

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 November 2010

Public Authority: Knowsley Metropolitan Borough Council
Address: PO Box 24
Archway Road
Huyton
Liverpool
Merseyside
L36 9YZ

Summary

The complainant submitted a request for information about a housing grant and loan scheme in North Huyton. Knowsley Metropolitan Borough Council ('the Council') withheld the requested information under section 12. Despite the intervention of the Commissioner, the Council failed to conduct an internal review as requested by the complainant. During the course of the investigation, the Commissioner issued an Information Notice which compelled the Council to provide information about its application of section 12 to the requested information. The Commissioner has investigated and found that section 12 is not engaged. The Council has breached section 16 by failing to provide appropriate advice and assistance to the complainant. The Council also breached section 17(5) by failing to specify the exemption that it relied upon in its refusal notice. The Commissioner requires the Council to disclose the requested information to the complainant.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 7 July 2009, the complainant submitted the following requests to the Council:

"With regard to stories printed in the Knowsley Challenge and Liverpool Echo in Sept 2008 which stated that 'If you own a home in the Stockbridge, Longview or Page Moss wards in North Huyton you may be entitled to a housing grant and loan.'

- 1) Can you tell me if the above statement, is true?
- 2) How many people from the Longview estate have applied?
- 3) How many applications have not yet had a final decision from Knowsley Council?
- 4) Does Knowsley Council have discretion to award Grants to applications they deem appropriate to the Housing Assistance Policy 2006?"

3. On 4 August 2009, the Council responded to the complainant as follows:

- 1) The Council confirmed that the story printed in local newspapers was inaccurate. Whilst people in the 'North Huyton New Deal for Communities' boundary may be entitled to a housing grant and loan, this area does not completely cover the Stockbridge, Longview and Page Moss wards.
- 2) The Council confirmed that 960 application forms were distributed to areas in the priority area for assistance, and 460 forms had been returned. Of these, 105 forms were being processed for housing assistance. The Council stated that to cross-check these against addresses in the Longview electoral ward would "exceed the appropriate limit of 18 hours".
- 3) The Council explained that 500 forms had not been returned, and so these addresses had not received a 'final decision' from the Council
- 4) The Council explained that there are eligibility criteria for housing assistance as set out in the Council's Housing Assistance Policy. Where there are "exceptional circumstances", the Council can authorise applications. The

Council included an extract from the Housing Assistance Policy that sets out the definition of "exceptional circumstances".

4. On 4 August 2009, the complainant wrote to the Council again. In relation to question 2, the complainant disputed that compliance would exceed 18 hours, and again asked that the requested information was provided.
5. On 24 August 2009, the complainant wrote to the Council to enquire when he might receive a response. On 26 August 2009, the complainant submitted a formal request for an internal review.
6. Despite the intervention of the Commissioner, the Council failed to complete an internal review of its decision to refuse the request under section 12 of the Act.
7. Following the intervention of the Commissioner, on 14 October 2010 the Council provided a response to the complainant's request. This disclosed the number of applications received from a number of roads. The Council however stated that it was "unable to provide an exact match between the Longview Estate and the roads listed".

The Investigation

Scope of the case

8. On 13 January 2010, the complainant contacted the Commissioner to complain about the way his request for information had been handled. This Decision Notice focuses on the Council's handling of the complainant's second request.
9. Following the Council's response of 14 October 2010, the complainant contacted the Commissioner to complain that he was still dissatisfied with the Council's response.

Chronology

10. On 26 January 2010, the Commissioner wrote to the Council and asked that it provide the complainant with its internal review outcome within 20 working days.
11. On 13 February 2010, the complainant contacted the Commissioner and stated that he had still not received the Council's internal review of his request.

12. On 7 April 2010, the Commissioner wrote to the Council and asked that an internal review outcome was provided to both the complainant and the Commissioner within 20 working days, so by 5 May 2010. The Commissioner also telephoned the Council to make it aware of the complaint and the need to conduct an internal review.
13. On 5 May 2010, the Commissioner wrote to the Council to enquire when it intended to provide its internal review outcome.
14. On 10 May 2010, the Commissioner wrote to the Council chasing its internal review outcome.
15. On 18 May, the Commissioner sent a further email asking that the Council provide its internal review outcome.
16. On 18 May, 19 May and 20 May 2010, the Commissioner telephoned the Council to ask that the internal review outcome was provided as soon as possible.
17. On 25 May 2010, the Commissioner wrote to the Council to chase up its internal review. Later the same day, the Commissioner telephoned the Council to enquire why it had not conducted an internal review. The Commissioner agreed a final deadline of 4 June 2010 for the Council to provide its internal review to both the complainant and the Commissioner. The Commissioner wrote to the Council again on 25 May 2010 to reiterate this deadline.
18. On 4 June 2010, the Commissioner telephoned the Council to enquire why it had not provided its internal review outcome.
19. On 7 June 2010, the Commissioner emailed and telephoned the Council to ask that it provide its internal review outcome.
20. As the Council failed to provide an internal review, the Commissioner wrote to the Council on 16 June 2010 and asked that it answer a number of questions about its estimate that complying with the complainant's request would exceed the appropriate limit.
21. On 21 June 2010, the Commissioner telephoned the Council to ask that it provided the information requested by the Commissioner as soon as possible.
22. On 24 June 2010, the Commissioner again wrote to the Council to ask that it provide the information requested by the Commissioner.

23. As the Council failed to respond to these questions, on 15 July 2010 the Commissioner issued an Information Notice under section 51 of the Act that compelled the Council to provide the following information:

- With reference to the four activities set out below please provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request:
 - Determining whether the information is held;
 - Locating the information, or a document which may contain the information;
 - Retrieving the information, or a document which may contain the information; and
 - Extracting the information from a document containing it

When providing these calculations please include a description of the nature the type of work that would need to be undertaken (e.g. searching X number of files = 1 hour).

- Please clarify whether a sampling exercise has been undertaken in order to determine this estimate.
- Please also confirm that the estimate has been based upon the quickest method of gathering the requested information, e.g. where possible databases would be used rather than searching manual files.
- Please clarify the nature of any advice and assistance given to the applicant in this case and if no advice and assistance was provided please explain why not.

The Council was instructed to provide this information within 30 days, so by 14 August 2010.

24. On 26 July 2010, the Commissioner emailed the Council to ensure that it had received the Information Notice, and to remind it that the deadline for compliance was 14 August 2010.
25. On 6 August 2010, the Commissioner emailed the Council to remind it that the deadline for compliance with the Information Notice was 14 August 2010.
26. On 13 August 2010, the Council telephoned the Commissioner and asked that the deadline for compliance with the Information Notice was extended to 16 August 2010, as 14 August fell on a non-working day. The Commissioner agreed to this new deadline.

27. On 16 August, the Commissioner telephoned and emailed the Council and explained that it had exceeded the deadline set in the Information Notice for the provision of the information requested by the Commissioner. The Commissioner asked that the requested information was sent as soon as possible.
28. On 17 August 2010, the Council provided the Commissioner with the information he had requested in the Information Notice.

Analysis

Substantive Procedural Matters

Section 12

29. The Council has applied section 12 to the requested information. Section 12 provides an exemption where the cost of complying with the request would exceed the appropriate limit as set out in regulation 3 of the Fees Regulations. For public authorities such as the Council, the appropriate limit is £450. Using a standard rate of £25 per hour, per staff member, this equates to 18 hours work.

Can the requests be aggregated?

30. The Council has aggregated the time it estimates it will take to comply with this request with the time it spent on complying with the complainant's other requests of 7 July 2009. The Commissioner has first considered whether the requests should be aggregated or considered individually for the purposes of section 12(1). Section 12(4) provides that where two or more requests are made by one person, the estimated cost of complying with any of the requests can be taken to be the estimated total cost of complying with all of them. Regulation 5(2) of the Fees Regulations clarifies that this applies when the requests relate to any extent to the same or similar information, and are received by the public authority within a period of 60 consecutive working days.
31. In order to aggregate the requests for the purposes of section 12(1) the Commissioner must determine whether they relate to any extent, to the same or similar information. This has been considered by the Information Tribunal in *Ian Fitzsimmons v Department for Culture, Media and Sport* [EA/2007/0124]. The Tribunal made the following general observation at paragraph 43:

“The test in Regulation 5 of the Fees Regulations seems to us to be very wide; the requests need only relate *to any extent* to the same or *similar* information [Tribunal emphasis]”.

32. The Commissioner considers that the Council is entitled to aggregate the time spent on complying with all four of the complainant's requests of 7 July 2009. This is because they all relate to information about the housing grant and loan scheme.

Would the 'appropriate limit' be exceeded?

