

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 November 2019

Public Authority: London Borough of Waltham Forest

Address: Town Hall
Forest Road
London
E17 4JF

Decision (including any steps ordered)

1. The complainant has requested copies of fire risk assessments ("FRAs") carried out on a particular building. The London Borough of Waltham Forest ("the London Borough") provided copies of assessments that it held.
2. The Commissioner's decision is that the London Borough holds no further information beyond that already disclosed and has therefore discharged its duty under section 1(1) of the FOIA. However, it failed to discharge this duty within 20 working days and thus breached Section 10 of the FOIA.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 6 January 2019, the complainant wrote to the London Borough and requested information in the following terms:

"Please provide me with the following:-

"1) A copy of the fire risk assessment for Northwood Tower for the period 2000 - 2017. As I understand it, these assessments must be reviewed every two years and redone every four years.

"I would like the above information to be provided to me in paper format."

5. The London Borough responded on 13 February 2019. It provided the complainant with eight documents, both in hard copy format and electronically, which it said were the documents which were
"available in line with cost limitations applicable in completing the request"
6. The complainant requested an internal review on 23 February 2019. She pointed out that two of the documents which she had received were duplicated. Noting the London Borough's reference to the cost limit, she argued that she could have been provided with additional information had these duplicates not been provided.
7. Following an internal review the London Borough wrote to the complainant on 24 May 2019. It stated that it held no further information beyond that which had already been provided. It then provided a further internal review on 19 August 2019 in which it again stated that it had provided all the information it held. It also provided some additional explanations as to why it held no further information.

Scope of the case

8. The complainant contacted the Commissioner on 26 June 2019 to complain about the way her request for information had been handled.
9. The complainant was unhappy that the London Borough's response was provided late. Although she appeared to accept that no further information was held, she was also convinced that the London Borough had committed a criminal offence under section 77 of the FOIA because, by making reference to the cost limit it had *"attempted to mislead me at the outset."*
10. As criminal offences cannot be considered in a decision made under section 50 of the FOIA, the Commissioner considers that her starting point has to be a determination as to whether the London Borough held additional information at the point the request was made.
11. Having reviewed the information which the London Borough has provided to the complainant, the Commissioner considers that each FRA contains some information which would be environmental. If any further information, within the scope of the request, were held by the London Borough, the Commissioner considers that it would also be likely to contain a mixture of environmental and non-environmental information.
12. The London Borough was not explicit in its initial response or internal review as to whether it had considered the request under the EIR or the

FOIA. As there are no procedural issues to address, the Commissioner considers that it would serve no useful purpose to draw a distinction between what information would fall for consideration under the FOIA and what would fall under the EIR – unless it is determined that further information is held.

13. The analysis that follows is therefore to determine whether the London Borough holds further information within the scope of the request.

Reasons for decision

14. Section 1(1) of the 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.*

15. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
16. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The London Borough's position

17. The London Borough explained to the Commissioner that:

"All records in relation to FRAs are held electronically. Searches were carried out on the dedicated network folder for FRAs undertaken on behalf of the council to obtain this information. The council had no legal requirement to carry out FRAs before October 2006. Therefore, the council does not hold Fire Risk Assessments for Northwood Tower recorded on its system prior to this date.

"Until 2016, the councils housing stock was managed and delivered by an Arm's Length Management Organisation (ALMO) on behalf of the council. This organisation was called Ascham Homes. When the service was integrated back to the council in 2016, the only Fire Risk Assessments provided to the council by Ascham Homes were the 2009 report, the 30/10/14 -30/10/15 report and the 17/12/15 – 16/2/16 report, which were saved electronically to the service areas designated folder. All of these have been provided to [the complainant] as part of her FOI request."

18. The London Borough went on to explain that it now had a legal requirement to retain its FRAs and therefore it had not destroyed any of the documents that had come into its possession. However, as noted as above, it had never possessed some of the FRAs covered by the time period set out in the request.
19. When pressed by the Commissioner as to the inclusion of the phrase "available in line with cost limitations applicable in completing the request," the London Borough stated that it had at no time attempted to claim that responding to the request would breach the Appropriate Limit.¹ The London Borough confirmed that it had never attempted to refuse the request, either in full or in part and that the only information it held was that which had been provided. It stated that:

"we are able to confirm that the statement was included to inform that the fulfilment of the FOI has met the cost limitations threshold. The statement is not intended to imply an exemption or to suggest that information has been withheld. s12 was not applied to this request."

The Commissioner's view

20. The Commissioner's view is that, on the balance of probabilities, the London Borough does not hold any further information beyond that which it has already provided.
21. The Commissioner is satisfied that the London Borough has carried out appropriate searches to identify information within the scope of the request.

¹ Section 12 of the FOIA allows a public authority such as the London Borough to refuse to comply with a request if the cost of complying would exceed £450 ("the Appropriate Limit").

22. Having considered the London Borough's arguments as to why it would not be expected to hold further information, the Commissioner considers that it has demonstrated that it would be inherently unlikely to hold any additional information. This does not mean that the information does not exist, only that the London Borough did not hold copies at the time the request was made.
23. The Commissioner therefore considers that the London Borough has complied with its section 1(1) duty in respect of this request.

Section 10 – Timeliness

24. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
25. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the London Borough has breached section 10 of the FOIA.

Other matters

Section 77 allegations

26. The complainant was insistent that the London Borough's reference to the cost limit was an attempt to mislead her and that the London Borough had therefore committed a criminal offence in responding to her request.
27. Section 77(1) of the FOIA states that:

Where—

(a) a request for information has been made to a public authority, and

(b) under section 1 of this Act the applicant would have been entitled (subject to payment of any fee) to communication of any information in accordance with that section,

any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled.

28. The Commissioner reiterates what she has already said in private correspondence with the complainant – namely that a criminal offence under section 77 can only occur *after* a request had been made and if the offence prevented the requestor from accessing information *which they would otherwise have been entitled to receive via that request*.
29. As the complainant was not entitled to receive any additional information and as the London Borough has never attempted to refuse the request, any section 77 arguments would thus fall away immediately.

Wording of response

30. In light of the issues raised in this case, the London Borough may wish to reconsiders its use of a reference to the cost limit when it is not attempting to refuse a request under section 12 of the FOIA.
31. Whilst the London Borough provided an unambiguous statement, in its internal review, as to the information it held, the Commissioner considers that many of the issues that have since arisen could have been prevented had the London Borough been clearer about its position from the outset.

Accuracy of information provided

32. During the course of the investigation, the complainant also drew the Commissioner's attention to research suggesting that public authorities were regularly providing inaccurate statistical data in response to information requests.
33. The present request does not involve statistical data, it seeks FRAs. The complainant has been provided with a copy of the FRAs. Whether the assessments the documents contain are "accurate" is not a matter for the Commissioner. The responsibility upon the public authority is to provide the information which it holds and, as the Commissioner has recorded above, it has done.

Access regime

34. Whilst this decision notice has referred to the FOIA throughout, for completeness, the Commissioner considers that her decision would have been the same had she considered the matter under EIR.

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

**Phillip Angell
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Wycliffe House
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