

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 January 2013

Public Authority: London Borough of Camden Council

Address: Camden Town Hall
Judd Street
London
WC1H 9JE

Decision (including any steps ordered)

1. The complainant requested details, on a case by case basis, as to how the council's Exceptions Panel, responsible for considering exceptional circumstances in the context of housing applications, had decided whether to award or not award additional points. The Commissioner's decision is that the council does not hold the information sought, but has breached section 1(1)(a) by failing to confirm this to the applicant.
2. The Commissioner requires the public authority to take no steps.

Request and response

3. On 19 December 2011, the complainant wrote to the council and requested information in the following terms:

"1. ... [the council's] criteria in allocating council housing of two and three bedroom flats between the period of April 2011 till December 2011 detailing the applicant's points, priority if applicable and the waiting time before the applicant secured his/her flat..."

2. ... how many applicants have requested the Exceptions Panel for additional points with a breakdown on how many points were awarded to each applicant, under which circumstances were the refusals and successful requests made if any..."

3. How many temporary two to three bedroom accommodation were available between April and December 2011, including annexes..."

4. Under what circumstances and for how long had the council used any of its accommodations which are or were allocated under the Choice-based lettings scheme for purposes other than it was intended.

5. ... how many and for how long people [are] living under unsuitable accommodation according to the council in the past two years (sic)."

4. The council responded to the request on 17 January 2012, providing the complainant with information relating to each part of his request. On 8 March 2012, the complainant responded asking the council to *"please tell [him] in more details under what reasons the Exceptions Panel had to award and refuse requests for extra points"* (sic).

5. The council interpreted this as a new request and responded on 26 March 2012 providing some information. On 2 April 2012, the complainant requested an internal review of the council's handling of his request noting the following:

"I need some more information regarding the request I made, could you please provide the information case by case on how the exceptions panel decided on the merit of awarding and not awarding extra points and how to the panel processed request for extra points to applicants in details. I believe that there were few cases and I believe that such information can be disclosed at no extra cost (sic)."

6. The council replied on 18 April 2012. It stated that as the information was being sought on a *"case by case basis"* it was exempt from disclosure under section 40(2) of the Act. Although it did not explicitly cite section 12 of the Act, the council also noted that *"to attempt to provide specific details and detailing reasons on a case by case basis would in any event exceed the 18 hours allowance for the processing of such information"*.

7. For the sake of clarity, the Commissioner is of the view that the complaint's emails of 8 March and 2 April 2012 do not constitute new requests for information but are instead clarifications of part two of the original request. The email of 8 March 2012 simply appears to be an expression of dissatisfaction with the council's initial response and therefore a request for an internal review. Furthermore, the request of 19 December 2011 seeks *"the number of points awarded to each applicant"* and refers to the *"circumstances where the refusals and successful requests made"*. This appears to be tantamount to the clarification provided on 2 April 2012 for information *"case by case"* and *"how the exceptions panel decided on the merit of awarding and not awarding extra points..."*

8. The council has explained that it considers the period covered by the request to be April 2011 to December 2011. This is on the basis that although part 2 of the request of 19 December 2011 did not specify a time frame, other parts of the request make clear that information is being sought between April 2011 and December 2011. As far as the Commissioner is aware, the complainant has not provided any further clarification on this point. In the circumstances, the Commissioner considers that defining the scope from April 2011 to December 2011 is an objective reading of the request.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to examine the council's refusal to provide him with information under sections 12 and 40(2) of the Act.
10. On 13 September 2012, the Commissioner wrote to the council asking it to provide him with its arguments for refusing the request under sections 12 and of 40(2) of the Act. The council responded on 10 October 2012, providing arguments just in respect of section 12. Accordingly, the scope of the Commissioner's investigation was limited to the application of section 12 to the request. On 17 October 2012, the Commissioner sought further clarification on a number of points raised by the cost estimate provided by the council. The council provided further details on 5 November 2012. However, a number of issues remained outstanding so the Commissioner wrote again to the council on 14 November 2012. The council provided additional detail to its section 12 arguments on 7 December 2012.
11. Having considered the arguments presented to him by the council, the Commissioner is of the view that on the balance of probabilities the information requested is not held by the council under section 1 of the Act.

