

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 August 2023

Public Authority: Department for Levelling Up, Housing and Communities

Address: Fry Building
2 Marsham Street
London
SW10 4DF

Decision (including any steps ordered)

1. The complainant requested information relating to housing from the Department for Levelling Up, Housing and Communities ('the DLUHC'). The DLUHC said that it does not hold some of the information requested, and that section 21 applies to the majority of the information. The complainant argues that it does hold the relevant information, and he disputes that some of the information is available to him by other means.
2. The Commissioner's decision is that the DLUHC was not correct to state that it does not hold the relevant information. He has also decided that it was not correct to apply section 21 to the information.
3. The Commissioner requires the DLUHC to take the following steps to ensure compliance with the legislation.
 - To disclose the requested information to the complainant.

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 23 January 2023, the complainant wrote to Department for Levelling Up, Housing and Communities ('the DLUHC') and requested information in the following terms:

"Please provide information on the number of dwellings in England grouped by region (North East, North West etc) then by date of construction, then by number of bedrooms and then by whether extended for living space.

I believe this information can be derived from the English Housing Survey. I should like it in an Excel spreadsheet."

6. The DLUHC responded on 21 February 2023. It confirmed that it only holds some of the requested information but said that this is already reasonably accessible to the complainant and so it applied section 21.
7. It also confirmed that the breakdowns requested by the complainant are not held, and that it is not obliged to create new information in response to an FOI request (section 1(1)).
8. Following an internal review, the DLUHC wrote to the complainant on 12 May 2023. It upheld its initial decision, however it provided direct links to the raw datasets underlying the complainant's request.

Scope of the case

9. The complainant contacted the Commissioner on 13 May 2023 to complain about the DLUHC's response to his request.
10. He argues that not all of the information is available to him on the links provided. He also argues that responding to the second part of his request, (i.e., the breakdown), would not amount to the DLUHC creating new information.
11. The Commissioner therefore considers that the complainant wishes to question the application of section 1(1) and section 21 to withhold the information from disclosure.

Reasons for decision

Section 1(1) - information not held

12. Section 1(1) of FOI requires that:

"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."

13. The DHULC accepts that holds the majority of the requested information in the form of raw data, but it argued that responding to the request for the breakdown would require it to extract relevant data from a number of different sources and collate these to create new information which the FOI Act does not require it to do. It therefore argues that the requested information is not held for the purposes of section 1(1) of the Act.

14. The Commissioner's guidance¹ on such situations is that where the "building blocks" necessary to produce the requested information are held, an authority is likely to hold that information unless it requires particular skills or expertise to put the building blocks together to provide the requested information.

15. The Commissioner therefore asked the DLUHC what level of work would be required in order to respond to the request from the raw data which it holds. The DLUHC said that it had asked the statistician who leads the analysis of the English Housing Survey what level of work would be required.

16. The statistician confirmed that the work would involve more than a simple querying or filtering of the raw data. Due to the nature of the data and how it is stored in large quantities across a number of different files, a bespoke script would have to be written into its data analysis

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/>

software to sort and collate the correct data, to manipulate the variables required for analysis, and to generate the tables requested. It argued that a second analysis would then have to be carried out to separately produce the initial results for the purposes of quality assurance.

17. Furthermore, it argued that the sample size of the English Housing Survey would be too small to provide a reliable output of results for the breakdowns requested. It said it was likely that the requested breakdown and subsequent analysis would generate cells which would mostly be blank or unreportable and/or that they would contain unreliable or misleading data. It therefore argued that, even if the analysis was carried out and the breakdowns were generated, it was unlikely to that this would provide sufficient information to respond to the request.
18. It argued therefore that as the extraction and collation of the information would involve a significant degree of work and expertise, complying with the request would require the creation of new information, which it is not obligated to do under the FOI Act. It therefore argued that, by extension, it does not hold the requested information.

