

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 20 October 2021

Public Authority: London Borough of Lambeth
Address: Lambeth Town Hall
Brixton Hill
London SW2 1RW

Decision (including any steps ordered)

1. The complainant has requested information about the availability of temporary accommodation. The London Borough of Lambeth ("LB Lambeth") denied holding this information and upheld this position at internal review. During the course of the Commissioner's investigation, LB Lambeth changed its position and its arguments supported a position that it would exceed the cost limit (section 12) to provide the requested information.
2. The Commissioner's decision is that LB Lambeth is entitled to rely on section 12(1) as its basis for refusing the request. However, it contravened its obligation under section 16 of the FOIA to provide adequate advice and assistance to the complainant.
3. No steps are required.

Request and response

4. Prior to the request under consideration in this case, the complainant made the following request: "Please confirm how many two-bedroom properties became available, within the Lambeth borough, to offer to homeless applicants under Part 7 Housing Act 1996, during the following periods:- a. 14th-15th May 2020 (inclusive); b. 18th- 22nd May 2020 (inclusive); c. 25th-29th May 2020 (inclusive); d. 1st-5th June 2020 (inclusive); e. 8th-12th June 2020 (inclusive); f. 15th June 2020; g.

16th June 2020; h. 17th June 2020; i. 18th June 2020; j. 19th June 2020.”

5. LB Lambeth responded to say “Our definition of ‘becomes available’ is as follows. When a void property becomes available for letting it is initially coded as “ready for pre-allocation”. This status code notifies the Allocations Team to identify prospective tenants, for instance by advertising the property through choice-based lettings or reserving for direct offer. The figures below are the number of 2-bedroom properties becoming available on the given dates.

This is the total of Council properties that became available on those dates for allocation under Part 6 of the Housing Act 1996. Those owed a full housing duty under Part 7 can of course bid for or be considered for offers under Part 6 alongside other applicants. The properties listed may still have works being done so may not be immediately available in the sense that someone could move in straight away.”

It then provided some figures.

6. On 24 June 2020 the complainant requested information of the following description following that earlier request:

“The response appears to only consider permanent accommodation, and not also temporary accommodation. Please also respond in terms of temporary accommodation (the properties do not need to be owned by the local authority, but simply provided via the local authority to meet Part 7 Housing Act 1996 duties).”
7. This is the request which is the subject of this case.
8. On 21 July 2020 LB Lambeth responded. It denied holding the requested information.
9. The complainant requested an internal review on 21 July 2020. He said:
“It is wholly unsatisfactory for the local authority not to record what temporary accommodation properties become available on a given date. If records are not kept, the local authority will need to look back and gather the information required. It will also need to change its approach going forward in relation to recording information, in light of its responsibilities as a public body that administers housing.”
10. LB Lambeth sent him the outcome of its internal review on 18 August 2020. In a brief email, it explained that it upheld its original position. The Commissioner has commented about this response further in Other Matters.

Scope of the case

11. The complainant contacted the Commissioner on 19 August 2020 to complain about the way his request for information had been handled.

12. The complainant also made the following comment when he contacted the Commissioner.

“No reasoning was provided for this assertion; just a signposting to the ICO (hence this email). The local authority did not try to explain its record-keeping processes (or lack of) in this important area concerning administration of temporary accommodation to homeless applicants, and nor did it look back to obtain the information required on our client’s behalf. Furthermore, the local authority did not offer to change or even review its record-keeping in this area.”

13. During the course of the Commissioner’s investigation, LB Lambeth appeared to introduce reliance on section 12 – cost of compliance exceeds the appropriate limit. It explained in some detail (set out later in this notice) that it is likely it holds relevant information but that it would be too costly to search for and find all the information it holds within the scope of the request and to provide it. The Commissioner has therefore concluded that LB Lambeth now appears to be relying on section 12(1). This applies where a public authority argues it is too expensive to provide requested information. The Commissioner has therefore considered whether LB Lambeth can, in fact, rely upon section 12(1).

