

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 March 2017

Public Authority: The Royal Borough of Kingston upon Thames
Address: Guildhall
High Street
Kingston upon Thames
KT1 1EU

Decision (including any steps ordered)

1. The complainant has requested information from the Royal Borough of Kingston upon Thames ("the Council") relating to properties within the Borough.
2. The Commissioner's decision is that the Council has correctly applied section 12 of the FOIA to the information falling within the scope of request 1 which relates to freehold properties.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 15 February 2016, the complainant wrote to the Council and requested information in the following terms:

"1. For each council estate (and any areas of council or ex-council housing which are not officially designated as an estate) in RBK, the number of a) resident and b) non-resident leaseholders or freeholders (with leaseholders and freeholders shown separately) broken down by property type (flat, maisonette, house) and number of bedrooms.

For example:

Alpha Road Estate 1-bed flat:

50 resident leaseholders

20 non-resident leaseholders

2-bed house:

15 resident freeholders

5 non-resident freeholders

2. A breakdown of how many people on the housing waiting list are in each of the bands”.

5. The Council responded on 11 March 2016. For request 1, the Council provided the complainant with a spreadsheet which contained information about the Council's leasehold properties. It further explained that the equivalent information was not available for freehold properties as the Council no longer owned those properties. For request 2, the Council provided the requested information.
6. Later the same day, the complainant asked for an internal review to be carried out. He explained

“I requested the number of a) leasehold and b) freehold properties, broken down by property type and number of bedrooms, per estate. The spreadsheet you have provided does not show this information. It groups the properties by block name and postcodes but I am unable to tell from that which properties are on each estate (or area of council or ex-council housing not designation as an estate)

It also does not show property (flat, maisonette, House) and it only shows leasehold, not freehold, properties. I do not accept your assertion that you have no information about freehold properties as you no longer own them. You must have records of which properties you have sold on each estate, regardless of whether they are leasehold or freehold”.

7. The Council sent the outcome of its internal review on 15 April 2016. The Council explained that the spreadsheet provided was taken from its current housing database which stores properties according to block and estate and assigns a single combined block and estate reference to each. The Council explained that this was shown in the first column of the spreadsheet. This column details six characters that make up the reference, the first three describe the estate and the last three describe the block. The Council confirmed that its database does not record an 'estate name' that corresponds to the first three characters. However, the Council were able to provide the complainant with a separate list of addresses and corresponding estates, sorted by estates. The Council explained that this information was not taken from the Council's current housing database and it therefore did not include the six character reference number as provided in the initial spreadsheet.

8. For houses sold freehold, the Council explained that its housing database was primarily an accounting system. It further explained that as soon as a property is sold freehold, it has historically been removed from the system as the occupant would no longer be subject to charges of any kind and the Council's involvement with the property ceases. The Council confirmed that:

"...any residual information regarding the past tenancy would only be retained for six years and would appear as 'tenancy data' rather than in reference to subsequently held properties".

9. The Council did however provide some information to the complainant regarding freehold properties. This consisted of a list of houses that were sold freehold over the past 12 years. However the Council explained that it was not required to keep records of properties where the Council's involvement had ceased more than 12 years ago.
10. The Council also explained that for the purposes of Council records, all maisonettes are classed as 'flats'.
11. Upon receipt of this, the complainant contacted the Council further and queried the information that had been provided. The complainant believed that the further information provided was inaccurate. He also disputed the Council's position that it does not have a record of freehold properties on each estate.
12. The Council responded and addressed the complainant's queries regarding the inaccurate information. It further provided an explanation regarding information held by further properties. The Council advised the complainant that if he was dissatisfied with the Council response, his next step would be to make a complaint to the Information Commissioner's Office.

Scope of the case

13. The complainant contacted the Commissioner on 17 May 2016 to complain about the way his request for information had been handled.
14. His complaint concerned the Council's handling of request 1. The complainant argued that the Council had not provided the information he was seeking.
15. During the Commissioner's investigation, the Council provided further information regarding leasehold properties sought in request 1. The complainant was satisfied with this and it has been removed from the scope of the complaint.

16. However the complainant remained dissatisfied with the Council's handling of the information he sought in request 1 regarding freehold properties.
17. The Commissioner contacted the Council on three occasions for further information. In response to the Commissioner's first two letters, the Council maintained its position that the information sought in request 1 relating to freehold properties was not held. With reference to the Council's second response to the Commissioner, the Council referred to the information as 'incomplete'. The Commissioner wrote to the Council for a third time to determine what the Council meant by 'incomplete'. The Commissioner advised the Council that:

"The FOIA covers recorded information, whether or not it is accurate. You cannot refuse a request for information simply because you know the information is out of date, incomplete or inaccurate. To avoid misleading the requester, you should normally be able to explain to them the nature of the information, or provide extra information to help put the information into context".
18. The Council returned to the Commissioner and revised its position. The Council applied section 12 to the information sought in request 1 on freehold properties on the grounds that compliance with this part of the request would exceed the appropriate cost limit.
19. The Commissioner has therefore had to consider whether the Council was correct to cite section 12 to withhold the information falling within the scope of request 1 which relates to freeholds properties.

Reasons for decision

20. Section 12(1) of the FOIA allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations).
21. The appropriate limit for central government departments is £600 and £450 for all other public authorities.
22. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - 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.
23. The Council explained that some information relating to freehold properties would be held in application forms under the Right to Buy programme. The Council explained:

"The Council does not hold a complete single record of current and ex-Council properties. Historically, when houses were sold freehold the property was deleted from the Council's previous computer system and any deleted records were not transferred to our current computer system. The same is true of our current computer system which does not hold details of ex-Council houses.

This means we cannot create a complete list against which to compare a list of current tenanted and leasehold properties in order to derive a list of freehold houses by exception.

24. The Council further explained that the only way it could create a complete list of houses sold under the Right to Buy would be to collate the Council's Right to Buy records. The Council confirmed that all Right to Buy applications prior to 2001 are kept in paper form. The Council estimated that there are approximately 2500 individual application records and these records include applications that did and did not, complete and all applications are held alphabetically, not according to whether they were completed. The Council explained that:

"With an average of two minutes spent checking and transcribing each of these records this amounts to 5000 minutes or 83 hours. This is in excess of the 18 hours the Council is required to spend on a single FOI request".

25. The Commissioner considers that the estimate provided by the Council does not appear to be unreasonable. However, even if the Commissioner considered the estimate to be overblown, a significant reduction of the figure to 30 seconds to review each application form would still exceed the appropriate limit for compliance. Moreover, the Commissioner is also aware that the Council has already spent a number of hours locating, retrieving and extracting the information sought in request 1 on leasehold properties and also the information sought in request 2. The Commissioner is therefore satisfied that section 12 of the FOIA applies to the information relating to freehold properties sought in request 1.

Section 16 - Advice and assistance

26. Section 16 states that a public authority should provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to a person who has made a request. A public authority will be deemed to have complied with this duty if it has provided advice and assistance in line with that set out in the code of practice on how public authorities are expected to discharge their functions under FOIA. This code is produced under section 45 of FOIA.
27. Under paragraph 14 of the code of practice, where a request is refused on cost grounds, the public authority should consider what, if any, information could be provided within the cost ceiling. There is also reference to advising the applicant to refine or reform their request.
28. In light of the information provided by the Council in paragraph 24, it does not appear that the Council can provide any advice and assistance on how the complainant can narrow his request in order for the Council to comply with it within the appropriate cost limit for compliance.

Right of appeal

29. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Alun Johnson
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF