

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 November 2019

Public Authority: London Borough of Southwark
Address: PO Box 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Southwark ("the Council") regarding its use of properties in particular boroughs in Essex. The Council refused the request, citing section 12 of the FOIA.
2. The Commissioner's decision is that the Council has correctly applied section 12 to the request and has also provided adequate advice and assistance in line with section 16. However, as the Council provided a refusal notice more than 20 working days after the date of receipt of the request, it has breached sections 10(1) and 17(5) of the FOIA.
3. The Commissioner does not require any further steps to be taken by the Council.

Request and response

4. On 20 December 2018, the complainant wrote to the Council via Whatdotheyknow.com and requested information in the following terms:

"Please specify the number and type of properties you have used separately in the following boroughs for a) temporary accommodation for homelessness and b) preventative homelessness by financial year in 2015/16, 2016/17, 2017/18 and 2018 April to December.

- i) Basildon*
- ii) Braintree*
- iii) Brentwood*
- iv) Castle Point*
- v) Chelmsford*
- vi) Colchester*
- vii) Epping Forest*
- viii) Harlow*
- ix) Maldon*
- x) Rochford*
- xi) Tendring*
- xii) Uttlesford*

Please provide the information by property type, tenure and size as follows (or as close to this as possible depending on how you record the information):

- a) Paid nightly (B and B) room with shared facilities*
- b) Paid nightly hostel (room with shared facilities)*
- c) room self contained (studio)*
- d) 1 bed room self contained*
- e) 2 bed room self contained*
- f) 3 bed room self contained*
- g) 4 or more bed room self contained*

For each property the tenure type – direct with private landlord, leased by council from private landlord, housing association, own stock, leased through a council scheme with private landlords, leased through a housing association (or registered provider) scheme with private landlord, other (please specify).

Please also provide the post code area (first part of the postcode only is fine) for each of these properties and the number of a) single people housed there in each financial year and b) number of couples without children c) number households with children (along with number of children) for each of these post code areas (or by property used)."

5. The complainant contacted the Council again to ask for a response on 24 January 2019 as they had not yet received one. After some contact, the Council provided a response on 18 February 2019 and refused to provide the requested information citing section 12 of the FOIA.
6. Following an internal review the Council wrote to the complainant on 27 March 2019. It stated that it was correct to refuse the request under section 12 and therefore upheld its position.

Scope of the case

7. The complainant contacted the Commissioner on 18 April 2019 to complain about the way her request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if the Council has correctly cited section 12(1) of the FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) of 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 cost limit.
10. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the Council.
11. 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 for the Council.
12. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - 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 Council has demonstrated that of the data it holds, it would need to search through 2,447 cases to locate and extract the information requested.
14. The Commissioner has made enquiries with the Council to see if there was a more effective way of locating the information rather than

reviewing each of the 2,447 case files. The Council responded to advise that although all the information is stored electronically in the same location, no reports were able to be ran to extract the information at a quicker pace. The Council also said that the data items were not recorded in a way that would enable it to highlight metadata for easier distribution. This is because parts 3 and 4 of the complainant's request is for the first part of the postcode for each temporary accommodation record. Because there is no facility to extract this via a report, each record has to be reviewed individually.

15. Within the Council's initial response to the complainant, it advised that it would take five minutes per file to locate and extract the information requested.
16. In its submissions to the Commissioner the Council argued that in order to fully address the request, it needed to locate and extract the property type, the tenure and size of the properties within the 2,447 cases it held within the scope of the complainant's request. Then it would need to determine the tenure type and details of the residents inside each property. The Council further argued that even it re-evaluated the estimated time to review per case file to one minute instead of five, this would still take 40.78 hours to locate and extract the information.
17. Therefore, as the Council has demonstrated that it is using the quickest method to locate, retrieve and extract the requested information from the data that it holds, the Commissioner notes that to be able to review the 2,447 case files within the appropriate limit, on average, the Council would have to review one case file every 26.5 seconds.
18. This would mean that every 26.5 seconds, the Council would have to locate and extract the property type, tenure and size, review the details of the residents in each property and also the postcode area for each case file.
19. The Commissioner is of the view that this is an unreasonable expectation on the Council. Because of this, the Commissioner is satisfied that the Council has applied section 12 of the FOIA correctly.

Section 16 - advice and assistance

20. Section 16 of the FOIA requires a public authority to provide "reasonable advice and assistance" to those making or wishing to make a request.
21. In cases where a public authority considers that a request could not be answered within the cost limit, the Commissioner would normally expect advice and assistance to be provided to help the requestor bring their request within the cost limit.

22. The Commissioner notes that within the Council's initial response to the complainant, it advised that it could potentially provide the complainant with the information if they narrowed the request and omitted questions three and four. However, the complainant chose not to refine the request as they considered the original request would not engage the cost limit.
23. Since the Council had identified a way that the request could be refined within the cost limit and communicated this to the complainant, the Commissioner is satisfied that the Council had provided adequate advice and assistance and therefore complied with section 16 of the FOIA.

Procedural sections of the FOIA

24. Section 1(1) of FOIA states that:

"Any person making a request for information to a public authority is entitled:

(a) to be informed in writing by the public authority whether it holds information within the scope of the request, and

(b) if that is the case, to have that information communicated to him."

25. Section 10(1) of the FOIA provides:

"...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

26. Section 17(5) of the FOIA states that:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

27. In this case, the complainant made their request via Whatdotheyknow.com on 20 December 2018. The Council sent its refusal notice on 18 February 2019.
28. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Council has breached section 10(1) of the FOIA. Additionally, because the Council failed to inform the complainant within 20 working days that it was refusing the request, it has also breached Section 17(5) of the FOIA.

Right of appeal

29. 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

30. 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.
31. 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

**Phillip Angell
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