The Commissioner's analysis

19. The Commissioner has considered the DLUHC's argument.
20. Whether information is held or not is determined as an issue of fact. The DLUHC has confirmed that it holds the raw data necessary to respond to the complainant's request for information.
21. The Commissioner considers that the extraction and reconstitution of data from a number of databases which are already held is not the creation of new information. However, the analysis of that data in order to provide the information requested might mean that new information needs to be created if it requires particular skills or expertise in order to analyse the data in order to provide the requested information.
22. The Commissioner's guidance provides a helpful question for determining whether skills or expertise are required in order to produce the relevant data: *"When deciding whether or not you hold information which has to be derived from raw data, you should consider whether anyone with similar skills or experience would reach the same result if presented with the same set of raw data."*
23. The question, therefore, is whether responding to the request would require a degree of interpretation using skills, knowledge, and expertise. If that was the case, the potential is that two separate individuals with the necessary skills and experience may come to different conclusions

over the data concerned. On the basis of the process described by the DLUHC, the Commissioner considers that it has not demonstrated that differing results would be obtained from an analysis of the results by two separate individuals.

24. The description of the process required by the DLUHC does not specify any particular analysis skills or expertise in order to provide the information – the issue is one of numbers of houses, broken down by specific named factors. It has not described any part of the process of collating the data which requires an interpretation of the results which relies upon skills or expertise in order to respond to the request.
25. The argument that the data produced may be misleading or inaccurate is not a reason for stating that the information is not held, or for not disclosing that data.
26. The Commissioner has not therefore been persuaded by the DLUHC's arguments and considers that it holds the information for the purposes of FOIA.
27. The DLUHC confirmed that carrying out the above tasks and responding to the request would not exceed the appropriate limit for responding to requests highlighted in section 12 of FOIA.
28. The Commissioner has therefore decided that the DLUHC does hold the relevant information and that it could be provided within the appropriate limit.

Section 21 – information accessible to applicant by other means

29. The purpose of section 21 of FOIA is to ensure that there is no right of access to information via FOIA if it is available to the applicant by another route. Section 21 is an absolute exemption which means there is no requirement to carry out a public interest test if the requested information is exempt.
30. Unlike most exemptions, the circumstances of the applicant can be considered as the information must be reasonably accessible to the particular applicant.
31. The complainant agrees that he has sufficient access to the information which the DLUHC has signposted to him, however he argues that not all of the information is available from the sources identified. He argues that the sources do not contain information on the 'whether extended for living space' variable.

32. When asked to respond on this point, and to provide a link to the relevant material, the DLUHC said to the Commissioner that the information is available at:
<https://beta.ukdataservice.ac.uk/datacatalogue/series/series?id=200010>.
33. However, the DLUHC's response was not sufficiently detailed enough to allow the variable identified to be pinpointed by the complainant. The link provided by the DLUHC only directs the complainant to the raw databases. He has already checked through these and been unable to identify the information he has specified within them.
34. The question for the Commissioner is whether the information is easily accessible to the complainant by other means. The Commissioner's guidance on the application of section 21² states that:
- "Therefore, when relying on section 21(1) to refuse a request on the basis that the information is publicly available, we expect you to show that:
- the information in the public domain matches what the applicant asked for;
 - **you have given precise directions to the applicant to enable them to find it without difficulty and without a great deal of searching necessary to locate it; and** [ICO highlighting]
 - you have considered the applicant's particular circumstances of the applicant and you are satisfied that they can reasonably access the information."
35. The complainant has explained he has not been able to locate the information using the link provided to him. The Commissioner has been unable to verify whether the information is available via these links, as the DLUHC's response was insufficiently detailed or precise enough to allow such a verification.
36. As the DLUHC's guidance was insufficiently precise in order to locate the requested information, the Commissioner is satisfied that the DLUHC was not entitled to rely on section 21 of FOIA in this case.

² <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/information-accessible-to-the-applicant-by-other-means-section-21/>

37. As the Commissioner has decided that section 21 was not applicable there is no requirement for him to carry out a public interest test.
38. As the Commissioner has decided that neither section 1(1)(b) nor section 21 was applied correctly by the DLUHC, the Commissioner requires the DLUHC to disclose the information to the complainant.

Right of appeal

39. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

40. 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.
41. 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

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF