

Mr Ian Thomas - Chief Executive
London Borough of Lewisham
Laurence House
1 Catford Road
London

SE6 4RU

4 September 2018

Dear Mr Thomas,

**London Borough of Lewisham's information rights
performance**

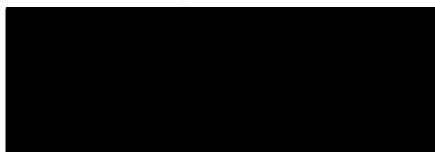
I wrote to you last month to indicate that the Information Commissioner would be issuing an Enforcement Notice in connection with the Council's outstanding subject access requests.

I enclose the signed notice which sets out the requirements that are expected to remedy the situation affecting individuals and their information rights.

The timescales for completion of outstanding casework should align with your own work plans, as discussed with our office. However I should state that if there is a significant failure to deliver against the actions stated, this may engage our wider regulatory powers.

I would appreciate if you can keep me updated about progress and we will review the situation at the end of the notice period.

Yours sincerely



Andy Laing
Head of Data Protection Complaints and Reviews
Information Commissioners Office



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DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

DATED: 4 September 2018

To: London Borough of Lewisham

Of: Corporate Information Team
1st Floor
Town Hall Chambers
Rushey Green
Catford
London
SE6 4RU

1. The London Borough of Lewisham is a "data controller" as defined in section 1(1) of the Data Protection Act 1998 ("DPA").
2. Section 4(4) of the DPA provides that, subject to section 27(1), it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which it is the data controller.
3. The Information Commissioner ("Commissioner") has considered a number of requests for assessment by complainants made under section 42 of the DPA. They concerned the respective failure by the data controller to respond to subject access requests without undue delay, in compliance with the requirements of section 7 of the DPA.

4. Following a series of correspondence and discussions with the data controller, it became apparent to the Commissioner that the data controller's internal systems, procedures and policies for dealing with subject access requests made under the DPA were unlikely to achieve compliance with the provisions of the DPA.
5. Specifically, on 29 March 2018 the data controller confirmed a backlog of 113 subject access requests from individuals across four directorates, the oldest of which dated back to 2013. The data controller's recovery plan involved eliminating the backlog by 31 July 2018. The Commissioner appreciates that some progress has been made to deliver this recovery plan.
6. However, an update was provided to the Commissioner on 25 July 2018 explaining that the 31 July 2018 deadline would not be met, and a new deadline was proposed to deal with the remaining outstanding requests.
7. In correspondence with the data controller prior to the expiry of the 31 July 2018 deadline, the Commissioner had explained that formal enforcement action would be a consideration should the data controller fail to clear its backlog by that time.
8. The data controller has since provided the Commissioner with a further breakdown of outstanding subject access requests, and updated the plan for recovery. Nevertheless, the Commissioner remains concerned by the data controller's failure to both adhere to deadlines set for clearing old cases, and for identifying subject access requests more generally. From the information provided it has been identified that there are 19 outstanding subject access requests that were received before 25 May 2018.



9. On 25 May 2018 the DPA was repealed and replaced by the Data Protection Act 2018. Subject access requests made on or after 25 May 2018 must be dealt with in accordance with the Data Protection Act 2018 and the General Data Protection Regulation. However, subject access requests made prior to that date remain subject to the DPA.
10. The Commissioner considers that the relevant provisions of the DPA in this case are the sixth data protection principle and section 7.
11. The Sixth Data Protection Principle provides at Part I of Schedule 1 to the DPA that:

"Personal data shall be processed in accordance with the rights of data subjects under this Act."

12. Paragraph 8(a) of Part II of Schedule 1 to the DPA further provides that:

"A person is to be regarded as contravening the sixth principle if, but only if, he contravenes section 7 by failing to supply information in accordance with that section."

13. Section 7 of the DPA provides, amongst other things, as follows:

"(1) Subject to the following provisions of this section and to sections 8, 9 and 9A, an individual is entitled –

- (a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,*

(b) if that is the case, to be given by the data controller a description of

–

(i) the personal data of which that individual is the subject,

(ii) the purposes for which they are being or are to be processed,
and

(iii) the recipients or classes of recipients to whom they are or may
be disclosed,

(c) to have communicated to him in an intelligible form –

(i) the information constituting any personal data of which that
individual is the data subject, and

(ii) any information available to the data controller as to the source
of those data, ...”

...

“(8) ...a data controller shall comply with a request under this section
promptly and in any event before the end of the prescribed period
beginning with the relevant day.”

...

“(10) In this section-

‘prescribed’ means prescribed by the Secretary of State by
regulations;

'the prescribed maximum' means such amount as may be prescribed;

'the prescribed period' means forty days or such other period as may be prescribed;

'the relevant day', in relation to a request under this section, means the day on which the data controller receives the request or, if later, the first day on which the data controller has both the required fee and the information referred to in subsection (3)."

...

14. The Commissioner is of the view that the data controller has contravened the sixth data protection principle in that, contrary to section 7, it has failed to inform the individuals, without undue delay, whether their personal data is being processed by or on behalf of the data controller and, where this is the case, failed, without undue delay, to have communicated to them in an intelligible form such information as may constitute personal data.
15. Moreover, the Commissioner is of the view that the systems, procedures and policies employed by the data controller for dealing with subject access requests generally appear to be inadequate, and have contributed to its contravention of the sixth data protection principle.
16. Notwithstanding the explanations given by the data controller for having accrued such a substantial backlog, and the steps it is understood to have taken to remedy the situation and to comply with its section 7 requirements, the data controller has to date been unable to satisfy its obligations in respect of the outstanding subject access requests.



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17. The Commissioner considered, as she is required to do under section 40(2) of the DPA when deciding whether to serve an enforcement notice, whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner takes the view that damage or distress is likely as a result of the complainants being denied the opportunity of properly understanding what personal data may be being processed about them by the data controller; furthermore they are unable to effectively exercise the various other rights statutorily afforded to a data subject in respect of that data.
18. The Commissioner has further taken account of the incorporation in English Law of the European Convention on Human Rights ("ECHR"), by virtue of the Human Rights Act 1998, in deciding whether or not to serve an Enforcement Notice. In particular, the Commissioner is mindful of the provisions of Article 8 of the ECHR in that the individuals referred to in paragraph 8 above all have the right to respect for private and family life, home and correspondence which has been unlawfully interfered with by reason of the failure of the data controller to respond to subject access requests in compliance with the DPA.
19. In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of her powers under section 40 of the DPA, she requires that the data controller shall:

By Monday 15 October at the latest, inform the (nineteen) individuals who submitted subject access requests before 25 May 2018, whether the personal data processed by it includes personal data of which those individuals (or any of them) are the data subjects and shall supply each of them with a copy of any such personal data so

processed in accordance with the requirements of section 7 of the DPA and the sixth data protection principle in that respect, subject only to the proper consideration and application of any exemption from, or modification to, section 7 of the DPA provided for in or by virtue of part IV of the DPA which may apply.

A formal progress update should be provided at weekly intervals during the notice period to allow progress to be monitored.

20. Failure to comply with this Notice is a criminal offence.
21. There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory Chamber. Information about appeals is set out in the attached Annex 1.

Dated the 4th day of September 2018

Signed: .

Andy Laing
Head of Data Protection Complaints
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF



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ANNEX 1

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an enforcement notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (the "Tribunal") against the notice.
2. If you decide to appeal and if the Tribunal considers:-
 - a) that the notice against which the appeal is brought is not in accordance with the law; or
 - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that she ought to have exercised her discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

GRC & GRP Tribunals
PO Box 9300
Leicester
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

The notice of appeal should be served on the Tribunal within 28 days of the date on which the enforcement notice was sent.

4. The statutory provisions concerning appeals to the First-tier Tribunal (General Regulatory Chamber) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).



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