

**FREEDOM OF INFORMATION ACT 2000 (SECTION 52)
ENFORCEMENT POWERS OF THE INFORMATION COMMISSIONER
ENFORCEMENT NOTICE**

DATED: 17 March 2023

To: London Borough of Lewisham

**Of: Town Hall
Catford
London
SE6 4RU**

1. The London Borough of Lewisham ("**the Council**") is a "public authority" listed in Schedule 1 and defined by section 3(1)(a)(i) of the Freedom of Information Act 2000 ("**FOIA**"). FOIA provides public access to information held by public authorities.
2. The Information Commissioner (the "**Commissioner**") hereby issues the Council with an Enforcement Notice (the "**Notice**") under section 52 FOIA. The Notice is in relation to the Council's
 - a. Continuing non-compliance with section 1(1) FOIA;
 - b. Continuing breach of section 10(1) FOIA.
3. This Notice explains the Commissioner's decision to take enforcement action. The specific steps that the Council is required to take are set out in **Annex 1**.

Legal Framework for this Notice

4. A person requesting information from a public authority has a right,

subject to exemptions, to be informed by the public authority in writing whether it holds the information, and to have that communicated to him, if the public authority holds it. This is set out in section 1(1) FOIA–

"(1) Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him."*

5. Section 10(1) FOIA specifies that public authorities must respond to requests within 20 working days:

"... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following receipt."

6. There is provision under FOIA for a public authority to claim a reasonable extension to this limit in certain circumstances but in all cases, the public authority must give the requestor a written response within the standard time limit for compliance.

7. The Commissioner has various powers under FOIA. One of these is the issuing of an Enforcement Notice. Section 52(1) of FOIA states –

"If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I, the Commissioner may serve the authority with a notice (in this Act referred to as an "enforcement notice") requiring the authority to take within such

time as may be specified in the notice, such steps as may be so specified for complying with those requirements.”

Background

8. The Commissioner decided to write to the Council regarding delays in responding to freedom of information (FOI) requests following a tweet mention by the Campaign for FOI. The tweet was in a relation to a [blog](#) published on 26 July 2022. The blog was on the FOI requests and Subject Access requests (SAR) [statistics](#) published by the Council on its website. Given the extent of the delays revealed in the published performance statistics, the Commissioner wrote to the Council on 5 October 2022 regarding its obligations under the FOIA and the Data Protection Act 2018¹. The Council responded to this letter on 1 November 2022, and provided a breakdown of its FOI and SAR performance data, including steps it was taking to address the Commissioner’s concerns.
9. The FOI performance data provided by the Council revealed that; from April to September 2022, an average 73% of received requests were responded to within 20 working days. The total number of unanswered or overdue requests in the same period was revealed to be 100, with 67 of these over 12 months old.
10. The Commissioner wrote to the Council on 1 December 2022 and invited the Council to provide more details regarding the steps that it was taking to address the backlog of old requests, particularly those over 12 months old.
11. The Council responded to this letter on 18 January 2022, and

¹ This Notice only addresses the Council’s performance under the FOIA.

explained that it had inadvertently provided inaccurate FOI performance data in its original response. The new FOI performance data provided by the Council covered the period April to December 2022. The average percentage of received requests responded to within 20 working days remained at 73%. However, the total number of overdue requests was actually 338, 221 of which were over 12 months old. The oldest unanswered request was submitted to the Council on 3 December 2020. The Council subsequently informed the Commissioner that a decision was taken to focus resources on prioritising new FOI and EIR requests, so that the number of overdue cases did not increase and add to the backlog.

12. The Council acknowledged that more work needed to be done to address the backlog of FOI requests, and to improve the rate of responses within statutory timescales. It highlighted the following three areas as presenting the biggest challenge in responding to FOI requests: Housing, Adult Social Care, and Highways. It explained that a new management structure had been put in place since December 2022 to address FOI and SAR performance. It had also agreed to recruit for an additional post to the FOI team.

