

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2024

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

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Barking and Dagenham (the council) for information relating to Weavers Quarter.
2. The Commissioner's decision is that on the balance of probabilities, the council does not hold information, within the scope of the request, in relation to questions two, four and ten. However, in relation to questions three and eight, he considers that on the balance of probabilities, the council may hold the requested information. In relation to questions one, five, and six, the Commissioner's decision is that the council was not entitled to rely upon section 21 (information accessible to the applicant by other means). However, in relation to question nine, the Commissioner's decision is that the council was entitled to rely upon sections 21 and 22 (information intended for future publication) to withhold the requested information. The Commissioner has also found that in failing to respond to the request within the statutory timescale, the council breached section 10(1) of FOIA.

3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - Disclose any further information, that has already not been provided under Section 22 of the Tenant and Leaseholder Act, which is within scope of questions one, five and six.
 - In relation to questions three and eight, conduct fresh searches and confirm to the complainant whether the information is held. If it is held, either disclose it or issue a valid refusal notice, stating the exemption for withholding it.
4. The public authority must take these steps within 30 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 13 February 2024, the complainant made the following refined request for information to the council:
 - “1. Please supply a list of providers under 'subcontractors' as per 'Beckett Court 2022-23 Service Charge Expenditure' (attached), the worth of each contract and the list of services they deliver to Weavers Quarter.
 2. Please provide the minutes, if any, Darren Rodwell the Leader of LBBB or the CEO of LBBB held with either L&Q or Bouygues regarding the unsafe/collapsing balconies/soffits, latent defects and the multiple incidents we have had at Weavers Quarter since Jan 2020.
 3. Provide a copy of contract LBBB or any of the council owned companies have with public relations firm Keeble Brown. Provide a justification to maintain such a contract and how this contract benefits local residents. Who pays for this contract or how much this contract costs to taxpayers?’
 4. Supply a list of graffiti incidents with dates and locations taken place at Weavers Quarter since Jan 2020, which resulted in deployment of the Graffiti team. Provide evidence of exact costing of these deployments.

5. List of exact costs and expenses of the item 'Council Car fleet', 'overheads', 'materials', 'extra lifts' as per listed in 'Beckett Court 2022-23 Service Charge Expenditure' and define the building specific services delivered under these items to Weavers Quarter. Provide an itemised list and costing of anything charged under 'overheads, materials, extra lifts and council car fleet.

6. Please provide accounting evidence/invoices to show that public realm costs provided by My Place/Public Realm Department of LBBD are separated from the cost of service provision for private/L&Q/Reside leaseholders at Weavers Quarter supposed to pay for only contracted, building specific services provided and billed by Reside.

Clarification; Provide evidence that that the services My Place or Public Realm Department of LBBD is billing to private leaseholders via service charges as per "Beckett Court 2022-23 Service Charge Expenditure" are separated from any public expenses/spending such as "council car fleet", "overheads", "extra lifts". I am an L&Q leaseholder and L&Q has a contract with Reside as managing agent. As such I am not supposed to pay for pooled, council wide expenses only for building specific ones. Please provide evidence that my service charges are not used to subsidise the public budget or expenses incurred on/by public assets/buildings/dwellings of LBBD by My Place/Public Realm Department.'

7. Please provide a list of locations/premises/buildings/dwellings the '89 operatives who undertake the Caretaking function within London Borough of Barking & Dagenham' working at, as mentioned in 'Beckett Court 2022-23 Service Charge Expenditure'. Clarification; Please provide a list of locations/premises/buildings/dwellings the '89 operatives who undertake the Caretaking function within London Borough of Barking & Dagenham' working at, as mentioned in 'Beckett Court 2022-23 Service Charge Expenditure'. as per the document attached to original request. 2022-23 financial years.

8. Please provide a copy of the contract L&Q holds with Reside as managing agent of Weavers Quarter. Please provide evidence of an agreed SLA, if any.

