

## **Freedom of Information Act 2000 (Section 48)**

### **Practice Recommendation**

**Date:** 26 September 2022

**Public Authority:** London Borough of Hackney  
**Address:** Town Hall  
Mare Street  
London  
E8 1EA

#### **Foreword**

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1. The Information Commissioner has received a number of complaints about the London Borough of Hackney's (the Council's) failure to respond to freedom of information (FOI) requests within the time requirements of FOIA. Following engagement with the Council's staff the Commissioner established that such delays in handling requests were also reflected in the Council's performance data. As a result the Commissioner has reached the view that the Council's request handling practices do not conform to the following parts of the section 45 [Freedom of Information Code of Practice](#), issued by the Cabinet Office in July 2018 (the Code).
  1. Part 4 of the Code relating to time limits for responding to requests.
2. Therefore, in accordance with section 48(1) of the Freedom of Information Act 2000 (FOIA), the Commissioner has elected to issue this practice recommendation.

#### **Summary**

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3. The Commissioner has been proactively engaging with the Council regarding its timeliness performance for FOI requests. This is because data from both the Commissioner's casework, and the Council's own data, showed that such performance was below the level expected. The Commissioner acknowledges that the Council has begun to implement

measures designed to address these performance issues. However, the situation has not improved sufficiently. The Commissioner has therefore decided to issue this practice recommendation to formalise his concerns and hold the Council accountable for improving its freedom of information request handling practices and, in turn, promote openness, transparency and accountability.

## **Nature of non-conformity**

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4. The Commissioner considers that the practices of the Council in relation to the exercise of its functions under FOIA do not conform with part 4 of the Code.

### **Part 4 – time limits for responding to requests**

5. Section 4.1 of the Code highlights the "clear" requirement that public authorities respond to requests for information promptly, and within 20 working days of receipt in accordance with section 10(1) of FOIA.
6. Section 4.4 of the Code states that public authorities may exceed the 20 working day deadline if additional time is required to consider the public interest.
7. Compliance with the statutory timescales for handling requests is a key priority.
8. In April 2022 by reviewing his wider caseload, the Commissioner identified a number of complaints about the Council's delays in responding to FOI and Environmental Information Regulations (EIR) requests within the time requirements of the relevant legislation.
9. More specifically, since January 2021 to April 2022 the Commissioner served eight decision notices requiring the Council to respond to outstanding requests. Furthermore, over the same time period he also dealt with an additional eight cases where the Council had failed to respond to requests in a timely manner; such cases were resolved without a decision notice being issued.
10. In light of this, in April 2022 the Commissioner asked the Council to provide him with up to date details of its timeliness performance in relation to FOI and EIR requests as well as details of overdue requests. The Commissioner also asked the Council to provide details of any plans it had in place to address any outstanding requests.
11. The Council provided the Commissioner with responses in May and August 2022. As part of these responses it provided the

Commissioner with the following data regarding the timeliness of its recent FOI/EIR request performance:

<b>Month</b>	<b>Number of requests received</b>	<b>Number of requests responded to within 20 working days</b>	<b>Number responded to outside of 20 working days</b>	<b>% responded to within 20 working days</b>
January 2022	158	91	Not reported	58%
February 2022	179	129	Not reported	72%
March 2022	183	118	Not reported	64%
April 2022	159	97	11	61%
May 2022	156	112	12	72%
June 2022	156	89	46	57%

12. In also provided the Commissioner with the following details regarding its overdue requests:

<b>Date</b>	<b>Total number of overdue requests</b>	<b>Number of requests over 6 months old</b>	<b>Number of requests over 12 months old</b>	<b>Date of oldest outstanding FOI/EIR request</b>
As at 14 April 2022	177	157	9	18 January 2021
As at 12 August 2022	185	63	19	18 January 2021

13. In respect of its plans for addressing any outstanding requests, in May 2022 the Council explained that its immediate plans involved the following:

- Identifying reasons for the backlog – the Council explained that a significant reason contributing to the backlog of requests was the inaccessibility of information as result of the serious cyber attack the Council experienced in October 2020. The Council explained that the attack had impacted on the Council's ability to access

information and led to a number of requests being put on hold. It explained that the majority of systems are now recovered with work continuing to recover all data possible. The Council explained that the backlog of requests are kept under review to determine whether any information relating to the requests can be provided as recovery work progresses.

