

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 December 2024

Public Authority: West Northamptonshire Council
Address: The Guildhall
St Giles Square
Northampton
NN1 1DE

Decision (including any steps ordered)

1. The complainant requested information held by West Northamptonshire Council (the council) in respect of its House in Multiple Occupation License Register (HMO License Register).
2. Housing legislation requires the council to not only make the HMO Licence Register available for public inspection, but also to provide a copy upon receipt of a request from any individual.
3. The Commissioner is therefore satisfied that the requested information is reasonably accessible to the complainant by other means, and the council is entitled to rely on section 21(2)(b) of FOIA as its basis for refusing the complainant's request.
4. The Commissioner does not require further steps.

Request and response

5. On 17 May 2024, the complainant wrote to the council and requested information in the following terms:

"I have downloaded from the council's website the HMO Public Register but it does not contain the names of the licence holders. Can you please provide me with all the names of the persons (natural and corporate) to whom licences have been granted by the council and the properties concerned."

6. On 22 May 2024, the council issued a refusal notice, citing section 21 of FOIA. The council advised the complainant that the Housing Act 2004 requires each local authority to maintain a public register of local premises licensed as HMOs, and that the full version of its HMO Licence Register can be provided upon request and payment of a fee.
7. The council also confirmed that it publishes extracts from its [HMO Licence Register](#) on its website, and provided the complainant with a direct link to this information. It also provided the complainant with an additional link to its website which it said would provide details of the [application process](#) and requirements for the licensing of a HMO.
8. On the same date, the complainant asked the council to confirm the fee charged for the provision of a copy of the HMO Licence Register, with landlord details included. In response, the council confirmed it had set its current fee for providing a copy of the full register at £109.
9. The complainant sent two emails to the council on 17 June 2024, expressing their dissatisfaction with the response that they had received to their request. The complainant explained that they live over 70 miles from the council's offices, and argued that other councils publish the full details of their HMO Licence Registers on their websites. The complainant also said that they considered a fee of £109 for the provision of a copy of the council's register to be excessive.
10. The council considered the complainant's emails as a request for an internal review, and provided its response on 19 June 2024. The council confirmed that, in line with its duty under the Housing Act 2004, and associated regulations, it maintains a register of licensed HMOs, which is available for inspection at its office, and by appointment. The council advised that photocopying any part of the HMO Licence Register during inspection is not permitted.
11. The council advised the complainant that as all of the information requested is publicly available within the HMO License Register held at its office, and a copy of extracts from this register is published online, it considered that it was correct to have refused the request under section 21 of FOIA.
12. The council also confirmed to the complainant that when providing a copy of the full HMO Licence Register upon request, it is entitled to recover its costs in producing and sending a copy, and that the fee charged is reviewed annually.
13. The council referred to a statement that it advised was published by the ICO in 2017, which said that whilst there is a statutory obligation to "provide a copy of the register on request, there is no obligation to

make it available electronically since publication on the internet may be unfair and excessive given the potential for ease of access by a large number of people.”

14. The council also referred the complainant to decision notice [IC-129062-H2M9](#), issued by the Commissioner on 25 October 2022, which it said supported its position to refuse the request under section 21 of FOIA.

Scope of the case

15. The complainant has said that they live over 70 miles away from the council’s office and therefore it would prove difficult to attend in person to inspect the full version of the HMO License Register. They have also said that they consider a charge of £109 for the provision of a copy of the register to be excessive. The complainant has pointed out that other nearby local authorities publish information from their HMO Licence Register, including some landlord details, on their websites, and that it is unfair that they have to pay a fee because the council has decided to limit the information that it makes freely available on its website.
16. The Commissioner will decide whether the council is entitled to rely on section 21 of FOIA as its basis for refusing the complainant’s request.

Reasons for decision

Section 21 – information reasonably accessible to the applicant

17. Section 1 of FOIA states that a person making a request for information to a public authority is entitled to be informed in writing by that public authority whether it holds information within the scope of the request, and if so, to have that information communicated to them.
18. The purpose of the exemption at section 21(1) of FOIA is to remove the right of access set out within section 1 where the requested information is “reasonably accessible” to an applicant via another route.
19. Section 21(2) goes on to further explain “reasonably accessible” as follows:
 - “ (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
 - (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under enactment to communicate

(otherwise than by making the information available for inspection) to members of the public on request whether free of charge or on payment.”

20. The purpose of section 21(2)(b) is to ensure that FOIA is not used to circumvent specific conditions for access to certain information, including timeframes and any applicable fees regimes, existing under another legislative framework. In order for it to apply, the information must be available for access to the public at large. This means access must not be restricted to particular individuals who must meet certain criteria.
21. The Commissioner understands that section 232 of the Housing Act 2004, requires every local authority to establish and maintain a register of licensed HMOs. The Commissioner considers [subsections \(4\) and \(5\)](#), of section 232 of the Housing Act 2004, to be of direct relevance to his consideration of this case. These subsections contain the following provisions:
 - “(4) The authority must ensure that the contents of the register are available at the authority’s head office for inspection by members of the public at all reasonable times.
 - (5) If requested by a person to do so and subject to payment of such reasonable fee (if any) as the authority may determine, a local housing authority must supply the person with a copy (certified to be true) of the register or of an extract from it.”
22. Given the above, the Commissioner considers that a local authority has a statutory obligation to make its full HMO Licence Register available to the public for inspection, and also to provide a copy of that register upon receipt of a request by any individual, whether that be free of charge or for a fee.
23. The Commissioner acknowledges the point made by the complainant that whilst the council publishes limited information from its HMO Licence Register on its website, some other local authorities choose to make additional information available on their website, including details of businesses that hold licences for HMOs. The Commissioner also understands why the complainant may consider the inconsistent approach taken by local authorities when publishing information online to be unfair. However, local authorities are not required to publish extracts from their HMO Licence Registers online, and it is their decision whether to do so, and how much information to make available in this way (so long as they are able to show that such processing complies with the data protection principles).

24. Furthermore, it is for the council to determine what it considers to be a reasonable charge for the provision of a copy of its HMO Licence Register under section 232 of the Housing Act 2004. Therefore, the Commissioner does not have any jurisdiction to challenge whether the current fee is a reasonable one. The Commissioner is aware that the complainant has already challenged the level of the fee charged directly with the council and he would expect that as part of its complaints process, the council will inform the complainant how they may pursue this matter further, should they wish to do so.
25. Given that the council, as the local authority, has a statutory obligation to provide a copy of its register of HMOs upon request, and is entitled to charge a "reasonable fee" for the provision of such information, the Commissioner is satisfied that the conditions of section 21(2)(b) are met in this case. He has therefore not considered it to be necessary to consider the complainant's claim that the information is not reasonably accessible to them on the basis that they would have to travel what they consider to be an unreasonable distance to inspect the HMO Licence Register held at the council's offices.
26. The Commissioner therefore concludes that the information requested is reasonably accessible to the complainant by other means and the council is entitled to rely on the exemption at section 21(2)(b) of FOIA as its basis for refusing the request.

Right of appeal

27. 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

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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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