

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 March 2024

Public Authority: London Borough of Lambeth
Address: Lambeth Town Hall
Brixton London
SW21 RW10

Decision (including any steps ordered)

1. The complainant has requested information regarding the use of battens to reinforce roofs. The London Borough of Lambeth ("the Council") relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that the Council was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner also finds that the Council did not comply with its section 16 obligation to offer advice and assistance.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with appropriate advice and assistance to help them submit a request that falls within the appropriate limit.
4. 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

5. On 23 May 2023, the complainant wrote to the Council and requested information in the following terms:

“Please provide all reports, inspections and communications in connection with the decision and consequent works to reinforce the roofs on Cressingham Gardens in 2023 using [battens].”

6. On 1 June 2023, the Council responded and provided a statement explaining the following;

“The decision to provide additional fixings to all the original roofs on the estate was taken as a result of the 9 roofs at Longford Walk becoming detached after the last storm. It was decided that all original roofs would benefit from extra battening down in case of another storm. The justification for this action would be that any extra fixing down of these roofs would give them a better chance of resisting further storm damage. As this decision was made for this reason there was no inspection or report needed.”

7. The Council provided its internal review on 15 September 2023 and explained that no further information was held despite the statement provided in its response to the request.

Scope of the case

8. The complainant contacted the Commissioner on 19 September 2023 to complain about the way their request has been handled.
9. During the Commissioner's investigation, the Council revised their position and provided the complainant with a fresh response which provided some additional information within the scope of the request with redactions made under section 40 and section 43. The Council explained that it was unable to provide any further information within the scope of the request, as doing so would exceed the cost limit and would be exempt under section 12(1).
10. The Commissioner has received no comments from the complainant challenging the application of section 40 and section 43. For this reason, he will only be focusing his investigation on the application of section 12(1).

Reasons for decision

Section 12 – cost of compliance

11. The following analysis covers whether complying with the request would have exceeded the appropriate limit.

12. Section 12(1) of the 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")
13. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 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.
14. 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.
15. 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.
16. 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. 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.
17. 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.
18. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

The Council's position

19. The Council explained to the Commissioner that it had conducted searches on its Housing Management system and outlook emails across the Council using the following search criteria; "Cressingham Gardens", "battens", "roof". The email search was narrowed to include emails dated between: 1 Jan 2023 – 23 May 2023 alongside the keywords above.
20. The Council explained that a narrow server based search of emails by its IT department returned 931 emails for the period stated above. The Council explained that based on a conservative calculation it would take 5 minutes per email to determine whether any information fell into the scope of the request.
21. The Council explained that this would amount to over 76 hours of work and therefore exceed the cost limit set out at section 12.

The Commissioner's view

22. The Commissioner is satisfied that complying with this request would exceed the appropriate limit.
23. The Commissioner is satisfied that relevant searches were used to identify any information within the scope of the request.
24. The Commissioner notes that even if the Council's estimate was reduced somewhat, for example if the Council was able to spend only 2 minutes reviewing each email for information within the scope of the request, this would still exceed the cost limit.
25. Complying with the request would therefore exceed the cost limit and so the Council was entitled to rely on section 12(1) of FOIA to refuse the request. To the extent that any information within scope of the request is environmental, it would be exempt under regulation 12(4)(b) of the EIR in the alternative to section 12 of FOIA.

Procedural matters

Section 16 – advice and assistance

26. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
27. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the

requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.

28. In this case, the Council does not appear to have provided any advice and assistance to the complainant – or explained why it is unable to do so.
29. The Commissioner is therefore satisfied that the Council did not comply with section 16 of FOIA when dealing with this request.
30. The Council must now provide reasonable advice and assistance, to the complainant, to help them refine their request.

Right of appeal

31. 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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Michael Lea
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF