

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 January 2014

Public Authority: Liverpool City Council

Address: Municipal Buildings

Dale Street

Liverpool

Merseyside

L2 2DH

Decision (including any steps ordered)

1. The complainant has requested information about Local Housing Allowance claims in the Liverpool City area. Liverpool City Council has refused to provide the information, relying on section 12(1) of the FOIA.
2. The Commissioner's decision is that the council has correctly relied on section 12(1) of the FOIA to refuse the request but has breached section 16(1) of the FOIA by not offering advice and assistance to the complainant as to how his request could have been refined to bring it within the cost limit.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To take reasonable steps to advise and assist the complainant with a view to refining the request to bring it within the cost limit.
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 28 May 2013, the complainant wrote to the council and requested information in the following terms:
 - *"Please provide the following information regarding Local Housing Allowance claims in the Liverpool City Council Area for the period from 1 February 2012 until now:*
 - A. *Between 1 February 2012 and 1 February 2013 (ie the date of the Upper Tribunals Administrative Appeals Chamber Decision CH/2483/2012)*
 1. *how many LHA benefit claims were paid on joint tenancies to landlords in the private rental sector?*
 2. *ditto but other landlords?*
 3. *for each of these two categories of claims how many were paid at (i) the shared accommodation rate, and (ii) the 1 bedroom rate?*
 - B. *As a result of CH/2483/2012 how many of the above claims for the 1 bedroom rate have been reviewed and backdated for (i) private landlords, and (ii) other landlords?*
 - C. *What date(s) is/are being used for LHA rates revised as a consequence of CH/2483/2012?*
 - D. *How many landlords in the private rental sector have, or are being affected, by rate revisions as a result of CH/2483/2012?*
 - E. *How many appeals against benefit decisions have been made on the basis of room allocations being specifically identified in joint tenancy agreements?"*
6. The council responded on 14 June 2013. It stated that it held some of the information requested but cited section 12(1) of the FOIA as its reason not to provide it. This is because it determined that it would take more than 18 hours to extract the information.
7. The complainant requested an internal review on the 14 June 2013 and the council provided this on the 15 July 2013 in which it maintained its original decision.

Scope of the case

8. The complainant contacted the Commissioner on the 22 July 2013 to complain that the council had refused to provide the information.

9. The Commissioner considers that the scope of the case is to determine whether the council is correct to rely on section 12(1) of the FOIA not to provide the requested information.

Reasons for decision

10. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request if the authority estimates that the cost of doing so would exceed the appropriate limit.
11. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 sets the appropriate limit 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 the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours in this case.
12. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
13. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
14. Section 12 explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. In the Commissioner's view, an estimate for the purposes of section 12 has to be 'reasonable': he expects it to be sensible, realistic and supported by cogent evidence.
15. The complainant has stated that the information he has requested should be readily available and has provided the Commissioner with an extract from the council's submission to HM Courts and Tribunal service as a reason to support his view. The complainant refers to section 7 paragraph 4 of the submission and states this clearly shows that the general information he has requested is readily available. This section states:

"On the 23 February 2013 following the notification of Commissioners decision (CH/2483/2012) the Local Authority reviewed all of its cases were [sic] joint tenants were in receipt of the One Bedroom Rate of Local Housing Allowance."

16. The council supplied its submissions to the Commissioner as to how it determined section 12 was engaged.
17. The council firstly advised that its system does not allow it to refine searches to a historic period for joint tenancies.
18. The council has established that it could provide the current position for joint tenancies in the private rented sector and all other landlords. It may also be able to provide the shared accommodation and 1 bedroom rates for both sectors but to do this would require a substantial manual task to be undertaken by an officer. The council state that there is no electronic search facility that it can use for this type of search.
19. In determining that the manual task required would exceed the parameters of section 12(1) of the FOIA the council explained that the City Council's Benefits Service has a caseload of approximately 80,000 live cases, of which 65,000 are for rented properties.
20. The council went on to advise that in order to provide the information requested in the complainant's questions A1, A3, B(i), C, D and E it determined it would have to do the following:
 - Run system reports to breakdown the 65,000 rented property caseload by tenure type.
 - Run a further report to extract the approximate 22,000 cases where Local Housing allowance (LHA) is being paid to identify the type of LHA being paid.
21. The council explained running the system reports would be an automated process which would require minimal manual intervention. However, for it to then go on to identify cases for the period requested, between 1 February 2012 to 1 February 2013, it would then have to manually analyse each case in each group as there is no system report available to do this.
22. The council advised that each case holds varying numbers of documents which include application forms, customer correspondence, landlord correspondence and internal documents.
23. The council estimated that it would take an average of 10 minutes to analyse and extract the data from each case. This equates to 3,666 hours of work.

24. The council advised that the same process, as explained in paragraph 20 and 21 above, would need to be undertaken with regards to answering questions A2, and B(ii) but instead analysing the remaining 43,000 cases that are in the non LHA rented group. Again this would take an average of 10 minutes per case, equating to 7,166 hours of work.
25. The council's reasons for having to manually review the cases and why this would take on average 10 minutes per case are because it does not have any report facilities that would allow it to identify reviewed or backdated 1 bedroom rates for landlords. Its system is based on individuals and contains details of all addresses where they have claimed housing benefit. For it to obtain the data requested by the complainant, the council state that it would have to examine the individual claim history of every claimant to see whether the change in rate is due to a review/ backdated claim rather than a customer changing address or a change in their circumstance.
26. The council also explained that some landlords in the private rental sector may have some tenants who have been affected by rate revisions as a consequence of CH/2482/2012, but some may not have any affected and others may have a mixture of the two. For the council to be able to provide a response to this it would have to identify each relevant landlord and subsequently each tenant's claim to identify if there has been a rate revision and then what caused this revision to take place.
27. The Commissioner acknowledges the reasons as to why the complainant considers the information he has requested should be easily accessible, but in reviewing the council's explanations above, the Commissioner is satisfied with these explanations given to him on how it would need to extract the information and the time it would take to do this. Therefore he has concluded that section 12(1) of the FOIA is engaged and the council was correct to refuse the request.

Section 16(1) Advice and assistance

28. Section 16(1) of the FOIA imposes an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the

section 45 Code of Practice¹ in relation to the provision of advice and assistance in that case.

29. Paragraph 14 of the section 45 Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied for a lower, or no, fee."

30. The Commissioner has viewed the council's initial response and internal review response to the complainant. The Commissioner has determined that the council in refusing the request, in both stages, has not offered any advice and assistance to the complainant with regards helping him or offering him the chance to refine his request.
31. The council has advised the Commissioner that it is unable to offer any information as to why it did not provide advice and assistance to the complainant in this case. It has gone on to say that it cannot see as to how narrowing the timeframe or the complainant being more specific in his request would have resulted in the council being able to provide the information.
32. However it did acknowledge that a more clear and constructive way forward would have been to inform the complainant that it was unable to respond and then to open a dialogue with the complainant, which may have resulted in some information being provided to him.
33. On considering the above, the Commissioner finds that the council has breached section 16(1) of the FOIA and therefore the council is required to carry out the steps stated in paragraphs 3 and 4 above.

¹ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-ofpractice.pdf>

Right of appeal

34. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

35. 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.
36. 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

Andrew White
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