

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 October 2014

Public Authority: London Borough of Barnet
Address: North London Business Park
Oakleigh Road South
London
N11 1NP

Decision (including any steps ordered)

1. The complainant has requested the council to disclose the number of complaints it has received relating to council tax and its decision to refuse interim payments in arrears cases prior to magistrate court proceedings. Initially, the council responded to this request by suggesting that it does not hold the requested information.
2. However, during the Commissioner's investigation it confirmed that it wished to rely on section 12 of the FOIA. It stated that it was unable to confirm whether it holds the requested information without exceeding the cost limit prescribed by the FOIA.
3. The Commissioner has considered the council's application of section 12 of the FOIA and he has decided that this exemption applies in this case.

Request and response

4. On 4 December 2013, the complainant wrote to the council and requested information in the following terms:

"This is a FOIA request for copies of all relevant correspondence and documents regarding complaints that LB Barnet's CTX departments have or had a policy of telling CTX payers that, if they were unable to make their full statutory monthly payments of CTX, they were not allowed to make reduced interim payments and must wait for magistrate court proceedings before any arrangement could be made. I am particularly

interested in the years 2005/06 and 2006/07 but require a list of all similar complaints made at any other time.”

5. The council responded on 6 January 2014. It stated that it had examined the complaints database and could confirm that it has received several complaints stating that the council was unable to accept an offer of payment. However, the council advised that all these offers of payment were made after the summons and liability order had been issued rather than before magistrate court proceedings.
6. The complainant responded on 10 January 2014 requesting an internal review. She wished to question the accuracy of the council's response of 6 January 2014 and its categorisation of complaints. She confirmed that she was unhappy that the council had stated that it does not hold any details of complaints received regarding the council's refusal to accept interim payments prior to magistrate court proceedings. She advised that she had made a complaint of this nature herself in 2009.
7. The council carried out an internal review and informed the complainant of its findings on 4 February 2014. It stated that it does hold details of her complaint from 2009 and that it was received prior to a summons being issued. It apologised if this was unclear from its earlier response of 6 January 2014. In terms of supplying copies of any relevant complaints it may or may not hold, the council confirmed that it unwilling to release such documentation, as it is exempt from disclosure under section 40(2) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 31 March 2014 to complain about the way her request for information had been handled. Specifically, the complainant was unhappy with the response she received from the council and the inaccuracy of the council's records in relation to complaints. She again referred to a complaint she made in 2009 of the nature specified in her request, which was not referred to in the council's response of 6 January 2014. She also confirmed that she made a very similar request to the council in 2012 and its response at this time was that it holds details of four complaints. The complainant is unhappy that this response differs greatly to the response she received on 6 January and 4 February 2014 in relation to her latest request. It eventually confirmed that it holds details of her complaint from 2009 but suggested that no further complaints of this nature had been made.
9. The complainant also wished to question the application of section 40 of the FOIA to any complaints the council may hold of the nature specified

in her request. The complainant wishes to obtain copies of any such complaints that are held without contravening the Data Protection Act.

10. During the Commissioner's investigation the council confirmed that it wished to rely on section 12 of the FOIA. It advised that section 12 of the FOIA should have been cited in its initial response of 6 January 2014, as the council is of the view that to accurately determine whether it holds any complaints of the nature specified it would exceed the cost limit prescribed by the FOIA.
11. The Commissioner will first consider whether section 12 of the FOIA applies in this case. He will only need to go on to consider section 40 of the FOIA if section 12 does not apply and it is found that the council does hold information of the description specified in the complainant's request.

Reasons for decision

12. The Commissioner will first address the complainant's concerns in respect of the accuracy of records at the council and the differing responses she has received to her requests, as the explanations supplied by the council to these concerns will lead on to the council's decision to apply section 12 of the FOIA.
13. The council began by explaining how complaints are recorded and stored. The council explained that it records details of all complaints received on a complaints log and primarily this complaints log is a performance management tool to ensure complaints are logged and responded to within the requisite timeframe. The complaints log does not have the capacity to record all elements of a complaint or any great detail, as this information is held separately on individual case files. The log contains more general limited information for management purposes to enable the council to manage individual complaints and on time.
14. The council stated in 2008 a column was added to this log which is a free text column for those handling the complaints to record a brief description of the complaint itself or to put any other information in of relevance to that case. The council confirmed that this is very brief and often only records the broad nature of the complaint. It confirmed that this column does not contain and does not have the capacity to record a lengthy and specific description of a complaint like, for example, the description the complainant provided in her request.
15. The council stated that in order to accurately determine what complaints, if any, do fall within the scope of the complainant's request

(i.e. relate to an alleged policy of refusing people the opportunity to make payments prior to the matter going to court), whether prior to 2008 when no column existed on the log to put in a brief description or indeed afterwards, the individual case files held for all complaints received by the Revenues and Benefits Team (the team a complaint about council tax would be directed to) would have to be reviewed.

