

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 19 May 2022

Public Authority: London Borough of Havering
Address: Town Hall
Main Road
Romford
RM1 3BB

Decision (including any steps ordered)

1. The complainant has requested information relating to the Private Sector Leasing Scheme operated by the London Borough of Havering (the Council). The Council issued a partial response but at the date of this decision notice it had not answered the request in full.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Respond to the outstanding parts of the complainant's request as set out at paragraph 9 below: Firstly, confirm or deny that the requested information is held (or, if the public authority decides to refuse to confirm or deny that any of the requested information is held, then a refusal notice should be issued that complies with the requirements of section 17 of FOIA).
 - Secondly, and subject to the above, if the information is held the public authority must either disclose the requested information or, if it wishes to withhold any information, issue a refusal notice in relation to the information it wishes to withhold and disclose the remainder.
3. 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 FOIA and may be dealt with as a contempt of court.

Request and response

4. On 18 March 2021 the complainant requested the following information from the Council:

"Havering Council used to run a program called the 'Private Sector Leasing Scheme'.

It advertised monthly fees paid by the Council to landlords for leased accommodation as follows:

- 1 bedroom flat - £575
- 1 bedroom house - £625
- 2 bedroom flat - £675
- 2 bedroom house - £725
- 3 bedroom flat - £725
- 3 bedroom house - £800
- 4 bedroom flat - £900

I would like to know if any of the monthly fees paid under the scheme have ever increased or decreased for any reason.

Where the answer is 'yes' I would like to know:

- Which property 'type' changed
- The date each change was made
- What were the results of that change

5. The Council acknowledged receipt of the request on 19 March 2021.
6. The complainant contacted the Commissioner on 21 April 2021 to complain that he had not received a response to his request.
7. The Commissioner wrote to the Council on 18 May 2021 to request that it respond to the complainant's request.
8. Following the Commissioner's intervention, the Council responded to the complainant on 2 June 2021. It provided some of the requested information and advised that

"Please note we are still waiting for the response to the information requested below, once this has been provided you will be informed."

9. The outstanding part of the request related to the complainant's question as to whether any of the monthly fees had changed, and if so, when and why.

10. The complainant was dissatisfied with the Council's partial response and requested an internal review on 3 June 2021. He pointed out that the Council had not answered all of the questions set out in the request, and reiterated the specific information he was seeking. The complainant also provided the Council with a copy of a letter he had received from another Council department which he considered to contradict the Council's response.
11. The Council acknowledged the complainant's correspondence on 3 June 2021.

Scope of the case

12. The complainant contacted the Commissioner again on 12 July 2021 to complain that he had not received the outstanding requested information. Nor had he received the outcome of the internal review.
13. The Commissioner wrote to the Council on 6 April 2022 to remind it of its obligations under FOIA. The Commissioner asked the Council to respond to the outstanding part of the complainant's request, and to complete the internal review requested on 3 June 2021.
14. On 19 April 2022 the Council acknowledged the Commissioner's correspondence and advised that a full response would be sent to the complainant "as soon as possible".
15. The complainant confirmed to the Commissioner on 17 May 2022 that he had not received any further correspondence.
16. In light of the above the Commissioner's decision relates to whether or not the Council has responded to the request within the statutory time for compliance.
17. Internal reviews are not a requirement of Part I of FOIA, but are a matter of good practice. Therefore the Commissioner has set out some recommendations at Other Matters below.

Reasons for decision

Section 1: general right of access **Section 10(1): time for compliance**

18. Section 1(1)(a) of FOIA requires a public authority to inform the requester in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested

information is held by the public authority it must be disclosed to the requester. Both requirements are subject to exemptions.

19. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request.
20. Despite the Commissioner's intervention, the Council has failed to respond to the complainant's request in full. The Commissioner therefore finds the Council in breach of section 10(1) of FOIA in respect of the outstanding part of the request.
21. The Commissioner is of the opinion that it is generally helpful for a public authority to provide a partial response if, in exceptional circumstances, it is unable to respond to all parts of the request within the statutory time for compliance. However the authority should keep the requester informed as to the outstanding parts of the request, and should provide a full response as soon as possible.
22. The public authority should note however that it will still be in breach of section 1 and section 10 of FOIA if a response is issued outside the statutory time for compliance, even in exceptional circumstances.

Other Matters

23. FOIA does not include a statutory requirement for a public authority to conduct internal reviews where requesters are dissatisfied with a response. However the Code of Practice issued under section 45 of FOIA¹ recommends internal reviews as a matter of best practice. The Code says that

"5.8 The internal review procedure should provide a fair and thorough review of procedures and decisions taken..."

24. In this case the complainant requested an internal review on 3 June 2021. The Council has offered no explanation, either to the complainant or to the Commissioner, for the inordinate time taken to complete the internal review.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

25. Accordingly the Commissioner recommends that the Council complete its internal review within 35 calendar days, the same timescale as compliance with the steps specified above.
26. The Commissioner considers that internal reviews offer a valuable opportunity for a public authority to resolve complaints about request handling at an early stage. It is also the public authority's opportunity to satisfy itself that it has complied with the requirements of FOIA, and to put right any deficiencies. For example the authority may need to check that it has answered all parts of a request, and identified all relevant information. Or the authority may be able to provide a more detailed explanation of its reasons for refusing a request.
27. An effective and robust internal review process may result in fewer complaints being made to the Commissioner, and therefore less time and resource being required from all parties. Failing to conduct effective and timely internal reviews may therefore result in additional work being required that would not otherwise have been necessary.

Right of appeal

28. 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

29. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
30. 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

**Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**