

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 December 2022

Public Authority: Brent Borough Council

Address: Brent Civic Centre
Engineers Way
Wembley Park
Wembley
HA9 0FG

Decision (including any steps ordered)

1. The complainant has requested information from Brent Borough Council ("the Council") relating to the allocation of residential properties within a specified Council area over a number of years.
2. The Commissioner's decision is that the Council has correctly applied section 12(1) of FOIA to the requested information. The Council has also fulfilled its obligation under section 16 of FOIA to provide advice and assistance to the complainant. Therefore the Commissioner requires no steps to be taken.

Request and response

3. On 15 April 2022, the complainant wrote to the Council and requested information in the following terms:

"Could you please list the number of 4 bedroom properties in south that have been allocated by south Kilburn regeneration team from year 2005 to date, that are:

- 1) Under-occupied , meaning that the family number is less than the bedroom awarded, where a family could be 5 including parent and children.

- 2) Under-occupied which Brent Council imposed & collects bedroom tax.
4. The Council, after seeking clarification of the request, responded on 15 June 2022. It stated that it did not hold the requested information.
5. On 15 June 2022 the complainant sought an internal review. The complainant stated:

“... I must insist, could you review all 3 and 4 bedrooms properties that have been provided from 2018 to date. An example where 1 couple and 3 children were allocated 4 bedroom properties, and 1 couple and 2 children provided with 3 bedrooms.”
6. The Council's response to this was provided on 11 July 2022. It stated that it did not hold allocation information in a centralised form, therefore Council officers would have to go through each individual record from 2018 onwards. As there is in excess of 200 records, this would take approximately 2000 minutes (around 33 hours) and at a flat rate of £25 per hour, would cost approximately £833. This would exceed the time and cost limits set out in section 12 of FOIA, which are 18 hours and £450.00 in respect of local government.
7. The complainant wrote to the Council on 15 July 2022 asking it how he could best re-frame the request to bring it under the cost limit. The Council responded on 28 July 2022 stating that it could not provide any advice on how to re-frame the request as the response would remain the same since the Council would have to search individual records as the information is not centralised. The Council did state:-

“In general, I can assure you that allocations are made in line with the Brent housing allocation scheme, and the landlord offer; allocations are made on the basis of need, rather than a count of people in the family unit, but no family would be offered a larger property (and therefore have a spare room) than was required for occupancy.”

Scope of the case

8. The complainant contacted the Commissioner on 11 July 2022 to complain about the way their request for information had been handled.
9. The Commissioner has considered the Council's application of section 12 of FOIA and whether it has fulfilled its obligation under section 16 of FOIA to provide advice and assistance.

Reasons for decision

Section 12(1) – cost of compliance

10. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the Council.
12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Council.
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it;
 - extracting the information from a document containing it.

14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency*¹ the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. The Council estimates that it would take approximately 10 minutes to a review each record. Therefore, the Council calculated that in total, it would take over 33 hours to compile and provide all the information it held within the scope of the request.
16. The Commissioner considers the Council’s estimate of 10 minutes to review each record for information within the scope of the request to be reasonable. Even if the Council was to take 5 minutes to review each record, the fact that there is “in excess of” 200 records means it is highly likely that the cost of complying with the request would still exceed the appropriate limit.
17. The Commissioner’s decision is that the Council estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the Council is entitled to rely on section 12(1) of the FOIA to refuse to comply with the request.

Section 16(1) of FOIA – duty to provide advice and assistance

18. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, provided a public authority adheres to the recommendations as to good practice contained within the Section 45 Code of Practice in providing advice and assistance, it will have complied with section 16(1).
19. The complainant sought advice on how to re-frame their request to bring it under the cost limit and the Council stated that this would not be possible due to the necessity of searching each individual record.

¹ EA/20017/00041

However, the Council did provide the complainant with a statement regarding its housing allocation policy.

20. Under the circumstances the Commissioner considered that the Council provided advice and assistance as far as possible and has therefore complied with the above obligation.

Right of appeal

21. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

22. 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.
23. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF