

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 September 2021

Public Authority: Runnymede Borough Council
Address: Runnymede Civic Centre
Station Road
Addlestone
KT15 2AH

Decision (including any steps ordered)

1. The complainant requested information from Runnymede Borough Council ("the Council") about the number of applicants for social housing properties. The Council disclosed some of the requested information but refused to provide the remainder under section 12 (exemption where cost of compliance exceeds appropriate limit) of the FOIA.
2. The Commissioner's decision is that the Council was entitled to apply section 12, and that it has complied with the requirement of section 16. However, the Council breached section 17 by failing to issue a refusal notice under the correct legislation.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 4 November 2020, the complainant wrote to the Council and requested information in the following terms (with numbers in brackets added to denote the three separate requests):

"We are now in November 2020 which means that in the space of 1 year and 7 months only 132 1 bedroom properties have been let by the council (73 to those in band D2) this is extremely low and shocking for a borough the size of Runnymede.

***(1)** To put this into context please advise the number of people in total on the housing register **(2)** and also the number of applicants who bided on those 132 1 bedroom properties overall. **(3)** Also please detail how many applied for those 132 flats from specifically from the D2 banding. Only with these figures can the situation be fairly considered."*

5. The Council responded on 1 December 2020. In respect of request (1) it disclosed information. In respect of requests (2) and (3) it applied regulation 12(4)(b) of the Environmental Information Regulations 2004 ("the EIR"), on the basis that to provide the information would be manifestly unreasonable on the grounds of cost.
6. Following an internal review, the Council wrote to the complainant on 19 January 2021. It maintained it's original response.

Scope of the case

7. The complainant contacted the Commissioner on 19 November 2020 to complain about the way requests (2) and (3) had been handled, and specifically that the Council was not entitled to apply regulation 12(4)(b) of the EIR.
8. During investigation, it was identified that the requests should have been handled under the terms of the FOIA, as the sought information is not environmental in nature as defined by regulation 2 of the EIR. The Council subsequently agreed that the requests would fall under the FOIA, and advised that it would therefore refuse the requests under section 12 of the FOIA, on the basis that to provide the information would exceed the appropriate limit in costs. The complainant acknowledged the requests fell under the FOIA but disputed the Council's application of section 12.

9. The scope of this case and of the following analysis is the determination of whether the Council was entitled to apply section 12, and whether the Council complied with section 16 and section 17.

Reasons for decision

Section 12 – Exemption where cost of compliance exceeds appropriate limit

10. Section 12(1) of the FOIA states that:

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.

11. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ (“the Regulations”) sets the appropriate limit at £450 for the public authority in question. Under the Regulations, a public authority may charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.
12. A public authority is only required to provide a reasonable estimate, rather than a precise calculation, of the cost of complying with the request, and in putting together its estimate it can take the following processes into consideration:
- 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.

¹ <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

Is section 12 engaged?

What information is sought?

13. The requests relate to social housing properties. The Commissioner understands that in order to bid on social housing properties, applicants must first join a housing register maintained by the Council; as part of this applicants are ascribed a banding which denotes their priority.
14. Request (2) seeks the number of applicants who have bid on the 132 available one-bedroom properties, whilst request (3) seeks the number of those applicants deriving from a 'D2' banding.

The Complainant's position

15. The complainant has argued that the Council has failed to provide evidence that confirms that compliance with the request would exceed 18 hours, and is therefore not entitled to apply section 12.

The Council's position

16. The Council has argued that to retrieve the information sought by the requests would take a minimum of 77 hours of officer time. This estimation is based on a sampling exercise undertaken by the Homelessness, Housing Advice and Allocations Manager.
17. The Council has provided the following elaboration to explain the basis for its estimation:
 - The requests seek the total number of applicants who bid on the available 132 one-bedroom properties, and the number of those applicants holding the priority banding of 'D2'.
 - There was a total of 4016 bids placed across these 132 one-bedroom properties. Of these 4016 bids, the same applicant may have bid for either several properties, or potentially all 132 of the properties.
 - Consequently, the Council would need to download and collate (in a spreadsheet) the bids submitted for each property. This would take 15 minutes for each of the 132 properties (resulting in a total of 33 hours).
 - The Council would then need to compare the 132 spreadsheets to deduce the actual number of applicants, and then identify their priority banding. This would take 20 minutes for each of the 132 spreadsheets (resulting in a total of 44 hours).

- On this basis compliance with requests (2) and (3) would require approximately 77 hours of officer time, equating to a cost of £1925.

The Commissioner's view

18. The Commissioner has considered the Council's submissions, and recognises that the compilation of the specific information sought by the requests would require the manual collation and review of bids submitted for each property.
19. The Commissioner further understands that a sampling exercise, undertaken by an officer familiar with the subject matter, has indicated that compliance with the request would take approximately 77 hours.
20. The Commissioner considers that the Council has provided a cogent explanation of the actions it would be required to take in response to the request, and that this explanation is supported by a sampling exercise.
21. Whilst the complainant has argued that the Council's position is incorrect, no evidence has been provided that would indicate to the Commissioner that the Council's sampling exercise, and the associated calculations it has undertaken, are deficient.
22. On this basis, the Commissioner is satisfied that the Council has estimated reasonably that compliance with the request would exceed the appropriate limit, and that section 12 therefore applies. The Council was not, therefore, obliged to comply with the complainant's request.

Section 16(1) – Duty to provide advice and assistance

23. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45 Code of Practice² ("the Code") issued by the Secretary of State, it will have complied with section 16(1).
24. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and the regulations made for that section, the cost of complying would exceed

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf

the appropriate limit, it should provide the requestor with reasonable advice and assistance.

25. The Commissioner's guidance³ states that the minimum a public authority should do in order to satisfy section 16(1) is indicate if it is able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit. If the requestor understands the way in which the estimate has been calculated to exceed the appropriate limit, it should help them decide what to do next.
26. In this case, the Commissioner recognises that the Council has attempted to comply with section 16 by suggesting related information that it would be able to provide within the appropriate limit. This includes:
- The number of households on the housing register on the date of the request;
 - The number of households requiring one bedroom on the date of the request;
 - The number of households under the age of 40, or between the ages of 25 and 39, requiring one bedroom on the date of the request; and,
 - A break-down of points 2 and 3 by banding to illustrate how many were in bands A, B, C1, C2, D1 and D2 for one-bedroom properties on the date of the request.
27. Having considered the nature of the information requested, the Commissioner recognises that there is no feasible way in which it can be meaningfully refined. In this scenario, the Commissioner considers the Council's explanation - of what related information it could provide within the appropriate limit - represents appropriate advice and assistance for the purposes of section 16.

³ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Section 17 – Refusal of request

28. Section 17 specifies that a refusal notice must be provided by a public authority no later than 20 working days after the date on which the request was received.
29. In this case, the College breached section 17 by issuing a refusal notice under the wrong legislation.

Other matters

30. Whilst the Council erred in initially refusing the request under the wrong legislation, the Commissioner commends the Council for the quality of its response and subsequent internal review outcome; the substantive content of which provide significant detail, provided in a structured way, to explain the Council's position on the basis of cost.
31. As noted in the Commissioner's guidance on refusal notices⁴, the provision of high-quality responses under the legislation may have significant benefits, including fewer applications for internal review – on the basis that the requestor understands why their request has been refused, and fewer complaints to the Commissioner.

⁴ https://ico.org.uk/media/for-organisations/documents/1628/refusing_a_request_writing_a_refusal_notice_foi.pdf

Right of appeal

32. 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

33. 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.
34. 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

Daniel Perry
Senior Case Officer
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