- Liaising with key officers and stakeholders – the Council explained that where a particular service had a large volume of overdue requests or where a request has been overdue for more than 6 months, its Information Management Team (IMT) has focused on liaising with and supporting key officers and information asset owners in the service.
- Reorganising the IMT – this had involved providing a specific point of contact for departments across the Council, with each officer within IMT dealing with requests for specific service areas.

14. The Council emphasised that it had experienced difficulties in recruiting and retaining staff in IMT with FOI experience which has impacted on its ability to deliver the progress it had planned.

15. In its update to the Commissioner in August 2022 the Council explained that:

- Part of its approach to addressing the backlog has been to prioritise requests that have been outstanding for the longest period of time whilst balancing those with new requests received each month. The Council noted that a positive outcome of this approach had seen the reduction in number of requests that were over 6 months old and as well as a significant number of requests being responded to each month.
- The IMT continued to liaise with key officers and information asset owners in the service areas across the organisation, especially for areas with large volumes of overdue requests or requests that have been overdue for more than six months.
- However, the Council explained that IMT was still facing challenges in recruiting and retaining experienced staff who are able to deal with information requests.

## Action recommended

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16. The Commissioner is aware that the Council is in the process of implementing some improvements to its information request handling processes. The Commissioner has therefore designed the following recommendations to support and enhance the Council's plans to improve its information rights practices, and also to hold it accountable for the changes it has made and is planning to make.
17. In relation to part 4 of the Code, the Council should ensure that requests for information are responded to in a timely manner. In the context of the Council's recent performance, the Commissioner wishes to emphasise that this involves two aspects: firstly, ensuring that outstanding requests are responded to, and, secondly ensuring that it has robust systems in place to ensure that new requests are handled in a timely manner.
18. The Council should create an action plan, incorporating the recovery plans already in progress, to ensure that requests for information are responded to in a timely manner.
19. The Commissioner recommends that as part of producing this plan the Council ensures that its request handling procedures include provision for when a response is late, or is likely to be late at any stage of the internal processes, it is clear when and to who to escalate, who is responsible for taking action, the action they will need to take, and by when.
20. As part of producing this plan the Council should consider using the Commissioner's FOI self-assessment toolkit to improve its timeliness compliance.<sup>1</sup>
21. With regard to the Council's backlog of outstanding FOI/EIR requests, the Commissioner notes that a significant factor contributing to the backlog is the ongoing impact of the cyberattack in October 2020. As explained above, this has resulted in the Council putting a number of requests "on hold" as a result of the inaccessibility of information following the attack, with such requests being reviewed as and when information impacted by the cyberattack became available again.

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi-self-assessment-toolkit/>

22. In the action plan, the Commissioner recommends that the Council highlights the number of cases currently affected by the inaccessibility of information due to the cyberattack and differentiate action regarding these and other requests. This would provide transparency as to the Council's recovery plan in this area.
23. The Commissioner will consider what further work we can do to support public authorities subject to such attacks.
24. The Commissioner recommends that the action plan is published on the Council's website for full transparency about the improvements it is making.
25. The Commissioner welcomes the publication of FOI performance statistics on the Council's website. He recommends that these are expanded in accordance with part 8.5 of the Code.
26. In considering these recommendations, the Commissioner expects the Council to ensure that it meets the requirements of all information rights legislation to which it is subject.

## **Failure to comply**

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27. A practice recommendation cannot be directly enforced by the Commissioner. However, failure to comply with a practice recommendation may lead to a failure to comply with FOIA, which in turn may result in the issuing of an enforcement notice. Further, a failure to take account of a practice recommendation may lead in some circumstances to an adverse comment in a report to Parliament by the Commissioner.
28. The Council should write to the Commissioner by the end of December 2022 to confirm that it has complied with his recommendations and how it has achieved this.
29. The Commissioner will have regard to this practice recommendation in his handling of subsequent cases involving the Council.

### **Signed**

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