

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2022

Public Authority: London Borough of Lambeth
Address: Lambeth Town Hall
Brixton Hill
London
Sw2 1RW

Decision (including any steps ordered)

1. The complainant has requested London Borough of Lambeth (the council) to disclose the amount of money Homes for Lambeth (HfL) has spent on WeWork desk space, the number of desks and how long they were rented for. The council refused to disclose the requested information citing regulation 12(5)(e) of the EIR.
2. The Commissioner's decision is that the request should have been considered under FOIA. As section 43 of FOIA is comparable, the Commissioner has considered whether this exemption applies to the request.
3. The Commissioner has concluded that for the number of desks, section 43 of FOIA applies and the public interest rests in non-disclosure. However, he has concluded that section 43 of FOIA does not apply to the total amount of money spent and how long the desks were rented for.
4. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Disclose the amount of money HfL has spent on WeWork desk space.

- Disclose how long WeWork desks were rented out for. If they were still being rented out at the time of the request, to confirm this was the case.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 12 April 2022, the complainant wrote to the council and requested information in the following terms:
- “The amount of money Homes for Lambeth has spent on WeWork desk space.
- The number of desks that have been rented out.
- The number of Homes for Lambeth staff that have used WeWork desks.
- The job titles of staff members who used the WeWork desks.
- How long the WeWork desks were rented out for. If they are still being rented out, please state this.- The name of the WeWork where desks were rented out.”
7. The council responded on 12 May 2022. It provided the information requested for questions three, four and six. For questions one, two and five the council refused to disclose the information citing regulation 12(5)(e) of the EIR.
8. The complainant requested an internal review on 13 May 2022.
9. The council carried out an internal review and notified the complainant of its findings on 6 July 2022. It upheld its previous decision.

Scope of the case

10. The complainant contacted the Commissioner on 22 July 2022 to complain about the way their request for information had been handled. They believe the requested information should be disclosed.

11. The Commissioner has proceeded straight to a decision without the withheld information or further input from the council. The council was requested to provide this information on 25 October 2022 but has failed to do so.
12. The request is not a request for environmental information and so it should have been processed under FOIA. The amount of money spent on We Work, for how long and the amount of desks is not information relating to any of the factors outlined in regulation 2(1)(a) to (f) of the EIR.
13. As section 43 of FOIA is comparable to regulation 12(5)(e) of the EIR, the Commissioner has considered whether section 43 of FOIA applies to the request.
14. He has decided that section 43 does not apply to some of the requested information. The following section will explain why. The summary section above explains what action is now required by the council.

Reasons for decision

15. Section 43 states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the commercial interests of the council and/or a third party. It is also subject to the public interest test.
16. The council stated that disclosure of the number of desks and the associated financial information would be likely to prejudice the commercial interests of both WeWork and HfL. It argued that the specific arrangements offered under contract to HfL would have been subject to negotiation and specific to this agreement. It is therefore of the view that disclosure could allow competitors of WeWork to undercut their prices in future leading to less competitiveness within the market overall.
17. The council went on to say that disclosure would damage HfL's relationship with WeWork meaning that HfL may be less able to negotiate similar contracts in future, thereby affecting its ability to achieve value for money.
18. In its initial response, the council advised that WeWork had stated that disclosure could provide information on its methods of business which may be of advantage to its direct competitors, thereby negating its ability to develop a commercial advantage when tendering for other contracts.

19. The Commissioner accepts that disclosure of the total amount of money spent, the number of desks and how long the contract is for would enable competitors of WeWork to work out roughly the rate HfL has paid per desk. This would enable competitors to potentially undercut WeWork when bidding for and negotiating for new business. Similarly it would reveal to other organisations what HfL paid and allow them to use this information to negotiate a similar or better deal with WeWork.
20. However, the Commissioner does not consider parts of this information alone would be likely to have those effects if disclosed. It is the combination of those factors together, which enables the rate per desk to be worked out. Disclosing the total amount of money spent and the length of the contract would not enable the rate per desk charged in this contract to be worked out. It would therefore not be prejudicial to the commercial interests of WeWork and the council if it was disclosed.
21. Therefore, for this information the Commissioner has decided that section 43 of FOIA does not apply and it should be disclosed.
22. For the number of desks, as the Commissioner is satisfied that, with the total amount spent and the length of the contract, a rate per desk can be derived, he has concluded that this information is exempt from disclosure under section 43 of FOIA. For this information the Commissioner will now consider the public interest test.
23. There is a public interest in openness and transparency and in members of the public understanding more clearly what public money is being spent on office space rental.
24. However, this will be met if the council complies with the steps of this notice and discloses the total amount paid and the length of the contract. Disclosing the number of desks too would enable competitors or future customers of WeWork to roughly work out a price per desk. This information would enable them to either undercut WeWork or hinder WeWork's ability to negotiate fairly and freely in future contracts and with new customers. This is not in the interests of the wider public. It is in the public interest to maintaining a level playing field and the ability of both the private and public sectors to negotiate freely to ensure that the best possible deals and terms are secured.
25. For these reasons, the Commissioner has concluded that the public interest rests in maintaining the exemption for this element of the request.

Right of appeal

26. 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

27. 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.
28. 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

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