9. Please provide evidence of audited annual statements of accounts for 2020-2021, 2021-2022, 2022-2023 of LBBD.

10. How many times have any operatives of L&Q contacted LBBD/Reside/any Reside Managers regarding the failure of delivery of any contracted services at Weavers Quarter since Jan 2020?"

6. On 17 April 2024, the council provided its response in which, in relation to questions one, five, six and nine, the council withheld the requested information under section 21 of FOIA, and cited information not held in relation to questions two, four, eight and ten. In relation to question three, the council applied section 43 of FOIA and it applied section 22 of FOIA to part of question nine. The council also disclosed information in relation to question seven.
7. Upon receiving this response, the complainant requested an internal review on 19 April 2024. After waiting the allotted time for the council to provide its internal review response, the complainant contacted the ICO, and their case was accepted without an internal review having been conducted.

Scope of the case

8. The complainant contacted the Commissioner on 29 May 2024 to complain about the way their request for information had been handled.
9. During the course of the Commissioner's investigation, the council confirmed that in relation to question three, section 43 of FOIA was incorrectly applied, and that instead the response should have been information not held.
10. The Commissioner therefore considers that the scope of his investigation is to determine whether, on the balance of probabilities, the council holds any further information within the scope of the request, and whether it was correct to apply sections 21 and 22 of FOIA to withhold the requested information in relation to questions one, five, six and nine.

Reasons for decision

Section 1 (Held/Not Held)

11. Section 1(1) of FOIA states 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.

12. The Commissioner has sought to determine whether, on the balance of probabilities, the council holds the requested information in relation to questions two, three, four, eight and ten.
13. In its response to question two, the council stated 'zero'. During his investigation, the Commissioner queried this response, and the council explained that there was a meeting held on 11 November 2023, but that no minutes were taken.
14. In response to question three, the council explained that section 43 of FOIA had been incorrectly applied as the council does not have a contract with Keeble Brown, so therefore the response should have been information not held. The council further explained that Keeble Brown have been "engaged by B&D Reside" which is a housing provider working in partnership with the council.
15. The Commissioner asked the council to expand on this and it explained that "Keeble Brown have been engaged by B&D Reside for support and advice on communication to residents, and their services are used as and when required for specific pieces of work." Therefore, there is no contract in place between the council and B&D Reside.
16. In relation to question four, the council explained to the Commissioner, that "instances of graffiti are not recorded as separate incidents but rather undertaken as part of the general maintenance."
17. Regarding question eight, in submissions to the Commissioner, the council explained that L&Q is not contracted by the council, but rather B&D Reside contracts with them. As such this information is not held by the council.
18. In relation to question 10, the council confirmed that it searched its systems for the requested information. It further explained that the systems searched were "SharePoint, Teams sites and emails", and that the key word used was 'Weavers Quarter'. The council understands that there is no register which records the number of complaints meetings.
19. Based on the above information, the Commissioner is satisfied that, on the balance of probabilities, the council does not hold any information in relation to questions two, four, and ten.
20. However, in relation to questions three and eight, the Commissioner is not convinced that the council would not hold information in relation to the contract with Keeble Brown and L&Q.

21. Having considered his own guidance¹ and the council's responses that "B&D Reside contracts with them" and that B&D Reside is a 100% council owned entity, the Commissioner does not consider that the responses to questions three and eight are sufficient.
22. He therefore requires the council to conduct fresh searches in relation to both questions, and either disclose the information or provide a valid refusal notice.

Section 21 – information accessible to applicant by other means

23. Section 21 of FOIA provides that information which is reasonably accessible to the applicant is exempt information.
24. Section 21 is an absolute exemption which means that there is no requirement to carry out a public interest test if the requested information is exempt.
25. Unlike most exemptions, the circumstances of the applicant can be considered, as the information must be deemed readily accessible to the particular applicant.
26. It is reasonable for a public authority to assume that information is reasonably accessible to the applicant as a member of the general public, until it becomes aware of any particular circumstances or evidence to the contrary.
27. Regarding questions one, five and six, the council confirms to the complainant that through their request for, and the provisions outlined in Section 22 of the Tenant and Leaseholders Act, this information is reasonably accessible to the complainant.
28. In submissions to the Commissioner, the council explained that in relation to the above questions, the complainant has since come into the council building and viewed the documents as part of their request under section 22 of the Tenant and Leaseholder Act.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/public-authorities-under-foia/>
<https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/>