Reasons for decision

12. Section 1 of the Act states that any person making a request for information to a public authority is entitled to be informed in writing by that 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 him.

13. In the council's disclosure to the complainant of 26 March 2012, referred to above, the council provided the following information:

"The circumstances in which the Exceptions Panel has refused the request for additional points are as follows:

- Where it was outside the Exceptions Panel remit;*
- No exceptional circumstances;*
- Circumstances already covered in the Allocations scheme;*
- Other housing options available to the applicant;*
- Medical not assessed;*
- Additional points not to be used to upgrade to a larger property...*

The Exceptions Panel in 2011 to-date awarded points for the following circumstances:

- Harassment/domestic violence extension of points and additional points to assist a move (where this will assist council and housing association tenants needing to move to a larger property and aid a quick move away from the harassment /domestic violence). Harassment / domestic violence points are time limited;*
- Overcrowding;*
- Statutory succession;*
- Non statutory succession;*
- Essential Repair extension of points and additional points to assist a move (where this will assist for council tenants needing to move to a larger property in order that the essential repair can be resolved). Essential repair points are time limited;*
- Medical;*
- Leaving care;*
- Under occupation;*
- Surrender of tenancy;*
- Others."*

14. In seeking justification for the council's application of section 12, the Commissioner sought to establish why the council was able to supply the above information within the cost limit, but to supply the information on a "case by case basis" would exceed 18 hours.
15. The council explained that the information above was taken from its computerised system which records the reason a referral was made. It also identifies whether a referral was agreed, deferred, deemed either not to have relevant issues or was rejected and no points awarded. However, the system is only able to record a single reason for the why a referral is made. In reality, the council has stated that a number of factors will contribute to whether a request is successful/unsuccessful.

16. Consequently, based on the computer system described above, the council was able to run a report which identified those referrals which were successful/unsuccessful. The council was also able to identify factors which were relevant to a successful/unsuccessful referral through the single reason entered into the computer system. However, this does not enable the council to exhaustively identify the factors which were relevant in each case or indeed the role those factors played in the Panel's decision.
17. In order to do this, the council explained that it would need to "*scrutinise the referral to the Exceptions Panel and any supporting information*". The council then went on to provide various time estimates to evidence that consideration of this information would take longer than 18 hours.
18. However, it is the justification for the estimate advanced by the council which has led the Commissioner to the view that on the balance of probabilities the information requested is not held by the council.
19. The Commissioner sought to clarify that the Panel's decisions are not recorded in a single written document; comparable to, for example, a court judgement. The council explained that the factors taken into account by the Panel in a given case "*are not contained in a single written document explaining the exact reasons for a decision*". The council also clarified that there is no summary sheet of each referral which would demonstrate the factors taken into account by the Panel.
20. Instead, the panel explained that there is a record sheet for each panel member which contains their notes on each of the cases. However, the council has also explained that "*each of those notes would not necessarily state exactly the factors taken into account to make a decision which is why further scrutiny of the supporting documents would be required*".
21. As part of the evidence presented to the Commissioner in support of its cost estimate, the council selected two cases and outlined the supporting documents which it argued would be necessary to consider in order to establish the factors which were taken into account by the Panel:

"Sample A – Documents considered:

Applicant's bid history;
Applicant's points history;
Email from applicant's solicitor;
Email from applicant's solicitor;

Average, median and indicative minimum values for successful CBL bids;
Letter from applicant's solicitor with assessment report;
Medical assessment Officer's downloaded notes;
Applicant's points history;
Email from applicant's solicitor;
Letter from applicant's solicitor;
School report;
Psychiatric report;
Responding letter to applicant's solicitor;
EP Decision letter to applicant's solicitor;
Further letter to applicant's solicitor.

