

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2014

Public Authority: London Borough of Brent
Address: Brent Civic Centre
Engineers Way
Wembley
HA9 0FJ

Decision (including any steps ordered)

1. The complainant requested from the London Borough of Brent ("the Council") information regarding its handling of requests under the Freedom of Information Act 2000 ("FOIA"). The Council applied section 12 to the request on the basis that it had estimated that responding to the request would exceed the appropriate limit under the Act.
2. The Commissioner's decision is that the Council has correctly applied section 12 of FOIA but that it has breached section 10 by not providing a response to the request within 20 working days.

Request and response

3. On 28 February 2014 the complainant requested the following information from the Council:

"1) Total Number of Freedom of Information (FOI) request received since the inception of the FOI Act (include data FROM this date for all questions unless otherwise specified), up to and including the date when you receive this request (include data UP TO AND INCLUDING this date for all questions unless otherwise specified), with figures per month, and per year.

2) Total number of request responded to within the twenty working day statutory time limit, with figures listed per year. Please use the date of receipt of the request for working this out.

For example a request received on 20/12/2013, responded to on 08/01/2014 would be included in the figures for 2013.

3) The number of fully disclosed request, partially disclosed requests, and fully declined requests for the figures in (2).

4) Total number of request that could NOT be responded to within the twenty working day statutory time limit, with figures listed per year, using the date of receipt for working this out, as in (2).

5) The number of fully disclosed request, partially disclosed request, and fully declined requests for the figures in (4).

6) Total number of requests for internal reviews received per year. Please use the date of receipt of the request for internal review for this particular query.

7) Total number of internal reviews completed WITHIN the twenty working day statutory time limit, with figures listed per year. Please take the date of receipt of the internal review request for calculation purposes, not the internal review completion date. So for example a request for internal review received on 20/12/2013 and completed on 08/01/2014 would be included in the figures for 2013.

8) Total number of internal reviews that could NOT be completed within the twenty working day statutory time limit, with figures listed per year. Please take the date of receipt of the request for calculation purposes as in (7).

9) Total number of request that were referred to the ICO by the data requester, with figures per year. Please take the date of receipt of the initial FOI request for calculation purposes, so for example an information request received on 13/05/2013 that is referred to the ICO for review by the data requester on 21/01/2014 will be included in the figures for 2013.

10) Total number of request that were referred to the ICO by you, with figures per year. Please use the date of receipt of the initial FOI request for calculation purposes, so for example an information request received on 13/05/2013, that was referred to the ICO for review by you on 21/01/2014 will be included in the figures for 2013.

11) Number of cases appealed to the Information Tribunal, for each year, with the date of the initial FOI request and the date when each case was initially heard at the Tribunal.

12) Number of cases appealed to the High Court or any other Court of Law (please specify the Court), for each year, with the date of the initial FOI request and the date when each case was initially heard at that particular Court."

4. On 10 April 2014, having received no response to his request, the complainant e-mailed the Council. The Council responded on 28 April 2014 to apologise for the delay and to inform him that it was initiating an internal review into why no response had been sent.
5. The Council provided a response to the complainant on 13 May 2014, after he had sent a further e-mail on 6 May 2014 with regard to the continued delay. However, part of the response to his request was not correctly formatted and a new properly formatted response was sent on 14 May 2014.
6. The Council applied section 12 to the complainant's request on the basis that it estimated that responding to the request would exceed the appropriate limit. The Council acknowledged that it had breached FOIA by not providing a response to the complainant within the statutory time limit.

Scope of the case

7. The complainant contacted the Commissioner on 28 May 2014 to complain about the way his request for information had been handled. In light of the delay in the Council providing a response to the complainant, the Commissioner considered the complaint without requiring him to request an internal review.
8. The Commissioner considered whether the Council handled the request in accordance with FOIA. Specifically, he looked at whether it was entitled to rely on section 12 as a basis for refusing to provide the requested information and whether it responded within the statutory time frame required by the Act.

Reasons for decision

Section 12 – The cost of compliance exceeds the appropriate limit

9. The Council informed the complainant that it had estimated that to respond to all of the questions contained in his request would exceed the appropriate limit under section 12 of the Act.
10. Section 12(1) of FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

11. Section 12(3) states that:

"In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases."

12. The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. The cost limit is currently set at £450 for local authorities.
13. Under the Fees Regulations, public authorities are required to cost their spending on the relevant activities at £25 per person per hour. Consequently, the appropriate limit would only be exceeded if a local authority estimated that it would take longer than 18 hours to carry out the relevant activities in order to comply with a request.
14. Under regulation 4(3) of the Fees Regulations, a public authority may, for the purposes of estimating the cost of complying with a request, only take account of the costs it reasonably expects to incur in:
- a. determining whether it holds the information;
 - b. locating a document containing the information;
 - c. retrieving a document containing the information; and
 - d. extracting the information from a document containing it.
15. The Council provided the Commissioner with an explanation of the reasons why it believed that compliance with the request would exceed the appropriate limit. The Council's explanation included details of its estimates of time for complying with the different parts of the request. The Commissioner notes from the Council's estimate that it believes that it would take the largest amount of time to respond to Part 3, for the number of fully disclosed requests, partially disclosed requests and fully declined requests for each year since 2005.
16. The Council explained in relation to Part 3 that its system in place at the time of the request for handling requests under FOIA had the following categories for outcomes:
- (i) All information sent;
 - (ii) Some information sent;

- (iii) No information sent;
- (iv) Exceeds Appropriate Limit; and
- (v) Information not held.