16. The council confirmed having reviewed how it handled the complainant's request again that its response of 6 January 2014 should have stated that the complainant's request was being refused under section 12 of the FOIA. As no summary column exists for complaints prior to 2008 and a search of this column for cases after 2008 produced no records, the Revenues and Benefits Team would have to review the 635 complaints files that exist from 2006 onwards to determine whether any complaints of the nature the complainant specified are held. It estimated that it would take 10 minutes to review each case file and in total would therefore take 106 hours to review them all. The council stated that this clearly exceeds the 18 hour time limit prescribed by section 12 of the FOIA.
17. The council acknowledged that the complainant had received conflicting information about whether complaints of the nature specified are held or not and that she made a complaint in 2009 of the nature specified, which was not referred to in its response of 6 January 2014. The council responded to these two points in more detail.
18. Dealing with the complainant's own complaint from 2009 first, the council believes this was not picked up by the officer responding to the complainant's latest request in January 2014 because the description of her own complaint in the column referred to above on the complaints log only records the subject matter in very broad terms and does not contain the lengthy or detailed description provided in her request. The details of her complaint from 2009 did not therefore come up on the search the officer carried out. The officer concerned was also not made aware of the complainant's previous complaint or indeed her earlier request from 2012 when the complainant corresponded with the council.
19. The council stated that it does not agree with the complainant that this is an issue of inadequate record keeping or the incorrect categorisation of complaints. It stated again that the complaints log (where all complaints are recorded) is designed to act as a performance management tool to ensure that complaints are handled appropriately and within the timeframes the council follows. The council explained that the complaints log is not designed and nor was its intention to record any complaint in any great detail. This information is held on the individual case file for each complaint.

20. The council advised that it is not known whether the response the complainant received in August 2012 from a different officer in response to her first request included her own complaint from 2009 in the statistics it quoted or indeed whether this response was accurate at this time, for reasons that will become apparent as this notice continues. However, the council believes the officer that responded to the 2012 request may have had some involvement in the handling of the complainant's complaint in 2009 and maybe therefore this officer was aware of its existence at this time and included it in the statistics they provided.
21. Turning now to the earlier request the complainant made in 2012 and the response she received, the council noted that the complainant was informed at this time that there had been four complaints in total of the nature specified and yet the response she received in January 2014 in response to her second request stated that none were held.
22. The council stated that it is not in a position to state whether the response in August 2012 was accurate or not or whether the complainant's complaint from 2009 was one of those included in the statistics the officer dealing with this request gave or not. The council can only state that it has carried out numerous searches of the complaints log, which is the same system the officer from 2012 would have used, and it is unable to retrieve any complaints of the nature specified in the complainant's request.
23. The council advised that the officer who responded to the 2012 request no longer works for the council so it is unable to contact them to see how they located this information or how they interpreted the complainant's first request. It is however noted that both requests are worded slightly differently and it is therefore likely that different words were used in the searches undertaken by the officer in 2012 to the more recent searches undertaken by the council.
24. The Commissioner asked the council if it was possible for it to retrieve any information it may still hold relating to the first request and how this was handled to see if it is possible to determine from this what searches were undertaken in 2012 and where the statistics quoted in the 2012 response originated from.
25. The council managed to obtain a copy of an internal email relating to the request the complainant made in 2012. It confirmed that this email was sent to officer dealing with the request in 2012 from another officer in the council and it said that since January 2008 the council had received two complaints regarding the request of Liability Orders before accepting other arrangements and both were in 2009/2010. The email said that in 2008/09 there were none and prior to 2008 the council was unable to

confirm without looking into each individual complaint file that may be of relevance.

