

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 June 2020

**Public Authority:** London Borough of Enfield  
**Address:** Thomas Hardy House  
39 London Road  
Enfield  
EN2 6DS

**Complainant:** on behalf of LMD UK Ltd

### Decision (including any steps ordered)

---

1. The complainant requested information about council-owned blocks. The London Borough of Enfield ("the London Borough") provided some information but refused to provide the remainder because it stated that the information was already reasonably accessible to the complainant.
2. The Commissioner's decision is that the London Borough of Enfield is entitled to rely on section 21 of the FOIA to withhold the information. She does however find that the London Borough failed to cite this exemption within 20 working days and thus breached section 17 of the FOIA.
3. The Commissioner does not require any further steps.

### Request and response

---

4. The complainant originally contacted the London Borough on 20 June 2019 and requested information in the following terms:

*"Under the Freedom of Information Act, I would be grateful if the council could please identify which blocks in their borough are under their ownership and, within each, how many units exist. We also would like information on how many of those are still under ownership of the local authority and how many have been sold as leasehold under Right to Buy."*

5. On 26 July 2019, the London Borough responded. It provided the total number of council-tenanted properties and the total number of Right-to-Buy units within Council-owned blocks. It also identified all the blocks which it owned. However, the London Borough did not break down each block between tenants and leaseholders as it said that, to do so would risk disclosing personal data.
6. The complainant contacted the London Borough again on 13 August 2019. She expressed dissatisfaction with the information provided and she set out the exact format in which she wished to have the information provided.
7. The London Borough treated this correspondence as a request for an internal review and completed that review on 11 September 2019. It updated its original list to include a breakdown of tenants and leaseholders where the numbers involved were six or more.

### **Scope of the case**

---

8. The complainant first contacted the Commissioner on 6 September 2019 to complain about the way her request for information had been handled. At that point, the London Borough had yet to complete its internal review. Once the London Borough had completed its review, the complainant complained to the Commissioner once again about the London Borough's use of section 40(2) to withhold information.
9. At the outset of her investigation, the Commissioner explained, to the complainant, the issues that appeared to be discouraging the London Borough from providing the requested information.
10. The Commissioner advised the complainant that seeking data for only those blocks which contained six or more units and allowing the London Borough to use "5 or fewer" to protect the lowest numbers, might alleviate the concerns and allow the complaint to be resolved informally. The complainant agreed to this approach in correspondence dated 23 January 2020.
11. The London Borough issued a fresh response to the request on 18 February 2020 and disclosed the number of tenants and the number of leaseholders in each block. In line with the Commissioner's suggestion, where the number of either leaseholders or tenants in a particular block was five or fewer (but greater than zero), the London Borough suppressed this information.
12. Whilst the London Borough ultimately decided to issue a fresh response, it pointed out to the Commissioner that, at a very late stage in its

considerations, it realised that the requested information would have been available from HM Land Registry – albeit via payment. Whilst it considered that disclosing information was the easier option, it sought the Commissioner's view as to whether section 21 of the FOIA would have applied. The Commissioner noted that she could only take a formal view on the exemptions actually applied by a public authority, but accepted that she had previously found that information could still be deemed as "reasonably accessible" even where it was only accessible for a fee.

13. Despite the London Borough having complied with the previously-agreed approach taken by the Commissioner, the complainant contacted the Commissioner on 11 March 2020 to state that she was unhappy that the London Borough had refused to supply data where the number involved was five or fewer.
14. Whilst the Commissioner notes that the London Borough complied with her approach – an approach which had already been explicitly endorsed by the complainant – the additional parameters that she introduced did not form part of the complainant's initial request. As the complainant has rejected the attempts at an informal resolution and insisted on a decision notice, she must consider the request as it was originally submitted.
15. The Commissioner pointed out that the London Borough had previously indicated that it might rely on section 21 of the FOIA to withhold information and that, based on her previous decisions, it seemed likely that the exemption would apply. However, the complainant refused to accept the Commissioner's view and insisted on a decision notice.
16. After receiving the complainant's 11 March correspondence, the Commissioner asked the London Borough to reconsider its stance on section 40(2) and the London Borough issued a fresh refusal notice to the complainant on 19 May 2020 – now relying on section 21 of the FOIA to withhold the requested information.
17. The Commissioner considers that the scope of her investigation is to determine whether the information in question is reasonably accessible to the complainant.

