council has not correctly applied section 14 of the FOIA to the request.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - issue a fresh response to the request which does not rely on section 14 of the FOIA
4. The council 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 15 September 2022 the complainant made a request to Hertsmere Borough Council (the "council") for the following information:

"Please provide details of how the housing nomination is carried out.

Please provide information of the selection criteria.

Please provide statistics of how many ethnic minority applications were submitted between 2019 and 2022.

Please provide information of how many of these applications were accepted and how many were refused.

Please explain how many people were refused 3 bedroom properties in 2021-2022, following a submission of application on medical grounds and offered 2 bedroom properties instead.

Please provide information of the Housing appeal process.

Is the Housing Manager Decisions are final and appellants have no right to appeal further within the Council?

Does the Housing Manager have the right to refuse appropriate properties required under Health grounds supported by medical documents, letters from GP, psychiatrists, hospitals and Social Services, because she has the powers to do so without reasonable explanation?

How do people object to the Housing Manager Decisions?

Do Housing Officers, or managers have the powers to overturn the professionals' decisions, such as Housing Solution (Social Services, GPs, Psychiatrists and Care Co-ordinators)?

Do the Housing Officers have the powers to judge, or make a decision regarding carers for mental health patients, where they stay and how they care for the patient?

What is the point providing medical records and letters from professionals if the Housing Officers/Managers overlooking them and making their decision regardless. Why are the Housing Officers not able to pay home visits to ensure they are making the correct decisions?

Why did the housing manager refuse my application for 3 bedroom properties without any reasonable explanation apart from her dissatisfaction?

Why was my case referred to the housing manager and I was made to wait 12 weeks for an explanation, when I asked simple question to the assistant housing officer, who stated that (she was not satisfied that my daughter lived with me) and I asked how she made that decision?

My daughter failed to change any of her documents to my address, later she did as requested by the housing department, however that was dismissed by the Housing manager, as irrelevant!?

I have made three biddings for properties in Potters Bar, however I was not successful in three of them despite being a high priority case with urgent needs to a ground floor property, I would like to know if the people who got these properties have higher needs than me and how and why?

Why has the Housing allocation officer informed me that she will only allocate property for me with stair lift? This was never mentioned to me, nor was a requirements, as the Housing Solution are more than happy to provide me with the necessary equipment once I have moved to a ground floor property."

6. The council refused to provide the requested information citing section 14 (vexatious and repeated requests) of the FOIA as its basis for doing so.

Reasons for decision

7. This reasoning covers whether the council has correctly applied section 14 to the request.

Section 14 – vexatious and repeated requests

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

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

9. Section 14(2) of the FOIA states:

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that

person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.”

10. The Commissioner’s guidance¹ states that a vexatious request will represent ‘a manifestly unjustified, inappropriate or improper use of a formal procedure.’
11. Some requests will be clearly vexatious whilst other requests will be less clear cut. In all cases, the important question for a public authority to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. In its response to the request the council stated:

“This FOI request is declined as much of the information you are requesting is publicly available on the Hertsmere Homes website and the remainder is requesting personal information regarding the the management of your housing application....FOI requests are not intended to deal with personal matters and complaints.”
13. The council’s internal review reiterated its initial response and added:

“The request appears vexatious as it repeats a previous request.”
14. The Commissioner notes that the council’s responses failed to cite the specific subsection of section 14 upon which it was relying.
15. In relation to the reasons cited in its initial response, the Commissioner does not consider that these constitute grounds for engaging any subsection of section 14. In relation to the the council’s suggestion in its internal review that “...the request appears vexatious as it repeats a previous request” the Commissioner has no evidence that the council has previously complied with a previous request for the same information.
16. The Commissioner’s decision is that the request is neither vexatious nor repeated and therefore, the council has not correctly applied section 14 of the FOIA to the request.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/what-does-vexatious-mean/>

17. The Commissioner requires the council to provide the complainant with a fresh response to their request which does not rely on section 14 of the FOIA.

Other matters

18. Although they do not form part of this decision notice the Commissioner wishes to raise the following matters of concern.
19. The council's responses to the complainant do not provide adequate reasons for refusing to comply with the request. The council's approach in this case suggests to the Commissioner that the council might not be taking its responsibilities under the FOIA seriously and/or that staff involved in handling requests have not been given adequate training. The Commissioner expects that the council's future handling of requests will comply with the FOIA, conform to the recommendations of the code of practice issued under section 45 of the FOIA², and have due regard for his own published guidance.
20. In addition, the council's approach to elements of the request that relate to the complainant's personal data suggest that the council might not understand its responsibilities under the UK General Data Protection Regulation (UK GDPR). The council should ensure that its future responses to requests identifying personal data of the applicant are more in keeping with the rights provided by the UK GDPR and, from a customer service perspective, more helpful.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

21. 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

22. 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.
23. 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

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