

Freedom of Information Act 2000 (Section 48) Practice Recommendation

London Borough of Tower Hamlets

10 July 2023

Summary

Section 48 of the Freedom of Information Act (FOIA) empowers the Information Commissioner (the Commissioner) to issue a practice recommendation where it appears to him that a public authority has failed to conform, specifically, to the FOIA Codes of Practice. These failures are addressed in the recommendations section below.

The London Borough of Tower Hamlets (the council) has consistently failed to meet the expected level of performance in terms of responding within the statutory timeframe and the number of overdue requests has increased in the first half in 2023. This has been highlighted following correspondence between the Commissioner and the council. Following engagement by his staff with the council about the underlying reasons for these failings, the Commissioner has reached the view that the council's request handling practices do not conform to section 4 of the section 45 Freedom of Information Code of Practice, issued by the Cabinet Office in July 2018 (the Code).

Recommendations

The council has confirmed that it has implemented a number of improvements to its information request handling processes. The Commissioner has therefore designed the following recommendations to support and enhance the council's improvements to its information rights practices.

In considering these recommendations, we expect the council to ensure that it meets the requirements of all information rights legislation to which it is subject.

Area of Code	Non-conformity	Recommendation of steps to be taken
<p>Part 4 – time limits for responding to requests</p> <p>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.</p>	<p>Between January 2022 and June 2023, the Commissioner has issued four decision notices which recorded a timeliness breach by the council in the handling of information requests. This is in addition to a further six complaints received during the same period about the timeliness of responses to information requests. These complaints were resolved informally without a decision notice.</p>	<p>In relation to part 4 of the code, the council should ensure it has appropriate procedures in place to both record and have access to official records. This is necessary to meet its obligations and respond fully, accurately and appropriately to information requests.</p>
	<p>The council has engaged with the Commissioner and provided its compliance figures.</p>	<p>The council should ensure that staff are sufficiently trained and aware of its procedures and practices in order to provide responses that fully comply with FOIA and the section 45 Code of Practice.</p>
	<p>For the year March 2022 to March 2023, the council responded to 79.7% of FOIA requests within the statutory time limits. As of March 2023, the council was only operating at 81% compliance.</p>	<p>The council should use the Commissioner’s FOI self-assessment toolkit to improve its timeliness compliance¹.</p>
		<p>The council should ensure that requests for information are responded to in a timely manner. When chased to issue responses by the Commissioner’s case officers, the council should respond in a timely and appropriate manner. This</p>

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/foi-self-assessment-toolkit/>

	<p>The backlog of overdue requests has increased from 12 overdue cases in July 2022 to 79 overdue cases in May 2023. In mid-April 2023, this backlog dated back to September 2022.</p>	<p>will avoid decision notices and the subsequent further delays for the requesters.</p> <p>In accordance with part 8.5 of the Code, the council should publish details of its performance on handling requests for information under FOIA and make these easily accessible on its website. The information should include:</p> <ul style="list-style-type: none">The number of requests received during the period;The number of the received requests that have not yet been processed;The number of the received requests that were processed in full (including numbers for those that were met within the statutory deadline, those where the deadline was extended and those where the processing took longer than the statutory deadline);The number of requests where the information was granted in full;The number of requests where the information was refused in full;The number of requests where the information was granted in part and refused in part;The number of requests received that have been referred for internal review (this needs only reporting annually). <p>The council's request handling procedures should</p>
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		<p>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.</p>
		<p>The council should ensure that its information rights training is sufficient to ensure that it has adequate coverage in place. In particular, it should ensure that request handling times do not fall below a compliant level in the event of the departure of key staff members.</p>
		<p>The council should create an action plan, incorporating any recovery plan already in development, with appropriate processes put into place to ensure 90% timeliness is achieved by the end of 10 October 2023. This should also include eliminating the backlog of overdue requests. This action plan should be supported by a 'lessons learned' exercise, which examines the root cause of delays from allocation through to clearance at different stages, with mitigations for any recurring problems addressed specifically in the plan. The Commissioner also recommends that this action plan is published on the council's website for full transparency about the improvements it is making.</p>

Reasons for issuing this Practice Recommendation

The Commissioner has been proactively engaging with the council regarding its timeliness performance for requests under FOIA since 2021. Through the evidence provided by the council in its engagement with the Commissioner, it appears that the handling of information requests within the council has fallen below the expectations set out in the Code of Practice. In particular, the figures from 2022-23 show that its performance is not simply attributable to the pandemic. This evidence is set out in the annex to this practice recommendation.

The Commissioner acknowledges the relatively low number of complaints submitted to his office and the council's engagement with the Commissioner in providing its compliance figures. He also notes that the council had implemented measures designed to address these performance issues, including an internal audit of the FOI function, increasing the number of staff, obtaining responses from internal departments quickly and monitoring its performance. However, the situation has not improved sufficiently. In particular, the Commissioner is concerned that the backlog of overdue requests appears to be increasing.

This practice recommendation formalises the Commissioner's concerns and holds the council accountable for improving its freedom of information request handling practices and, in turn, increase public confidence and trust in its information rights practices.

Failure to comply

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 notice². 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.

² https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1_0.pdf

Reference: FPR0987669

The council should write to the Commissioner by the end of **10 October 2023** to confirm that it has complied with its recommendations and how it has achieved this.

The Commissioner will have regard to this practice recommendation in his handling of subsequent cases involving the council.

Annex

Detailed compliance figures

Percentage of requests complied with within the statutory timeframe of twenty working days	
March 2022	76%
April 2022	95%
May 2022	73%
June 2022	69%
July 2022	83%
August 2022	84%
September 2022	83%
October 2022	70%
November 2022	80%
December 2022	81%
January 2023	81%
February 2023	80%
March 2023	81%