14. The Commissioner has also considered whether LB Lambeth complied with its obligations under section 16 of the Act which requires a public authority, where reasonable to do so, to provide advice and assistance to requesters before, during or after they make a request.

Reasons for decision

15. Section 1(1) of FOIA provides 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 of the description specified in the request, and

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

16. Section 12(1) of the Act states:

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

17. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) at £600 for central government departments and £450 for local government. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour.
18. This means that LB Lambeth may refuse to comply with a request for information if it estimates that it will take longer than 18 hours to do so.
19. 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; a) determining whether it holds the information; b) locating the information, or a document holding it; c) retrieving the information, or a document holding it; and d) extracting the information or a document holding it.
20. Section 12 explicitly states that public authorities are only required to estimate whether the cost of compliance with a request would exceed the appropriate limit, not give a precise calculation. In the Commissioner's view an estimate for the purposes of section 12 has to be reasonable; she expects it to be sensible, realistic and supported by cogent evidence.
21. The Commissioner put a series of questions to LB Lambeth to ask it to explain its position. It answered the questions and gave the following background:

“Most temporary accommodation is “nightly rate” accommodation provided by private sector landlords. Providers of temporary accommodation send local authorities details of vacancies on a day-to-day basis. The temporary accommodation market in London is very fast moving and vacancy information quickly becomes out of date.

These daily vacancy notifications are made by email to the TA [Temporary Accommodation] Team's Placement inbox [it provided the email address]. This email is also used for communications regarding placements, not exclusively vacancy notifications.

The way this information is used is that each day the duty TA Officers will have applicants they need to accommodate. They will have assessed the applicant's needs such as size [of] property they require and location, and will read the vacancy notification emails to identify properties that may be suitable and book these with the provider. They

may also contact providers directly, especially if they have specific requirements."

22. LB Lambeth then went on to imply that it could rely on section 12 as its basis for not complying with the request. It said:

"It is possible to go back and identify emails that may have been notifying us of 2-bed vacancies. During the period in question between 14/5/20 and 19/6/20 there were 365 emails received by the TA Placement Inbox with "vacancy", "vacancies", "available" and "availability" in the subject line, and whose text included reference to "2-bed" (and variations).

However, that does not of course mean we had 365 2-beds available, for the following reasons:

- Some of these emails may not be vacancy notifications, but just happen to include the search terms, or replies to earlier emails
- Some emails and notifications may be duplicates or re-advertisements of the same properties
- Many of these emails are about multiple vacancies
- Some of these properties may have been taken by other councils very quickly, so not necessarily available to Lambeth for any significant period of time

It would require a manual review of these 365 emails to tally how many 2-bed properties in total were available. At 5 minutes per email it would take about 30 hours to manually extract the address and property size of the vacancies."

23. LB Lambeth went on to provide commentary about attachments it had provided to the Commissioner "by way of examples to show the lack of consistency in the formats which means we cannot extract this electronically". It added that "It should also be noted that not all these notifications will be directly relevant to Lambeth. For instance, we regularly get notifications of vacancies in places like Hull and Hartlepool, which are of no interest to us."
24. Finally, it added that "the final decision on whether to use placements would depend on other factors such as price, distance from work or school for the applicant, medical needs etc. We therefore do hold some information regarding vacancy information supplied by TA providers through emails, but this is not supplied in a standardized format and it would be in excess of the FOI cost limit to collate this to provide the requested information."
25. The Commissioner had asked LB Lambeth whether it had a business need to record the requested information. It said:

"No, there is no operational business purpose for which the requested information should be held. LB Lambeth does not record details of available temporary accommodation notified to us by providers each day, and there is no operational need to keep old vacancy notifications from the day before.

When a TA placement is made this is fully recorded on our Housing database system, and we can provide full details of people provided with temporary accommodation on any given date.

It is of course true that having historic information about vacancy notifications would have some value, for instance in the event of an enquiry or for the purpose of strategic analysis of TA supply. However, as noted above, our current systems do not allow the easy collation of this information."

26. The Commissioner viewed the examples provided and noted that they varied in format such that it was necessary to read through them to determine whether they contained the required information. LB Lambeth suggested that each document would take five minutes to look through in order to determine whether it had relevant information and that it had 365 documents in the requested period. While the Commissioner is sceptical that every document would take five minutes, she accepts that this is a reasonable average given the variety of format. Even if it were, say, an average of four minutes per document, that would require over 24 hours work.
27. LB Lambeth knows where the information is or is likely to be, namely the emails sent to a particular email address. However, extracting that information is likely to take longer than the appropriate limit which is set at 18 hours work for local government public authorities such as LB Lambeth. The Commissioner therefore accepts that LB Lambeth can rely on section 12(1) as its basis for refusing to comply with the request.

Advice and assistance

28. Section 16(1) of the Act states: "It shall be the duty of the public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it"

29. The Commissioner has issued guidance on providing advice and assistance. Paragraph 59 of the guidance states¹:

“In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

- either indicate if it is not able to provide any information at all within the appropriate limit; or
 - provide an indication of what information could be provided within the appropriate limit, and
 - provide advice and assistance to enable the requestor to make a refined request”
30. While there had been an exchange of correspondence between the parties, LB Lambeth did not, following internal review, make any effort to provide advice and assistance to the complainant. Instead, the letter it sent outlining the outcome of its internal review was brief and unhelpful. It was a reasonable assumption that LB Lambeth would have an easily searchable record such as the one described in the request. While not obliged under FOIA to do so, nothing in FOIA prevented LB Lambeth from providing an explanation about its response as to why it did not hold such a record such as that given to the Commissioner (see paragraph 25 above). This could have helped the complainant rephrase his request or allowed him more readily to contribute to a wider public discussion as to whether such a resource should be available.
31. In failing to provide adequate advice and assistance, LB Lambeth contravened its obligations under section 16. Given that the analysis in this Decision Notice necessarily contains explanatory detail about how LB Lambeth collects and uses the requested information, the Commissioner does not require LB Lambeth to take any further steps to provide advice and assistance in respect of this specific request.

Other Matters

32. LB Lambeth’s letter to the complainant setting out the outcome of its internal review (dated 18 August 2020) was limited to a single sentence “We consider that our original response was correct”. The FOIA section 45 Code of Practice provides guidance to public authorities on their
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¹[costs of compliance exceeds appropriate limit.pdf \(ico.org.uk\)](#)

responsibilities under the FOIA ². Paragraphs 5.8 – 5.10 explain that the internal review procedure should provide a fair and thorough review of procedures and decisions taken in relation to the FOIA. It says that the public authority should “in all cases re-evaluate their handling of the request and pay particular attention to concerns raised by the applicant”.

33. The Commissioner has set out on her website the positive benefits for public authorities of conforming with the section 45 Code of Practice.³ These include improved public perception of an organisation, saving of staff time and potentially less resource being spent on dealing with complaints to the Commissioner.
34. It is far from clear to the Commissioner whether LB Lambeth conducted a fair and thorough review of the decisions taken in respect of the request in accordance with the section 45 Code of Practice. This is because LB Lambeth only provided a cursory response to the complainant regarding the outcome of its internal review. It appeared to review and alter its position only when approached by the Commissioner regarding this matter. It may well have conducted a thorough internal review prior to its letter of 18 August 2020. However, its correspondence with the complainant and the Commissioner do not appear to demonstrate that.
35. The Commissioner is also disappointed that LB Lambeth did not spell out which provision of FOIA that it was seeking to rely on in its correspondence with her. It clearly used the language of the legislation, namely the word “extract” and “FOI cost limit”, but did not spell out clearly which provision this referred to.

² [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf \(publishing.service.gov.uk\)](#)

³ [Section 45 – Code of Practice, request handling | ICO](#)

Right of appeal

36. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

37. 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.

38. 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

Elizabeth Hogan
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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