

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 March 2023

Public Authority: London Borough of Lewisham
Address: Laurence House
1 Catford Road
London
SE6 4RU

Decision (including any steps ordered)

1. The complainant has requested information with regards to a housing contract. London Borough of Lewisham (the council) refused the request under section 14(1) of the FOIA as it deemed the request was vexatious.
2. The Commissioner's decision is that section 14(1) is not engaged and that the council breached section 10(1) of the FOIA as it did not issue a response within the required 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant in accordance with the FOIA without relying on section 14(1) of the FOIA.
4. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 11 April 2021, the complainant made the following information request to the council via WhatDoTheyKnow website (WDTK):

"1. The number of cases of suspected fraud by Lewisham Borough Council's PFI housing management providers Regenter RB3, Pinnacle, Rydon and their respective sub-contractors discovered by or reported to the Council from 01 January 2020 to 31 December 2020?

2. The number of cases of suspected fraud by Lewisham Council's PFI housing management providers Regenter RB3, Pinnacle, Rydon and their respective sub-contractors discovered by or reported to each company from 01 January 2020 to 31 December 2020?

3. How many of the suspected cases were investigated by the Council?

4. How many of the suspected cases were investigated by Regenter, Pinnacle and Rydon?

5. Of the cases investigated how many were confirmed to be an act of fraud?

6. Of those cases confirmed to be fraud, how many has the Council pursued legal action against?

7. Does the Council have a fraud response plan (or equivalent) for the Regenter RB3 PFI housing contract? Does this plan include a fraud risk strategy? What is the fraud risk rating for the Regenter PFI housing contract?

8. In 2020 the Council reported that it did not require its contractors (employers) to implement whistle blowing policies, including protection procedures. Grateful to know if this was reviewed and contracts changed please? Fraud happens in all organisations and its reporting should be encouraged. Employees who work for companies without their own whistleblowing and whistle-blower protection policies are less likely to overtly / covertly report fraud because of the fear of reprisals (i.e. loss of job and retaliation) and this means that tax payers money is at risk of abuse."

6. The complainant sent a reminder via WDTK every month following his request and the council did not respond for 16 months when it refused the request on 12 August 2022 under section 14(1) of the FOIA as it determined it to be vexatious.

7. The complainant requested an internal review on 13 August 2022 and the council provided the internal review on 13 September 2022 upholding its initial response.

Scope of the case

8. The complainant contacted the Commissioner on 19 September 2022 to complain about the council's refusal and the time it took to respond to his request.
9. The scope of the case is for the Commissioner to determine whether the council was correct to refuse the request under section 14(1) of the FOIA. He will also determine whether it responded outside the required timeframes of the FOIA.

Reasons for decision

Section 14(1) of the FOIA – Vexatious request

10. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
11. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the Information Commissioner v Devon CC v Dransfield¹. The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure." The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
12. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the value and purpose of the request justifies the distress, disruption or irritation that would be incurred by complying with it.

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<https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

13. The Commissioner in consideration of this case, must point out that even though the request was responded to on 12 August 2022, he can only take in to consideration evidence prior to the date of the request, that being 11 April 2021.
14. The council has provided some background information to the Commissioner explaining that the complainant is a leaseholder of a property managed under a Private Finance Initiative (PFI) contract².
15. The council has told the Commissioner that in December 2020, the complainant was issued with a warning letter regarding his unacceptable level of contact with the council, and this letter makes reference of 8 FOI requests received between April and December 2020. And during the same time period, a total of 30 FOI requests were received and responded to from varying named individuals, the majority relating to the PFI Housing contract.
16. The council has stated to the Commissioner that in excess of 64 requests were made to the council in 2021 from various individuals including the complainant, again all relating to the PFI housing contract.
17. The council has provided the Commissioner with a spreadsheet recording the requests from April 2020 to 2023. He notes that there were 16 recorded requests in 2021 up to and including this request being made and only one of those requests was from the complainant. That being this request that the council has deemed vexatious.
18. The council considers that the complainant is part of a campaign group that has placed and continues to place a disproportionate or unjustified level of disruption, irritation and distress on the council and they are placing a strain on resources which is getting in the way of delivering mainstream services or answering legitimate requests. Many of the responses sent are challenged with points argued rather than requesting new information.
19. The council has stated that it contacted the Commissioner's Office for some help, guidance and advice with this matter on two occasions in 2021 explaining the situation and that it believed a campaign group was

