

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

### **Decision notice**

**Date:** 13 March 2024

**Public Authority:** London Borough of Hillingdon  
**Address:** 3E/04 Civic Centre  
High Street  
Uxbridge  
Middlesex  
UB8 1UW

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

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1. The complainant has requested information from the London Borough of Hillingdon (LBH) for the numbers of individuals placed on the Restricted Persons Register between 1st January 2020 and 31 December 2022 by year.
2. The Commissioner's decision is that, on the balance of probabilities, LBH does not hold the requested information.
3. The Commissioner does not require LBH to take any further steps to ensure compliance with the legislation.

#### **Request and response**

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4. On 5 June 2023, the complainant wrote to LBH and requested information in the following terms:

"How many persons were placed on Hillingdon Council's Restricted Persons Register during the following time periods:

1st January 2020 to 31st December 2020

1st January 2021 to 31st December 2021

1st January 2022 to 31st December 2022

How many persons are currently placed on Hillingdon Council's Restricted Persons Register?"

5. LBH responded on 3 July 2023. It stated that:
  1. "The council does not hold the requested information.
  2. The Council's Restricted Persons Register is a live system and data is not kept as to how many people were on it at dates in the past."
6. On 4 July 2023, the complainant requested an Internal Review.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 14 September 2023 to complain about the way their request for information had been handled. The complainant had not received an internal review response.
8. On the 17 January 2024, the Commissioner wrote to the LBH reminding it of its obligations under FOIA and asking it to respond to the complainant's internal review request dated 4 July 2023.
9. LBH responded to both the Commissioner and claimant on the 26 January 2024. It stated that it had provided the complainant with an internal review response in connection with this request on 25 August 2023 and provided a copy of this correspondence. LBH refused to comply with the request on the basis of section 14 (vexatious) of FOIA at that time as it was part of a long-standing series of FOIA and Subject Access Requests (SAR), on the same and similar subject.
10. However, following the Commissioner's correspondence of 17 January 2024, LBH reviewed its responses and provided the complainant with a revised internal review response on 26 January 2024.
11. The Commissioner considers that the scope of his investigation is only to determine whether, on the balance of probabilities, LBH holds the

requested information and whether it has complied with section 1(1) of FOIA.

## Reasons for decision

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12. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
13. The right of access to information relates only to information which is held in a recorded form at the time a request is received. There is no obligation to create or obtain information, generate answers to questions nor to provide statements, opinions, and explanations, unless these are already held in a recorded form. Nor does the legislation require a public authority to amend or verify the accuracy of the information it holds.
14. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
15. In its correspondence with the complainant on 26 January 2024, LBH provided information on the numbers of individuals currently held on the restricted persons register and upheld its position that it did not hold information between the time periods 1 January 2020 to 31 December 2022 years stating:

“Having discussed this matter with the Health and Safety Manager, I can confirm that the Council does not hold information about how many people were placed on the Restricted Persons Register during the years in question.

This is because individuals are placed on the Register for a specified period of time. Once this time has expired, their entry is removed, and no record is maintained. The current record does not therefore contain the information you requested.

We are, however, able to confirm that there are currently 30 people who appear on the Council’s Restricted Persons Register.”

16. On 28 January 2024, the complainant raised his concerns with the Commissioner and LBH on the limited consultations with officers at LBH. The complainant was aware that LBH must inform individuals of their

inclusion, exclusion, and any change of status on the RPR register as laid out in their policy correspondence "Unreasonable or Unreasonably Persistent Complainants" and that LBH held recorded information that may be on personal files or centrally held elsewhere.

17. LBH advised the Commissioner that the Restricted Persons Register (RPR) was a live software programme/data system on Microsoft 365 and that persons are only on the RPR for a specified period and then removed and no records are stored and maintained. All records are completed and held on the RPR IT system and via emails. There is no access to the back system to request historic recorded information or hard copy records if held and they are not stored centrally.
18. Additionally, LBH consulted with IT teams who confirmed that all deleted files would be retained in the Microsoft 365 recycle bin for 93 days and then deleted unless someone empties the bin earlier. LBH provided numbers of individuals that are currently on the register to the complainant.
19. LBH provided the commissioner with information on the process for inclusion and exclusion from the RPR and the authorisation and risk processes to ensure it is used appropriately. LBH assured the Commissioner that, although all personnel can recommend inclusion and view records as part of their work records, the ultimate responsibility for operation of the RPR on LBH IT systems and an individual's removal is with the Health and Safety Team who do not have expertise on how the software can be interrogated to locate information within the scope of the request once individuals are removed.
20. LBH confirmed that they had been unable to locate any IT data information within the scope of the request for the periods in the fixed yearly time frames which began on 1 January 2020 and ended on 31 December 2022.
21. The Commissioner is satisfied that LBH carried out appropriate searches of its electronic and IT record systems and consulted with all responsible, authorised and appropriate staff members as to whether further information within the scope of the request was held.
22. Whilst the Commissioner recognises that the complainant believes further information within the scope of this request is held by LBH, given the time which has passed since the request was made, LBH's explanation of the searches and limitations of the RPR data systems and the fact that the complainant has requested historical information and specific figures for each year, the Commissioner accepts LBH's explanation that it does not hold any recorded information within scope of the request.

23. Section 1 of FOIA is a matter of fact of whether information is held or not held. It is not an opinion on whether it should have been held or recorded.
24. As such, the Commissioner has decided that LBH has complied with section 1(1) of FOIA and that, on the balance of probabilities, LBH did not hold the information at the time of the request.

## Right of appeal

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25. 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)

26. 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.
27. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**