Sample B – Documents considered:

Complaint letter;
Email;
Email;
Emails;
Email;
Emails;
Download of medical assessment officer's notes;
Email includes a long response to a councillor;
Table showing points level;
Letter from Welfare Officer;
EP Referral Form;
Emails;
Email to councillor;
EP decision letter to client;
Email to councillor;
Email;
Email trail;
Email from applicant's ex-partner;
Further email from applicant's ex-partner and responding emails."

22. The Commissioner notes the Tribunal's decision in [Michael Leo Johnson v the Information Commissioner and the Ministry of Justice \(EA/2006/0085/ 13 July 2007\)](#) where it commented:

"49. ... the degree of skill and judgment that must be applied to the building blocks may well have a bearing on whether the information is held or whether what is being is more properly construed as being new information..."

23. The Commissioner considers that there is a distinction to be made between situations where "skill" and where "judgment" is required to extract the information to respond to a request. His guidance, ['Determining whether information is held'](#), explains that:

"Anyone competent in the required skills will obtain the same results when applying them to the same data. When thought of in these terms... the level of skill needed to identify, extract or manipulate the building blocks does not determine whether information is held... What is important in determining whether information is held is the level of judgment exercised."

24. The Commissioner is of the view that the task outlined by the council in paragraphs 15 – 21 above would require judgment and not skill to complete. The council is proposing to look at the evidence which was submitted before the Panel in order to determine what was taken into account, and how, in order to reach its decision. The officer conducting the search would therefore have to try to interpret what the Panel would have taken into account and how. Given the range and type of documents submitted to the Panel in the two cases above, it seems unlikely that the decision process would be scientific. Instead, it would involve the discretion of different panel members who would inevitably be affected by different evidence in different ways. It therefore seems unlikely that two different officers would obtain the same conclusions regarding the factors which were taken into account in each case. As different officers would not necessarily obtain the same results when looking at the same data, it is clear that the task would involve the exercise of judgment rather than the deployment of a mechanical skill.

25. The Commissioner's guidance further explains that:

"... if answering the request involves exercising sophisticated judgment, the information will not be held. But if only a reasonable level of judgment is required to identify the relevant building blocks, or manipulate those blocks, the information will be held..."

26. At the very least, the Commissioner considers that the exercise outlined in paragraph 24 would require "sophisticated judgment". To determine how evidence would be interpreted by a Panel making a decision to award extra points would require detailed knowledge of the housing applications. This is evidenced by the fact that the *"panel is made up of senior manager in the Housing Needs Group including the HNG Group Leader and service managers from the following services in the Group: Allocations Services, Housing Options & Advice Service, Single Pathways Support Service and Floating Supporting Service and is serviced by the Exceptions Panel Manager."*

(<http://www.camden.gov.uk/ccm/content/housing/housing-options-new/i-need-more-advice-and-help/how-the-exceptions-panel-works.en;jsessionid=C5AA62CFE34D43C308942A2A4CF5EA86.node2>)

27. Sample A above illustrates that the decision to award extra points will involve consideration of medical, educational and psychiatric information. The council has further explained that the evidence in support of a typical referral could contain *"a consultant's report, several GPs or psychiatric letters or reports, a child psychologist report, a report from a social worker, information from the medical assessment officer [and] supporting information from a councillor..."*
28. The Commissioner considers that the seniority of the individuals, outlined in paragraph 26, who make up the Panel clearly illustrates that the decision to award extra points is one which would require detailed knowledge and experience of the housing application system. Moreover, the evidence submitted to the Panel, as described in paragraphs 21 and 27 above, would be inherently complex. This complexity will compound the sophistication of the judgment necessary to determine the relevance of this information to the decision to award, or not award, extra points for the purpose of housing applications.
29. The Commissioner considers the extraction of the information requested would require sophisticated judgment rather than a learnt skill, because the outcome is not solely dependent on the relevant raw data, and that consequently the information is not held within the meaning of the Act.
30. The Commissioner finds that the council has breached section 1(1)(a) by failing to deny to the requestor that the information is held; rather than seeking to argue that it is exempt from disclosure under section 12 or 40(2) of the Act.

Right of appeal

31. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

32. 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.
33. 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

Andrew White
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