² Private finance initiative (PFI) contracts are a form of public private partnerships used in the UK since the 1990s. PFI is a way to finance and provide public sector infrastructure and capital equipment projects, such as roads, hospitals, and schools.

in operation and further to that, suspicion that many of the requesters were pseudonyms made via WDTK to make the requests.

20. The council has stated that its Head of Information Security also spoke to the Commissioner's Office in October 2021 and was advised to keep records with a view to start applying section 14(1) of the FOIA to the requests. The council says it did this and consequently started applying section 14(1) of the FOIA to many requests in 2022.
21. The council also listed, in the spreadsheet it provided to the Commissioner, multiple requests from various individuals showing that they had been annotated, the majority being done so by the complainant.
22. The complainant has stated to the Commissioner:

"In 2020 myself and two other residents made several (approx. 12) FOI requests to LBC about the PFI contract. As per a request by LBC to me to reduce the number of FOIs I made, since April 2021 I only made three (3) FOI requests. The April 2021 one and two requests in June 2021 because the relevant LBC teams refused to provide requested information by email. This is hardly a vexatious campaign and the two other residents have not made any requests since spring 2021."
23. The complainant has also told the Commissioner that:

"I promote the WDTK.com FOI platform to others who are mistreated, ignored and discriminated so that they may publicly obtain information to make positive changes but this should not mean LBC may ignore legitimate requests for basic information that they should already hold. I also annotate other peoples' FOI requests pointing people in the direction of other FOIs and highlighting and challenging when FOI authorities refuse to provide information or provide misleading or incorrect information. These annotations do not cause any extra work to the Council because they are not FOI requests requiring responses."
24. As the council points out, it started applying section 14(1) to many of the requests received in 2022, however, this request was made in April 2021. As previously stated the Commissioner is only able to consider evidence leading up to this request being made.
25. With that in mind, the Commissioner has not been presented with sufficient evidence to show that there was a 'campaign group' or that pseudonyms were being used at the time of the request.
26. The Commissioner sympathises with the volume of correspondence/information requests that the council has received up to 2023, but the majority of these request post-date this request and have come from

many different individuals. The complainant has stated that he and two others have made requests, but the Commissioner is not convinced the volume of those requests, stated by the complainant, up to the date of this request can sufficiently be deemed a 'campaign'.

27. Even if the complainant does annotate on requests, this is something that the WDTK website allows, and it is difficult to see how this would create extra work for the council, as pointed out by the complaint, it is not a FOIA request that would require a response.
28. The council has also provided other evidence that the Commissioner has not considered in this decision notice, simply because they are occurrences that happened after this request was made and so are unable to be used in determining whether this request is vexatious. Had this further evidence pre-dated the request, then there may have been a stronger argument for the use of section 14(1) of the FOIA.
29. Based on the above, the Commissioner has not been convinced, that at the time of the request, there was a disproportionate or unjustified level of distress, disruption or irritation being placed on the council.
30. The Commissioner therefore finds that section 14(1) of the FOIA is not engaged and the council should now comply with the steps at paragraphs 3 and 4 of this decision notice.

Section 10(1) of the FOIA – Timeframe to Respond

31. Section 1 of the FOIA requires a public authority that holds information to make it available on request.
32. Section 10(1) of the FOIA requires a public authority to comply with section 1 of the FOIA within 20 working days, following receipt of a request.
33. In this case the council took 16 months to respond to the request. The Commissioner therefore finds that the council has breached section 10(1) of the FOIA.

Other matters

34. Due to the extensive timeframe that the council took to respond to this request, the Commissioner has added this to his internal concerns tracker which he uses to monitor public authorities compliance with the FOIA and Environmental Information Regulations 2004.

Right of appeal

35. 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

36. 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.
37. 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

Victoria James
Senior Case Officer
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