33. The Commissioner has considered whether the Council's estimate that complying with the request would exceed the appropriate limit. Regulation 4(3) of the Fees Regulations provides that the activities that a public authority can take into consideration in calculating this estimate include:
- Determining whether it holds the information,
 - 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.
34. The Council has explained to the Commissioner that the Longview Estate is comprised of three separate wards, specifically Stockbridge, Long View and Page Moss. Only part of the Longview Estate is covered by the New Deal for Communities (NDC) boundary.
35. At the time the request was received, the Council had received 460 completed applications for the NDC housing grant and loan scheme, from the original 960 forms sent out. Some application forms were returned from addresses which fall outside of the NDC boundary.
36. The Council has explained that in order to ascertain whether an application form was sent from an address on the Longview Estate, it would be necessary to cross match the address on the form with a list of addresses within the boundaries of the Longview Estate. It would also have to cross match the address with a list of addresses that fall within the NDC boundary.
37. At the time the request was made, the applications received by the Council had not been converted to electronic records, so the addresses on the forms would have to be checked against eligible addresses manually.

38. The Council stated that to create a list of addresses falling within the Longview Estate, a GIS mapping system would have to be utilised. This would involve taking address information from the Stockbridge, Page Moss and Longview wards, and overlaying these with addresses falling within the NDC boundary. The resulting addresses would then be overlaid with a list of addresses from the Longview Estate. This would create a list of addresses within both the Longview Estate and the NDC boundary. The Council estimates from experience of similar work that this exercise would take 2 hours.
39. At this point, the Council would need to compare the original enquiry forms with the list of eligible addresses. It estimates that this would take between two and five minutes per form. The Council received a total of 460 forms. Using the lower figure of 2 minutes per form, it estimates that this exercise would take 15 hours and 20 minutes.
40. The Council has aggregated this estimate with the time that it spent on complying with the other three requests made by the complainant on 7 July 2009. The Council states that it spent four hours on compiling the information provided to the complainant in the original response but has given no further details of what activities took place to provide the information.
41. In response to the complainant's other three requests, the Council stated that the newspaper story was inaccurate, that 500 of the 960 forms sent out had not been returned, and provided an extract from the Council's Housing Assistance Policy. The Council has not provided the Commissioner with any breakdown of the time that it spent on the activities set out in regulation 4(3) of the Fees Regulations. In the absence of any breakdown, the Commissioner does not accept that it is clear that the Council spent four hours on determining whether it held the requested information, or locating, retrieving or extracting this information.
42. Consequently, the Commissioner finds that the Council has provided insufficient evidence to support its reliance on section 12. Therefore, he finds that section 12 is not engaged and requires the Council to disclose the requested information to the complainant. The Commissioner finds that section 12 was applied incorrectly in the Council's original response.

Section 16

43. In its response to the Commissioner's Information Notice, the Council explained that in terms of advice and assistance, the complainant has met with Council Officers on two occasions. In addition, the

complainant has received a home visit and received further advice on a Borough-Wide Assistance scheme.

44. The activities described demonstrate that the Council has advised the complainant generally on accessing services relating to property improvement. However the Council did not advise the complainant on how he might clarify his request so that it could be dealt with within the appropriate limit.
45. The Commissioner therefore finds that the Council breached section 16 by failing to provide the complainant with appropriate advice and assistance. The Commissioner does not however require the Council to explain to the complainant how the request might be clarified as he does not accept that section 12 was applied correctly in this case.

Section 17

46. Section 17(5) provides that:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

47. The Commissioner notes that in its refusal notice of 4 August 2009, the Council explained that it considered that to comply with the complainant's request would exceed the appropriate limit of 18 hours. However, the Council did not explain that it relied on section 12(1) to withhold this information, and consequently the Commissioner finds that the Council has breached section 17(5).

The Decision

48. The Commissioner finds that Knowsley Metropolitan Borough Council has incorrectly applied the exemption from disclosure at section 12. The Council has also breached section 16 by failing to provide appropriate advice and assistance to the complainant and section 17(5) by failing to specify the section that it relied upon in withholding the requested information.

Steps Required

49. The Commissioner requires the Council to disclose the requested information to the complainant or issue a refusal notice relying on a exemption contained in part 2 of the Act.
50. The Commissioner requires the Council to take these steps within 35 calendar days.

Other matters

51. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
52. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case the Council failed to conduct an internal review despite the publication of his guidance on the matter.

Right of Appeal

53. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 17th day of November 2010

Signed

**Andrew White
Group Manager**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides 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.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Section 12(3) provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

Section 12(4) provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

Section 12(5) – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

Duty to provide Advice and Assistance

Section 16(1) provides that -

“It shall be the duty of a 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”.

Refusal of Request

Section 17(5) provides that -

A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.