The Contravention and Reasons for this Notice

13. FOIA requires a public authority to inform people whether it holds information they have requested and to communicate it to them within 20 working days of receipt of their request.

14. There is some evidence of improvement in the number of requests responded to by the Council within 20 working days. In October 2022, 91% of requests were responded to within 20 working days, and this stood at 82% for both November and December 2022. This rate of response will need to be sustained and improved further.

15. The backlog of FOI requests and their age profile, are clearly a matter of considerable concern for the Commissioner, however. It is worth noting that the extent of the FOI backlog might not have come to light had the Commissioner not contacted the Council on 5 October 2022, and then requested further information on 1 December 2022. The Council could have proactively contacted the Commissioner to highlight the problems it was facing and what action it planned to take to address this, seeking advice from the Commissioner on whether this was sufficient.
16. Instead the council has taken the decision to complete recent requests at the expense of tackling a backlog of older requests leaving those requestors without a response for significant periods. This is clearly unacceptable. Instead, a plan of action should have been put in place to address both the older and more recent requests, particularly in view of the nature of some of the older requests, which include requests to significant areas including Adult Social Care and housing.
17. Taking into account the volume of unanswered FOI requests, their age profile, and the need to sustain and improve FOI response rates, the Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice. This Notice requires the Council to comply with section 1(1) of FOIA in respect of each FOI request, where the response is outside of 20 working days at the date of this Notice, and where a permitted extension has not been applied. It is essential that the improvements that the Council has indicated it has seen in relation to incoming requests are also sustained.
18. The Commissioner also considers it a proportionate regulatory step to require the Council to devise and publish an action plan, which formalises measures to mitigate delays in responding to the requests it

receives, in line with statutory requirements. This action plan should be supported by a 'lessons learned' exercise, which examines the root cause of delays in responding to FOI requests, with mitigations for any recurring problems addressed specifically in the plan. The Commissioner has produced a range of [resources](#), including a template Action Plan, which should support the Council in complying with this step.

Terms of this Notice

19. The Commissioner therefore exercises his powers under section 52 of FOIA to serve an Enforcement Notice requiring the Council to take specified steps to comply with the requirements of Part 1 of FOIA. The specified steps are set out in **Annex 1** of this Notice.

20. The consequence of failing to comply with an Enforcement Notice is that the Commissioner may make written certification of this fact to the High Court pursuant to section 54 of FOIA. Upon consideration and inquiry by the High Court, the Council may be dealt with as if it had committed a contempt of court.

Right of Appeal

21. By virtue of section 57 of FOIA there is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). If an appeal is brought against this Notice, it need not be complied with pending determination or withdrawal of that appeal.

22. Information about the appeals process may be obtained from:

Reference: ENF0987655

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 9368963

Email: GRC@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. Any Notice of Appeal should be served on the Tribunal within 28
(calendar) days of the date on which this Enforcement Notice is sent.

**Deborah Clark
Manager – FOI
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES THE LONDON BOROUGH OF LEWISHAM TO TAKE THE FOLLOWING STEPS BY NO LATER THAN SIX MONTHS FROM THE DATE OF THIS NOTICE:

- (i) In respect of each information request where the response is outside of 20 working days as at the date of this notice, and where a permitted extension has not been applied, to comply with section 1(1)(a) of FOIA and, if information of the description specified in the request is held, either
- (ii) communicate it pursuant to section 1(1)(b) FOIA; or issue a valid refusal notice under section 17 FOIA, unless section 17(6) FOIA applies.

THIS NOTICE FURTHER REQUIRES THE LONDON BOROUGH OF LEWISHAM TO TAKE THE FOLLOWING STEP BY NO LATER THAN 35 CALENDAR DAYS FROM THE DATE OF THIS NOTICE:

- (iii) Devise and publish an action plan formalising the measures it will take to ensure it complies with its legal duties under Part 1 of FOIA to respond to information requests in a timely fashion, while also clearing its backlog of late requests as required by this notice.