

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 February 2023

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 information about complaints received by London Borough of Lambeth (the Council) in February 2022. The Council provided some information, but refused the rest of the request by virtue of section 12(1) (cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that the Council was entitled to refuse to comply with the rest of the request in accordance with section 12(1) of FOIA.
3. The Commissioner does not require the Council to take any further steps as a result of this decision.

Request and response

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

"Please provide the following information:

[1] The number of customer complaints Lambeth received at Stage 1 of the complaints process in February 2022.

[2] The number of customers who received a Stage 1 response within 20 working days for the complaints Lambeth received in February 2022.

[3] The number of customers who did not receive a Stage 1 response within 20 working days and were not contacted within 20 working days to be notified regarding the delay for the complaints Lambeth received in February 2022.

[4] The number of customers who received a Stage 1 response after 2 months delay for the complaints Lambeth received in February 2022.

[5] The number of customers who received a Stage 1 response after 2 months delay but were not contacted to be notified regarding the delay for the complaints Lambeth received in February 2022.”

5. The Council responded on 7 September 2022. It provided the figures for parts 1 and 2 of the request, stating that it had received 704 Stage 1 complaints in total, of which 414 received a response within 20 working days. However, it refused parts 3 to 5, citing section 12(1) of FOIA as its basis for doing so.
6. Following an internal review the Council wrote to the complainant on 26 January 2023. It provided a revised cost estimate which considered just the 290 complaints which didn't receive a Stage 1 response within 20 working days, rather than the full 704 complaints which it had mistakenly based its original cost estimate on. However, the new cost estimate was still substantially over the appropriate limit, therefore it maintained its reliance on section 12(1) to refuse parts 3 to 5 of the request.

Scope of the case

7. The complainant contacted the Commissioner on 5 December 2022 to complain about the way their request for information had been handled, at which point the Council had not yet provided its internal review outcome.
8. The Commissioner considers the scope of his investigation to be to determine if the Council was entitled to rely on section 12(1) of FOIA to refuse to comply with parts 3 to 5 of the request.

Reasons for decision

9. 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 limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
10. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the Council is £450.
11. 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.
12. 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; and
 - extracting the information from a document containing it.
13. 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 in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, 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.
14. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
15. It is important to note that whether or not section 12 of FOIA can be relied upon by a public authority is not affected by how a complainant considers that information should be held, or if a public authority should have a system from which it can extract the information via automated searches. The Commissioner can only base his decision on the way that

the information is, as a matter of fact, held by the public authority in question.

16. In this case, the Council explained that it does not routinely collect or report on the information in the format sought by parts 3 to 5 of the request. Therefore, the only way for it to produce this information would be for it to manually examine each of the 290 complaint files which did not receive a stage 1 response within 20 working days to extract the relevant data.
17. The Council explained that it would take approximately 10 minutes per case to carry out the work required to extract the relevant data, which totalled over 48 hours for all 290 cases. Even if the Council were to consider a more conservative estimate of 5 minutes to review each case file, the work required would still be substantially over the appropriate limit.
18. The Commissioner considers that the Council has estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, his decision is that the Council was correct to rely on section 12(1) of FOIA to refuse to comply with the request.
19. The application of section 12 of FOIA triggers the duty to provide advice and assistance under section 16. This requires a public authority to provide advice and assistance, where reasonably practicable to do so, which may allow the applicant to submit a refined request which does not exceed the appropriate limit.
20. The Council did not offer any such advice and assistance in this case. However, due to the very specific nature of the information sought by parts 3 to 5 of the request, the Commissioner cannot see any way that the request could be suitably refined in order to fall under the appropriate cost limit whilst still satisfying the interests of the complainant.
21. The Commissioner does not require the Council to take any further steps on this matter.

Right of appeal

22. 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

23. 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.
24. 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

**Catherine Fletcher
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Wycliffe House
Water Lane
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Cheshire
SK9 5AF**