

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 August 2023

**Public Authority:** London Borough of Barking and Dagenham  
**Address:** Barking Town Hall  
Town Hall Square  
Barking  
IG11 7LU

### **Decision (including any steps ordered)**

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1. The complainant has requested information from the London Borough of Barking and Dagenham ("the Council") in relation to a various number of topics. The Council refused to provide the requested information, citing section 12(1) of FOIA – cost of compliance exceeds the appropriate amount.
2. The Commissioner's decision is that the Council was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that the Council complied with its obligations under section 16 of FOIA to offer advice and assistance.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

### **Request and response**

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4. On 23 April 2023, the complainant wrote to the Council and requested information in the following terms:

"I am writing, pursuant to the FOI / EIR regulations, to seek the following information (expressed as total sums / numbers for the given period), for EACH of the following financial years: 2018/19, 2019/20, 2020/21, 2021/22 and 2022/23:

1. Total Development Management (DM) department budget (net cost to taxpayer, being total costs minus total income). Please confirm whether DM budget includes or excludes enforcement / validation / administration / other non planning application assessment officer elements.
2. Total Planning (DM, enforcement, planning policy, and design / trees / conservation teams where these fall within the Planning group) department budget (cost to taxpayer, being total costs minus total income)
3. Total permanent staffing costs within each year for DM team
4. Total FTE number of permanent officers within DM team
5. Total permanent staffing costs within each year for Planning team
6. Total FTE number of permanent officers within Planning
7. Total temporary / agency staffing costs for DM team
8. Total FTE number of DM permanent and temporary agency officers working as case officers (being those officers whose primary role is the assessment of planning and related applications and pre-applications / PPAs)
9. Total FTE number of temporary / agency officers within DM team
10. Total temporary / agency staffing costs for Planning team
11. Total FTE number of temporary / agency officers within Planning team
12. Organisation chart/charts for Planning department.
13. Total cost of externally procured services relating to the assessment of planning and related applications and pre-application / PPAs (such as ecology / heritage / design / trees advice)
14. DM Planning and related applications (defined as planing applications / advert consent / prior approval / LDC / LBC / NMA / condition discharge etc) income
15. Total number of planning and related applications decided
16. Fast track services (for planning and related applications) fee income (if applicable)

17. DM Pre-application income (please clarify if this total also includes PPA income)
  18. Total number of pre-applications received
  19. DM Planning Performance Agreement income (if recorded or available separately - including preapplications subject to PPAs)
  20. Total number of PPAs agreed
  21. Current number of undetermined planning and related applications
  22. Current number of undetermined planning and related applications where the original statutory determination period has passed
  23. Current number of undetermined planning and related applications where the original statutory determination period AND extension of time date / PPA (where the date is recorded on your planning database) has passed
  24. Total of planning appeal awards of costs received
  25. Total of planning appeal awards of costs expended."
5. The Council responded on 23 May 2023. It stated that the information was withheld, citing section 12 of FOIA – cost of compliance exceeds the appropriate limit.
  6. Following an internal review the Council wrote to the complainant on 23 June 2023. It stated that it maintained its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner 27 June 2023, to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of this case is to determine whether the Council is entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner will also consider if the Council met its obligations under section 16 of FOIA to provide advice and assistance.

## Reasons for decision

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### Section 12 – cost of compliance

9. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
10. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the Council is £450.
11. 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 time limit of 18 hours for the Council.
12. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - determining whether the information is held;
  - 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 Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
14. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.

15. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

**Would the cost of compliance exceed the appropriate limit?**

16. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the Council to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
17. In its submissions to the Commissioner, the Council explained that it has a third party company (which it wholly owns), that provides certain planning services to the Council, along with council-led regeneration and planning consultancy services. The Council advised that due to this, the structure and financing of the development management function differs from that of a conventional local authority.
18. The Council explained that the contract between itself and the third party is for a range of services and is not limited to planning. It also explained that the Council does not provide any funding directly to the planning team within the third party and, as such, the net cost to the taxpayer cannot be quantified in the same manner as other local authority planning teams.
19. The Council has advised the Commissioner that the total amount of hours it estimates that it would take to locate the requested information is approximately 67.5 hours, or a cost of £1,687.50.
20. The Council has explained that for some of the questions to be answered, it would take approximately 5 hours to compile the information due to the need for proportional reallocation from company-wide budgets at the third party and incorporation of information from the Council's HR department. It advised that the third party staff are employed by the third party.
21. The Council also explained to the Commissioner that for several of the questions, it would take approximately 3 hours to locate the information due to the atypical structure of the Council.
22. From the information that the Council has provided, the Commissioner considers that the Council estimated reasonably that it would take more than 18 hours/£450 limit to respond to the request. If even only one part of a request triggers the cost limit, then it applies for the entirety of a request. The Council was therefore correct to apply section 12(1) of FOIA to the complainant's request.

23. To the extent that any of the information falls under the Environmental Information Regulations 2004 (EIR), the Commissioner finds that the request may be refused under regulation 12(4)(b) on the grounds of cost, as an alternative to section 12 of FOIA.

**Section 16(1) – The duty to provide advice and assistance**

24. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).
25. In the Council's internal review response, it advised the complainant that if they wished to consider a simplified request, it may be able to provide some of the requested information. The Commissioner is therefore satisfied that the Council did meet its obligations under section 16 of FOIA.

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<sup>1</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

## Right of appeal

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26. 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](mailto:grc@justice.gov.uk)

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

27. 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.
28. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**