29. In correspondence to the Commissioner, the complainant argues that the information provided, under Section 22 of the Tenant and Leaseholders Act was "insufficient" and that the above act "does not provide opportunity to request information regarding costing of contractors, overheads and council car fleet etc."
30. Furthermore, as the information was not accessible to the complainant, at the time of the request, the Commissioner considers that the exemption is not engaged, in relation to questions one, five and six.
31. The Commissioner therefore requires the council to disclose any further information, that has already not been provided, under Section 22 of the Tenant and Leaseholder Act, which is within the scope of questions one, five and six.
32. Looking back at the council's response to question nine, the council provided the following link to a performance and spending page on their website: [Council accounts and budget | London Borough of Barking and Dagenham](#)
33. However, having looked at the above page, the Commissioner noted that the accounts for the years 2020-2021 and 2021-2022 have not yet been audited.
34. The Commissioner raised this with the council and they explained that there is a local audit backlog in England, and that the government conducted a consultation on this this year.
35. Whilst the Commissioner appreciates that the complainant specifically asked for audited accounts, he also acknowledges that there is a backlog with audits, and he therefore considers, that whilst unaudited, the accounts fall within scope of the request, and therefore, for question nine, section 21 is engaged.

Section 22-information intended for future publication

36. Section 22(1) of FOIA states that information is exempt information if:
 - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
 - (b) the information was already held with a view to such publication at the time when the request for information was made, and
 - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

37. For the exemption in section 22 to apply, the public authority must, at the time it received the request, have had a settled expectation that the information would be published at some future date, even if no precise date has been set.
38. Section 22 is a qualified exemption which means it is also subject to the public interest test.
39. In its response to question nine, the council confirmed that it was reasonable to withhold the accounts for 2022-2023 until its planned publication, and that it hoped to have the accounts published by the end of May 2024.
40. The Commissioner is aware that the accounts for 2022-2023 have now been published (24 June 2024), and like the earlier accounts, they have not been audited. However, at the time of the request (13 February 2024), the Commissioner accepts that it was reasonable for the council to withhold part of the information in relation to question nine, until the future publication date.

Public interest test

41. As the Commissioner is satisfied that section 22 applies to the requested information, he will consider whether the public interest in maintaining the exemptions outweighs the public interest in disclosing the information.

Factors in favour of disclosure

42. The council accepts that there is a public interest in "the accountability, openness and transparency of government, and the promotion of public understanding."
43. The council also states that through disclosure of the withheld information, it would demonstrate compliance with the Act.

Factors in favour of maintaining the exemption

44. The council states that the information is "being drafted and intended for publication at an appropriate date."
45. It further explains that to release the information prior to publication would result in "duplication of effort and impact on departmental resources."

The balance of the public interest

46. Having taken the arguments into account, the Commissioner agrees with the council that the balance of the public interest favours maintaining the exemption. He recognises that there is a general public interest in transparency, but, in this case, that there is greater public interest in allowing the council to publish the requested information in line with its normal publication procedures, and not divert vital council resources in publishing it earlier.
47. It is the Commissioner's decision, therefore, that the council was entitled to rely upon section 22(1) of FOIA in relation to part of question nine.

Procedural matters

48. Section 10(1) of FOIA requires a public authority to comply with the requirements of section 1(1) within 20 working days.
49. As the council provided a response to the complainant outside of the 20 working day period the Commissioner has found that it breached section 10(1) of FOIA.

Other matters

50. There is no obligation under FOIA for a public authority to provide an internal review. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 Code of Practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.

51. In this case the complainant requested an internal review on 19 April 2024 and the council did not provide one. The Commissioner reminds the council of its obligations under the Code of Practice².

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-45-code-of-practice-request-handling/>

Right of appeal

52. 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

53. 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.
54. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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