## **Reasons for decision**

---

### Section 21 – Reasonably Accessible to the Requestor

18. Section 21 of the FOIA states that:

- (1) *Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.*
  - (2) *For the purposes of subsection (1)—*
    - (a) *information may be reasonably accessible to the applicant even though it is accessible only on payment, and*
    - (b) *information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.*
19. The Commissioner considers that the purpose of the section 21 exemption is to protect the scarce resources of public authorities by shielding them from replying to requests for information which the requestor could have found elsewhere. It acts as an incentive for public authorities to be proactive in publishing information as part of their publication schemes. Finally it protects the statutory right of public authorities to charge for certain information which they are bound by law to collect.
20. In this particular case, the London Borough pointed out that all of the information that the complainant originally sought could have been obtained by using HM Land Registry's land search tool. It argued that, in providing this information, it would be denying the Land Registry a substantial amount of money.
21. The complainant's position was set out in an email to the Commissioner dated 26 May 2020. Referring to the link to the Land Search tool the London Borough had provided, she argued that:
- "the information I requested almost 1 year ago (June 2019), is available at this link for a cost of £34.90 per block owned by the council. If I were to utilise this tool to obtain the data requested, that would be at a cost of approximately £29,106.60 based on the 834 properties the council owns. I don't believe that's reasonable to say the council won't provide the data in the way I requested because it's available in the public domain at a cost of £29,106.60."*
22. It appears to be common ground between all parties that the requested information *would* be available from the Land Registry. The dispute centres on whether it would be *reasonably* accessible to the complainant.

23. The FOIA says that information must be “reasonably accessible” to the requestor for section 21 to apply – not that it must be equally as accessible to the requestor as it is to the public authority.
24. In decision notice FER0844098,<sup>1</sup> the Commissioner considered a similar request for a list of owners of 104 properties that Gloucestershire County Council had sold and the prices that had been paid for each one. The Commissioner found that, although the cost required was not insignificant, the Land Registry Act permits HM Land Registry to charge for the information it holds and that the information was available via a publication scheme.
25. The Commissioner considers that whilst there are some differences between that request and the one being considered here – namely that the complainant in this case is seeking fewer data fields in respect of a larger number of properties – the basic principle is the same: all of the information would be available from HM Land Registry. The information that HM Land Registry holds is available as part of its publication scheme and it is required, by another piece of legislation, to produce that information on request – albeit for a fee.
26. Anyone can request information from HM Land Registry online therefore, fees aside, the Commissioner can see no other reason why the information is not reasonably accessible to the complainant – and the complainant has not put forward any other reason as to why she cannot access the information from HM Land Registry.
27. Section 21(2) of the FOIA is very clear that where information is accessible via another enactment, it is “reasonably accessible”, regardless of whether a fee is required.
28. The Commissioner is therefore satisfied that the information *is* reasonably accessible to the complainant and therefore the London Borough is entitled to rely on section 21 of the FOIA to withhold the information.

### Procedural Matters

29. Section 17(1) of the FOIA states that when a public authority wishes to withhold information or to neither confirm nor deny holding information it must:

---

<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2616375/fer0844098.pdf>

*within the time for complying with section 1(1), give the applicant a notice which—*

- (a) states that fact,*
- (b) specifies the exemption in question, and*
- (c) states (if that would not otherwise be apparent) why the exemption applies.*

30. Whilst the London Borough could probably have relied on section 21 to withhold *all* the information it held within the scope of the request, it did not begin relying on that exemption until nine months after the request was submitted. The Commissioner therefore finds that the London Borough breached section 17 of the FOIA in responding to the request.

### **Other matters**

---

- 31. The complainant has made several identical requests to other local authorities. She has expressed her concern that both the public authorities concerned and the Commissioner have taken different approaches to some of the request.
- 32. Section 50 of the FOIA – which is the section empowering the Commissioner to investigate complaints and issue decisions – requires the Commissioner to determine whether a public authority has complied with the FOIA in the way that it has handled a particular request. She does not act for either party to a complaint.
- 33. Different public authorities will hold different types of information in different ways. Some may be willing to disclose information even though an exemption would apply and there may be particular circumstances which would affect the severity of prejudice or the balance of the public interest which are unique to a particular public authority.
- 34. Whilst the Commissioner strives to maintain a consistent approach, she considers each complaint on its own individual merits. As the approach to the London Borough has taken to this request has been different to that taken by other authorities, it follows that the Commissioner's considerations will also be different.

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**