

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2024

Public Authority: Hertsmere Borough Council
Address: Elstree Way
Borehamwood
Herts
WD6 1WA

Decision (including any steps ordered)

1. The complainant requested information from Hertsmere Borough Council ("the Council") relating to overcrowding reviews.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold information within the scope of the request.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 22 February 2024, the complainant wrote to the Council and requested information in the following terms:
"Please may I receive information on how an overcrowding review in temporary accommodation is meant to be conducted when someone has requested an overcrowding review?"
5. The Council responded on 6 March 2024 and stated the following:
"Hertsmere Borough Council does not hold the information you have requested as the information required does not come under an FOI."

6. On 13 March 2024, the complainant requested an internal review and on 19 March 2024, the complainant wrote to the Commissioner to complain about the Council's handling of their request.
7. Following receipt of the complaint, the Commissioner asked the Council to provide the complainant with a further response to the request which complied with the requirements of FOIA.
8. The Council provided the complainant with a response to their request on 19 June 2024 in which it provided the complainant with some information. It also directed the complainant to chapter 17 of the Homelessness Code of Guidance 2023 ("the Guidance").

Scope of the case

9. Following receipt of the Council's response on 19 June 2024, the complainant contacted the Commissioner again to complain about the way their request for information had been handled. The complainant stated that whilst the Council has provided them with information relating to overcrowding, it has provided information about what overcrowding is rather than information about how an overcrowding review should be conducted. Furthermore, the complainant stated that the information provided by the Council appears to be from Shelter's website rather than being from or relating to the Council itself.
10. The complainant does not consider chapter 17 of the Guidance, which the Council directed them to in its response to their request, to fall within the scope of their request. They stated that whilst chapter 17 of the Guidance relates to the suitability of accommodation, it does not state how an overcrowding review is meant to be conducted.
11. The complainant considers the Council to hold information within the scope of their request which has not been disclosed to them.
12. Whilst the Council acknowledges that the information which it provided to the complainant with on 19 June 2024 was taken from Shelter's website, it considers the information to fall within the scope of the request as in its view, the information explains how the Council applies legislation and guidance relating to housing and overcrowding.
13. However, the Commissioner has viewed the information which the Council provided the complainant with on 19 June 2024 and does not consider it to fall within the scope of the request. Whilst the information relates to overcrowding, it does not explain how an overcrowding review should be conducted. Furthermore, the Commissioner does not consider the information to have been held by the Council at the time of the

request as the information was taken from Shelter's website by the Council when responding to the request.

14. The scope of this case and the following analysis is to determine whether the Council holds information within the scope of the request.

Reasons for decision

The Council's position

15. The Council considers that with the exception of the information which it disclosed to the complainant on 19 June 2024, it does not hold any information within the scope of the request. In its submissions to the Commissioner, the Council stated that it has consulted the Council officers responsible for conducting overcrowding reviews who have explained that they carry out overcrowding reviews by simply assessing properties and applying the following legislation and guidance:

- Section 324 (definition of overcrowding), section 325 (room standard) and section 326 (space standard) of the Housing Act 1985
- Section 202 of the Housing Act 1996
- Chapter 17 (suitability of accommodation) and chapter 19 (review of decisions and appeals) of the Guidance

16. The Council stated that when conducting overcrowding reviews, Council officers do not rely on an internal Council policy or guidance to inform them how to carry out overcrowding reviews and so no such policy or guidance exists. It explained that there is a specific government policy document about housing and overcrowding, that being the Guidance which the complainant was directed to in its response of 19 June 2024.

The Commissioner's position

17. Based on the explanations provided by the Council the Commissioner is satisfied that the Council has carried out reasonable searches for information within the scope of the request as when conducting its searches, the Council consulted the Council officers responsible for conducting overcrowding reviews. They have confirmed that when carrying out overcrowding reviews, they rely on the relevant legislation and the Guidance to help them determine whether a property is overcrowded. They do not use an internal Council policy or guidance.

18. Furthermore, the Commissioner has reviewed chapter 17 of the Guidance which the Council directed the complainant to in its response of 19 June 2024 and notes that it is relevant to the subject matter of the request. As there is specific government guidance which outlines how local authorities should assess the suitability of accommodation including whether a property is overcrowded, the Commissioner considers that it is reasonable that the Council would not have its own internal policy or guidance on the matter.
19. Therefore, the Commissioner's decision is that on the balance of probabilities, the Council does not hold information within the scope of the request.

Other matters

20. The Commissioner is disappointed by the Council's handling of the request and the quality of its submissions in this case. Whilst the Council has provided the Commissioner with submissions to support its position, the submissions did not include the level of detail the Commissioner expects. The Commissioner had to contact the Council multiple times to obtain further information from the Council in order to make his decision in this case.
21. In the future, the Council should in the first instance, provide the Commissioner with sufficient information so that he can make his decision. The Commissioner will log his concerns.
22. The Commissioner is also concerned about the quality of the Council's initial response to the request, which stated "the information required does not come under an FOI". It is unclear what the Council meant by this wording. The Council should ensure that similarly unclear statements are omitted from responses to future FOI requests, which should instead state clearly whether or not recorded information falling within the scope of the request is held, and either disclose any such information or explain under which section of FOIA it is not being disclosed.

Right of appeal

23. 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

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Ben Tomes
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