

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 September 2018

**Public Authority:** London Borough of Lewisham  
**Address:** Town Hall Chambers  
Catford  
London  
SE6 4RU

### Decision (including any steps ordered)

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1. The complainant has requested information from Lewisham Council about housing benefit claims. Lewisham Council disclosed some information within the scope of the request and for the remainder has relied on section 12 FOIA – costs of compliance exceeds the appropriate limit. The Commissioner's decision is that Lewisham Council is entitled to rely on section 12 in respect of the entire request. Lewisham Council responded to the request outside of the statutory 20 day time limit and accordingly has breached section 10 FOIA. The Commissioner also notes that the complainant was not provided with any advice and assistance in line with the duty set out at section 16 FOIA. The Commissioner considers that Lewisham Council has therefore also breached section 16 FOIA.
2. The Commissioner does not require Lewisham Council (the council) to take any steps.

### Request and response

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3. On 11 December 2017 the complainant requested information of the following description:

*"I Request the following Information*

*1. No Of Person Employed & Self Employed Claiming Housing Benefit In Lewisham 2013-2016*

*2. Ethnicity of those claiming 2013-2016*

*3. How many persons/shareholders are claiming benefit & their ethnicity 2013-2016*

*4. how many have been refused and are at tribunal 2013-2016"*

4. On 4 April 2018, almost four months after the request was submitted, the council responded. It disclosed some information requested at questions one and two. It sought clarification of the request at question three and relied on section 12 to refuse the request at question four.
5. The complainant requested an internal review on 4 April 2018 and the council sent the outcome of its internal review on 9 April 2018.
6. The council disclosed some further information in relation to question one setting out that it had misread the original request. With regard to question three it asserted that the information was not held and it maintained its reliance on section 12 in order to refuse to comply with the request at question four.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 21 March 2018 to complain about the way his request for information had been handled. His complaint was only in respect of the application of section 12 in relation to question four.
8. The Commissioner considers the scope of her investigation is to determine if the council is entitled to rely on section 12 FOIA to refuse to comply with the request.

## **Reasons for decision**

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9. Section 1(1) FOIA states that

*"(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."*

10. Section 12(1) FOIA states that

*"(1) 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. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) at £450 for local government departments such as Lewisham Council. 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 limit of 18 hours.
12. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
- Determining whether it holds the information
  - 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
13. 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. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence."<sup>1</sup>
14. In providing its submission to the Commissioner, the council has sought to rely on section 12 in respect of the request at questions three and four, rather than just question four as detailed in its original response and internal review. It is the Commissioner's established position that if section 12 applies to one part of a request, it will apply to the entire request.
15. The council has set out that it has some 35,000 live cases which would need to be searched to determine what information it holds within the scope of the request. Information and data on those cases is held on two systems, the 'Academy' system and the 'information@work' system.

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<sup>1</sup> <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

16. The 'Academy' system is used for the sole purpose of processing claims and in addition to other information, holds specific detail relating to claims, calculation, benefit awards and payment details. The 'information@work' system is a document management system which hosts evidence and documentation in support of any claim.
17. It is the council's position that to determine what information it holds within the scope of the request, it would need to first define and run a system interrogation report to identify each and every case which may fall within the scope of the request. This will highlight some cases where further analysis is required to determine if the case is in scope; the information held on the 'Academy' system does not provide detail of self-employment but simply records an income code which indicates whether the individual is employed or self-employed. In order to determine if the case falls within the scope of the request, an officer would need to access the 'information@work' system to manually check each record as the request relates to shareholders.
18. In order to demonstrate how this would work, the council has provided detail in relation to question three of the request as an example. The council had set out to the complainant that on the processing system there is no distinction between types of self-employment so the same indicator would exist irrespective of whether an individual were a self-employed taxi driver or a self-employed managing director. In order to calculate the benefit entitlement, the only relevant information is that someone is self-employed and their income.
19. The council has explained that each claim may have a number of changes in circumstances each year and that in terms of a search for the requested information, an officer may need to undertake the same search on a number of occasions. This is because, over the course of any given time period, in this case a three year period, any claimant may have had periods of claiming benefit and periods when they did not. In relation to the request, the council would need to identify these different periods.
20. Having established via the 'academy' system those cases which may fall within the scope of the request, the 'information@work' system would need to be interrogated to determine, in each case, the nature of any periods of 'self-employed' status between 2013 and 2016. Those cases and periods would need to be logged if they fell within the scope of the request.
21. The council set out that the process would be similar for question four although the council has pointed out that the complainant has asked for cases where claims are refused but the council's position is that it does not refuse claims. It has explained that awarding benefit is a statutory

obligation but that there are numerous occasions where someone fails to qualify for benefit. It considered therefore that in order to identify information falling within the scope of the request at part four, it would again have to consider cases where no benefit was in payment between 2013 and 2016. The Commissioner considers that the council was correct to interpret the request in this way as it would have been, at best, disingenuous to simply respond by saying it does not refuse claims.

22. In undertaking a sampling exercise to allow for a better understanding, the council reviewed ten recent cases. Of the cases reviewed, eight recorded a period or periods where there was no benefit in payment. Of the ten cases there were 22 instances of no entitlement to benefit with each record having to be checked and each instance of non-payment considered and the reason for non-qualification established.
23. It is the council's position that this process, in relation to the ten cases and 22 instances of non-qualification reviewed took one officer a period of three hours. The council asserted that checking the 22 instances took an average of eight minutes each. It has asserted that this exercise would have to be reproduced over its full caseload of 35,000 cases and this would, without doubt, exceed the cost limit.
24. Having considered the wording of the request at point four, the Commissioner does not consider that there is any need to retrieve and log the information about the reason why no benefit was in payment, all that is required is to record the periods of non-payment and to retrieve and record information in relation to those cases who appealed to the tribunal.
25. Although this may mean that less time is required to undertake the four permitted activities, the Commissioner acknowledges that the time required will still exceed the appropriate limit of 18 hours. Even if it were the case that each live case could be interrogated and the information in relation to either question three or four, or both, retrieved and recorded in one minute, which is highly unlikely, a case load of 35,000 cases would mean that the time required to complete the search of live cases alone would be 583 hours and 20 minutes approximately which equates to an approximate cost of £14,583. This would clearly exceed the 18 hour/£450 limit. Even if it took only one minute to undertake the checks, the council would only be able to check 1080 cases which would not allow it to respond to the request. Of course, the longer the search takes in each case, the fewer cases that can be identified.
26. In addition to searching all of the live cases for the relevant dates and type of self-employment, the timescale attached to the request would

mean that the council would also need to search non-live cases dating from 2013 to 2016. The Commissioner has not asked the council to provide further detail on those cases as she considers it sufficient to note that this represents an additional cost.

27. The Commissioner is satisfied that the council has satisfactorily established that it cannot comply with the complainant's request within the appropriate time limit and accordingly it is entitled to rely on section 12 FOIA.
28. Section 16 FOIA places a duty on a public authority to provide advice and assistance, as far as is reasonable, to those who propose to make a request to it or who have made a request to it. In this case the council has set out to the Commissioner that due to the way information is held, it was unable to offer advice and assistance to the complainant as it is not possible to produce even a revised amount of information without exceeding the cost limit. The Commissioner considers that the council should have set this out to the complainant as that in itself would have constituted relevant advice in the circumstances. The Commissioner concludes that the council has breached section 16.

## Right of appeal

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29. 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 7395836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.
31. 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 .....**

**Sarah O’Cathain**  
**Senior case officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**