

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 January 2023

**Public Authority:** London Borough of Lewisham

**Address:** Town Hall  
Rushey Green  
Catford  
London  
SE6 4RU

### **Decision (including any steps ordered)**

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1. The complainant requested information from the London Borough of Lewisham ("the public authority"). The Commissioner's decision is that the public authority was entitled to refuse to comply with the request in accordance with section 12(1) (cost limit) of FOIA. The Commissioner also finds that the public authority complied with its obligations under section 16 of FOIA to offer advice and assistance.
2. The Commissioner does not require the public authority to take any steps.

### **Request and response**

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3. The complainant made the following request for information to the public authority:

"A list of all Section 106 (S106) and Community Infrastructure Levy (CIL) payments made to Lewisham council from Evelyn Ward developments for the period 2010 - Present.

- A list of all departmental allocation (eg "Leisure", "Highways" etc) of S106 and CIL for the period 2010 - Present.

- A list of all expenditure made by Lewisham council from Evelyn Ward development 106 and CIL for the period 2010 - Present.
  - A breakdown of remaining S106 and CIL Held by Lewisham council from Evelyn Ward developments and type of account in which it is held/protected.
  - A list of projected S106 and CIL payments expected by Lewisham council from Evelyn Ward developments for the period 2010 - Present.
  - A list of all deeds of variation for Evelyn Ward developments which reallocated S106 or CIL or both for the period 2010 - Present.”
4. The public authority refused to provide the requested information citing section 12 (cost limit) of FOIA as its basis for doing so.

## **Reasons for decision**

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### **Section 12 – cost of compliance**

5. This reasoning covers whether the public authority is correct to apply section 12(1) (cost limit) of FOIA to the request.<sup>1</sup> The appropriate limit<sup>2</sup> for the public authority in this case is £450.
6. The public authority considers that the cost of complying with this request would exceed the appropriate limit under FOIA. It has explained that it did provide some of the requested information on a discretionary basis but it was not able to provide the information broken down as specified in the request. It was also not able to provide the information relating to deeds of variation as complying with this part of the request alone would exceed the cost limit.
7. The public authority estimated that it would require 32 hours in compiling the information on Deeds of Variation alone. It explained that its system does not run reports in the requested format, so data would need to be checked for information falling outside the scope of the request. The public authority would need to manually check approximately 150 Legal Agreements to see which have had Deeds of Variation and it estimated that at least half of these would need to be

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/36/section/12>

<sup>2</sup> <https://www.legislation.gov.uk/uksi/2004/3244/regulation/4/made>

checked against the Principal Deed which it considered would take around 20 minutes per agreement.

8. The Commissioner is satisfied that the public authority's arguments above are justified because it has explained that lengthy manual searches would be required and the reasonably estimated cost for obtaining the requested information is clearly in excess of the cost limit. It is also worth noting that if just one part of a request triggers the cost limit, then the request as a whole breaches the limit. This is clearly the case in this instance.
9. The Commissioner's decision is that the public authority was correct to apply section 12(1) of FOIA to the request.

### **Section 16(1) – The duty to provide advice and assistance**

10. Section 16(1) of 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 practice<sup>3</sup> in providing advice and assistance, it will have complied with section 16(1).
11. The Commissioner notes that the public authority provided two spreadsheets with some of the requested information in a different format in an attempt to help the complainant. It also advised that the complainant could narrow the scope of the request to attempt to meet the cost limit or that they could pay for the information to be compiled. The Commissioner is therefore satisfied that the public authority met its obligations under section 16 of FOIA.

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<sup>3</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

## Right of appeal

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12. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

13. 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.
14. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**