26. The council stated that this email suggests that the officer from 2012 was only informed of two complaints and not four, as the response the complainant received in 2012 stated. The council explained that there is no way of knowing whether this was an error of the officer in 2012 or whether this officer then obtained the details of two other cases from another source.
27. The council is now aware from looking at the complainant's first request how the officer from 2012 may have searched the complaints log at the time and it states that the slightly different wording between the complainant's first request and the second may explain why the officer from 2012 located two alleged complaints yet the officer dealing with the most recent request did not located any.
28. It explained that it is an officer's usual practice to search using key words within the wording of an information request. The council believes the officer from 2012 may have searched the log using key words such as "liability", "liability orders" and "LO". The council confirmed that it repeated searches of the complaints logs using these key words and retrieved the two cases referred to in the email discussed in paragraph 26 above. The council confirmed that neither of these two cases were the complainant's own complaint from 2009.
29. The council explained that it then repeated the search using key words from the complainant's more recent request. It stated that liability orders were not mentioned in the complainant's more recent request so this key phrase would not have been used or indeed resulted in the two complaints referred to above being retrieved. The council instead searched using key words such as "magistrate" and "court" and this came up with zero results. The council believes it is likely that the officer who dealt with the most recent request used the latter method when searching for relevant information. This officer would have had no reason to search using words other than those used in the request itself and would not have been aware of the complainant's previous request from 2012.
30. The council concluded that it is unable to provide any more information or definite answers and has provided the above information to try and explain how the contradictory responses may have arisen. The council stated that the fact is that due to the way information is held by the council in relation to all complaints, it cannot confirm how many complaints it may or may not have received and provide copies of the necessary correspondence without exceeding the cost limit prescribed by the FOIA. The council acknowledged that there is clearly some doubt

over the accuracy of the earlier response the complainant received in 2012 for the reasons explained above. But again there is no means of establishing whether this was accurate or not because this would still involve the task of going through all 635 case files individually and this would exceed the cost limit prescribed by the FOIA.

31. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit. The appropriate limit equates to £450.00 or a maximum of 18 hours at a rate of £25 per hour.
32. The council has explained clearly how it records the complaints it receives and why an electronic search of its complaints log does not reveal any results for the specific nature of complaints the complainant requires. It has explained that the complaints log is primarily a performance management tool providing very specific and limited information on each complaint. It only records the type of information the council requires in order to monitor the handling of complaints and ensure that these are dealt with in accordance with its procedures and in a timely fashion.
33. It is noted that the complainant requires the details of any complaints the council has received of a very specific and detailed nature and in order to establish whether the council does hold any such complaints over the timeframe she has specified would involve a review of all complaints files received during this time. The council has confirmed that it holds 635 case files that may or may not be relevant to the complainant's request and the only way to establish if it holds complaints of the nature specified would be for it to review each of the 635 individual case files. It estimates that it would take it 10 minutes to review each file and the overall task of establishing whether it holds any recorded information would take 106 hours in total.
34. The Commissioner has considered in detail how the council records and retains its complaints. He accepts that due to the way it records and holds complaints information and the number of potential complaints that would need to be individually retrieved and reviewed that the council's estimate that compliance would exceed the cost limit prescribed by the FOIA is reasonable. As stated above, the council holds 635 individual complaints files for the benefits and revenues section of the council for the timeframe of the request. If an officer was to be tasked with reviewing each and every one to establish whether the council does hold any complaints (any other complaints to the complainants from 2009) of the nature specified and on average 10 minutes was taken for each, it would take the council 106 hours to comply with this request.

35. As stated above, there is an appropriate limit for FOIA request and this is set at £450.00 or 18 hours at a rate of £25.00 per hour. In this case it is clear from the estimation provided by the council that compliance would exceed the appropriate limit by a considerable amount. As the Commissioner is satisfied that this estimation is reasonable he has decided that section 12 of the FOIA applies in this case.

Other matters

36. The Commissioner notes that at the council did not apply section 12 of the FOIA until he became involved in the case that the council could not have provided the complainant with advice and assistance in accordance with section 16 of the FOIA at the time it handled the request.
37. However, the Commissioner considers it would be a matter of good practice for the council to be willing to assist the complainant in making a new request should she wish to do so which, in terms of scope, could be responded to in full within the cost limit.

Right of appeal

38. 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@hmcts.gsi.gov.uk

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

39. 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.
40. 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

Rachael Cragg
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