17. The Council confirmed that the earliest case on the system dated from June 2007. However, it informed the Commissioner that, having run a report on all cases within its system, outcomes were not routinely recorded on the system until January 2014 and were not recorded at all before June 2011. Between those dates the outcomes were only recorded in a minority of cases. Overall, of 7987 FoI responses on the system, the Council stated that the outcome was only recorded for 1529 responses. This meant there were 6458 responses for which no outcome had been recorded.
18. The Council went on to explain that to respond to this part of the complainant's request, it would need to run manual checks on 6458 responses between 2007-2014, where no outcome had been recorded, and an unknown number from between 2005-2007 which were only contained in individual officers' email accounts. The Council estimated that it would take an average of 2 minutes to check each request. Therefore, it had estimated that in order to respond to this part of the request would take 215 hours for the 2007-2014 data, plus an unquantifiable amount for the data from 2005-2007 as it would need to carry out thousands of manual checks on long-dormant e-mail accounts.
19. In relation to Part 3 of the request, the complainant argued that the Council appeared to have provided information in response to similar requests in the past and highlighted two particular requests on the "What do they know" website. He queried why the Council could not provide him with similar information without exceeding the time limit under section 12.
20. In relation to these two requests, the Council explained that both dated back some years and that both were refused under section 12. However, whilst the requests were refused under section 12, the Council confirmed that it did supply some information to the requesters. It went on to explain that since that time it had changed its practice to bring it into line with ICO guidance, in particular, that, where section 12 was applied, requests should be refused but that the public authority, where possible, should give guidance about what might be available in response to a revised and more narrowly focussed request.
21. In relation to one of the requests that the complainant identified, the Council informed the Commissioner that, although the response said that all the information requested was available, that this was not

correct. It only supplied information in respect of 100 cases and that this information was in fact the outcome information as recorded on its case management system. The Council explained that the information it supplied to the earlier requester did not correspond to the categories requested by the complainant (whether information was fully released, partially released or withheld) but was the same information that it informed him would be available in response to a revised and re-focused request.

22. In relation to the other request that the complainant identified, the Council informed the Commissioner that its response gave percentages in relation to information that had been provided in full, part or withheld (annual totals) but the response was caveated to indicate the limitations of the reporting system and indicate what categories of response were excluded. It stated that it was in effect a partial response based on some categories held on its case management system.
23. The Council explained to the Commissioner that its current view was that the response provided to the complainant was to be preferred to those it provided to the earlier requests. This was because it was more accurate as it told the complainant what was factually available.
24. In light of the explanation provided by the Council, the Commissioner is satisfied that its estimate that responding to all of the questions contained within the request would exceed the appropriate limit of £450 is a reasonable one. On that basis, he is satisfied that the Council correctly applied section 12 to the request.

Section 16 – Advice and assistance

25. Where a public authority claims that section 12 is engaged, the Commissioner expects that it should, where reasonable, provide advice and assistance under section 16 of the Act to help the requestor to refine the request so that it can be dealt with under the appropriate limit.
26. The Commissioner notes that in its response of 14 May 2014 to the complainant, the Council provided details of its position with regard to each of the twelve parts of his request. It detailed whether information was held, whether the information might be exempt from disclosure, and if so, on what basis and whether the appropriate limit applied. Where the Council believed that it did not hold information, it provided the complainant with an indication as to what similar information it did hold that could be provided. Where the Council believed that a response to a particular question would be likely to exceed the appropriate limit, it provided an indication of what information it believed could be provided within the appropriate limit.

27. In the Upper Tribunal's recent decision in *Commissioner for the Police of the Metropolis v (1) The Information Commissioner and (2) Donnie McKenzie [2014] UKUT 0479 (AAC)*, Judge Wikeley made reference to the first-instance decision in *Beckles v Information Commissioner (EA/20111/0073 & 0074)* in relation to the application of section 16, where it said in paragraph 24 that:

"S.16 requires a public authority, whether before or after the request is made, to suggest obvious alternative formulations of the request which will enable it to supply the core of the information sought within the cost limits. It is not required to exercise its imagination to proffer other possible solutions to the problem."

28. Judge Wikeley stated at paragraph 19 that *"... the explanation provided by the First-tier Tribunal in Beckles represents an accurate statement of the law."*
29. After, reviewing the Council's response to the complainant, the Commissioner is satisfied that it did attempt to provide him with obvious alternative information that it believed that it could provide within the appropriate limit. Consequently, he has determined that it did comply with its duty to provide advice and assistance under section 16 of the Act.

Section 10 – Time for compliance with the request

30. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and, if so, to have that information communicated to him, subject to the application of any relevant exemption. Section 10(1) of FOIA provides that this must be done *"...not later than the twentieth working day following the date of receipt."*
31. The Commissioner notes that the complainant made his request on 28 February 2014 and that the Council provided a response on 13 May 2014. He has therefore determined that the Council breached section 10 by not providing the complainant with a response within 20 working days.

Right of appeal

32. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

33. 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.
34. 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

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