

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 October 2023

**Public Authority:** London Borough of Havering  
**Address:** Town Hall  
Main Road  
Romford  
RM1 3BB

#### Decision (including any steps ordered)

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1. The complainant has requested, from the London Borough of Havering ("the Council"), copies of policies relating to financial compensation during a given period. The Council has advised that it does not hold the requested information.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold information within the scope of the complainant's request. However, the Commissioner finds that the Council has breached section 10(1) of FOIA, as it failed to correctly inform the complainant whether it actually holds the information within the statutory time frame of 20 working days.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

#### Request and response

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4. On 25 January 2023, the complainant wrote to the Council and requested information in the following terms:

"I would like to request information as follows:

## DEFINITIONS

1. "Policy" means a written system of guidelines to guide decisions and achieve rational outcomes. It may include a statement of intent and is implemented as a procedure or protocol.

2. "Supporting Information" means printed documents, computer files, letters and emails that address or relate to:

- Agenda setting (Problem identification) – The recognition of the subject as a problem demanding further attention.

- Formulation – The exploration of a variety of options or alternative courses of action available for addressing the problem. (appraisal, dialogue, formulation, and consolidation) –

Decision-making – The decisions related to the ultimate course of action, whether to perpetuate the policy status quo or alter it.

- Implementation – The decision put the Policy into practice.

- Evaluation – Assessments related to the effectiveness of the Policy in terms of its perceived intentions and results.

3. "Financial Compensation" means the act of providing a person with money in exchange for use of their property.

I would like to ask for a [digital] copy of every Policy that was in force between January 1, 2015 until June 1, 2016 affecting how Financial Compensation was decided, calculated, administered and distributed to Landlords in connection with the Private Sector Leasing Scheme. The information supplied should enclose all Supporting Information to provide a more complete understanding."

5. The Council responded on 22 February 2023. It refused to provide the requested information, citing section 22 of FOIA – information intended for future publication.
6. Following an internal review the Council wrote to the complainant on 27 June 2023. It upheld its original position.
7. During the Commissioner's investigation, he asked the Council to consider their response to the request again, as the information requested was from 2015/2016.
8. The Council provided an updated response, advising that it does not hold the requested information.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 19 June 2023, to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of the case is to determine if, on the balance of probabilities, the Council holds information relevant to the complainant's request.

## **Reasons for decision**

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### **Section 1 of FOIA – general right of access**

11. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them.
12. In cases where a dispute arises over whether recorded information is held by a public authority at the time of the request, the Commissioner - following the lead of a number of First-tier Tribunal decisions - applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it more likely than not that the public authority holds information relevant to the complainant's request.

### **Complainant's position**

13. The complainant has explained that they are only looking for digital copies of every 'written' system of guidelines that has been used to guide decisions that were in force between 1 January 2015 and 1 June 2016. They added that they also want the supporting information that accompanies the same guidelines.
14. The complainant also explained to the Commissioner that they received a further response from the Council on 27 June 2023, advising that information regarding the policy would be available in July 2023. The complainant provided a copy of the email sent from the Council.

### **Council's position**

15. The Council explained to the Commissioner that they searched the records from Democratic Services, who manage the Cabinet agendas and committee decisions, and were unable to locate anything. They added that they do not retain any paper records.
16. The Council also advised that they searched the electronic document records for the housing department, along with the email records for

any document referring to financial payments to Private Sector Leasing landlords. The Council again advised that it could not find any records.

17. The Council explained that it did not find any reference to a policy on financial payments to landlords in any other documents and that as far as it is aware, a policy was not in place at this particular time.

### **Commissioner's finding**

18. The Commissioner has considered the complainant's concerns, details of the searches carried out by the Council, and its explanations as to why the information is not held.
19. In an email to the Commissioner, the complainant explained that they had received an email from the Council dated 22 February 2023, which explained that "not a policy but a procedure, which is currently in the process of being re-drafted and should be complete within the next 3 months...".
20. The Commissioner asked the Council to provide a copy of the document that had been referred to. The Council explained that "all information with regard to how compensation works is contained within the lease contract. Rental compensation and a termination bonus". It also provided a copy of another document, "Housing Services Good Will Gesture Policy" to the Commissioner, explaining that it is not aware of any other policy regarding compensation. This document is in a draft format and was not created until 2021, which therefore falls outside the scope of the request.
21. The complainant has not asked for "any" policies relating to compensation. They have asked for policies that were in force during a very specific period of time. The Council has stated that, as far as it is aware, no such policy existed during that time. No evidence has been put forward that would contradict the Council's assertion that it did not have a policy and, if it did not have a policy, no recorded information about a policy could be held.
22. It is the Commissioner's view that, on the balance of probabilities, the Council does not hold a policy that was available within the years cited in the complainant's request.

### **Section 10 – time for compliance**

23. 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 of the description specified in the request, and

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

24. Section 10(1) of FOIA states that, subject to subsections (2) and (3), 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.
25. In this case, the Council failed to correctly inform the complainant whether it actually holds the information within 20 working days. As such, it has breached section 10(1) of FOIA.

### **Other matters**

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26. The Commissioner reminds the Council to ensure that it is reading requests for information carefully, which will lead to correct responses being issued promptly. In this case, it mis-read the request, which resulted in the inappropriate application of section 22 of FOIA – information intended for future publication.
27. Not only was the Council very unlikely to have had an intention to publish information created so long ago, it cannot publish information it does not in fact hold.
28. The Council needs to ensure that it is carrying out proper searches for information when requests are received and it should not be relying on exemptions to withhold information until it has first confirmed that there is information to withhold. The Commissioner considers that the Council should be able to make use of his “90 second guide to FOI<sup>1</sup>” to assist with any future requests for information.
29. The Commissioner also reminds the Council, that whilst there is no formal requirement to undertake an internal review under FOIA, it is best practice to complete these within 20 working days, and no longer than 40 working days.

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<sup>1</sup> [Freedom of information \(FOI\) in 90 seconds for public authority staff | ICO](#)

## Right of appeal

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

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

31. 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.

32. 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 .....**

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