

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 March 2025

Public Authority: London Borough of Ealing
Address: Perceval House
14/16 Uxbridge Road
Ealing
W5 2HL

Decision (including any steps ordered)

1. The complainant has requested information in relation to Houses of Multiple Occupation (HMOs) located in Perivale Ward in the London Borough of Ealing.
2. Although responding to some parts of the request, the London Borough of Ealing (the Council) refused the request relying on section 12 (Cost of compliance exceeds appropriate limit).
3. The Commissioner's decision is that the Council was entitled to rely on section 12 to refuse the request.
4. The Commissioner does not require the Council to take further steps in relation to this complaint.

Request and response

5. On 7 April 2024 the complainant made the following request to the Ealing London Borough Council (the Council) for information under the FOIA:

"I am making a Freedom of Information (FOI) request under section 8 of the Freedom of Information Act 2000, relating to privately owned Houses of Multiple Occupation (HMOs) (as defined by section 254 of

the Housing Act 2004 (as amended)) located in Perivale Ward in LB Ealing. Privately owned includes HMOs owned by a private limited company (including a community interest company or CIC) where the ultimate beneficial owner(s) are not public bodies.

Please can you accordingly provide the following information:

A For Perivale Ward in LB Ealing:

- 1)How many licensed licensable HMOs are there in this ward?
- 2)How many non-licensable HMOs are there in this ward (where they are managed by a housing association, co-operative, other charitable organisation or public body and/ or because they provide accommodation to certain categories of tenants)?
- 3)How many a) licensed and b) non-licensable HMOs in this ward house tenants who have been placed in supported or temporary/ emergency accommodation by Ealing LBC?
- 4)How many of those a) licensed and b) non-licensable HMOs in this ward house tenants who have been placed in supported or temporary/ emergency accommodation by charitable organisations or public bodies other than Ealing LBC? If so which charitable organisations or public bodies?
- 4) For 3) and 4) above, how many of those HMOs house tenants who are ex offenders who have unspent criminal convictions within the definition of the Rehabilitation of Offenders Act 1974 (as amended)?
- 5)For 3) and 4) above, how many of those HMOs house tenants who are known substance abusers or undergoing assisted addiction recovery?
- 6)For 3) and 4) above, how many of those HMOs house tenants who are listed in the Sex Offenders Register?
- 7)For 3) and 4) above, how many of those HMOs house tenants who are victims of sexual exploitation or domestic abuse?
- 8)For 3) and 4) above, how many of those HMOs house tenants who are asylum seekers?
- 9)How many HMO licenses in this ward has Ealing LBC refused, varied or revoked (under sections 64, 69 and 70 of the Housing Act 2004) and for what reasons were these licenses refused, varied or revoked?
- 10)For each of 1) to 9) above, please provide, to the full extent disclosable by law, the addresses of these HMOs (it is understandable

that for some of the information requested in 1) to 9) above addresses may be protected by law and non disclosable).

11) Is Ealing LBC making any payments to any landlords of any HMOs in this ward in relation to their HMO? If so what is the nature of these payments (e.g. housing benefit to fully or partially subsidise rent) and how much is being paid to each HMO landlord in receipt of such payment?

12) Is any other public body other than Ealing LBC making any payments to any landlords of any HMOs in this ward in relation to their HMO? If so what is the nature of these payments (e.g. housing benefit to fully or partially subsidise rent) and how much is being paid to each HMO landlord in receipt of such payment? If so, which public bodies?

13) On what date does Ealing LBC intend to make an Article 4 direction, under The Town and Country Planning (General Permitted Development) (England) Order 2015, reimposing a precondition for owners of houses in this ward to obtain planning permission prior to converting their house into an HMO?

14) On how many days in the past year has the MPA attended Perivale ward in relation to incidents concerning tenants of HMOs?

B Specifically for Polling District JU in Perivale Ward (also known as the Medway Village) (as marked "JU" in this map:
https://url.uk.m.mimecastprotect.com/s/nWb2Cj275UPRovzcW6N8i?do_main=ealing.gov.uk

[The complainant effectively reiterated all the requests for specific information as listed in part A but related to the area specified in part B.]”¹

6. The Council responded on 3 May 2024 and provided some of the requested information, explained that other information was not held, explained that some information could not be provided because of the

¹ For clarity, although the quoted request specifies 14 points, the request in fact consists of 15 points, and as referred to by the Council in its response, for the reason that point 4 is repeated, presumably in error. The same applies to part B of the request, not detailed here. In its response to the Commissioner’s investigation, some of the Council’s questions and responses did not correspond with the numbering in the investigation letter. This was later somewhat clarified but for avoidance of doubt, this decision notice will quote the relevant parts of the request in the ‘Reasons for decision’ section when dealing with specific exemptions or provisions relied upon by the council.

cost limit at section 12, and refused to comply with some parts of the request citing various neither confirm nor deny (NCND) exemptions within FOIA.

7. On 17 May 2024, the complainant requested an internal review as they disagreed with the Council's response.
8. Specifically, the complainant challenged the Council's responses to parts A and B 3 to 9, and A and B 12.
9. The Council provided an internal review on 17 June 2024 in which it effectively maintained its original position to the majority of the response, except parts A and B12, where it changed its original response to section 12. Specifically, the Council's response to the disputed points was as follows:
 - In relation to parts A and B3, the Council refused to provide the information citing section 12 (Cost of compliance exceeds appropriate limit).
 - In relation to parts A4, the Council did not provide any response and B4, the Council denied holding the information. When challenging the Council's response to these parts in their internal review request, the complainant did so on the presumption that due to the similarity of the questions in both parts A and B, the response to part A4 would be the same as to part B4. The Council did not make any comments in relation to this, however, it changed its original position in relation to these parts of the request, refusing to provide information citing section 12.
 - In relation to parts A and B5-8, the Council neither confirmed nor denied (NCND) to hold the information citing sections 40(5B)(a) (Personal information), 38(2)(Health and safety), 44(2)(Prohibition on disclosure) and 31(3)(Law enforcement).
 - In relation to parts A and B9, the Council denied holding the requested information.
 - In relation to parts A and B12 the Council cited section 12, therefore changing its initial response which was challenged by the complainant, who pointed out that the answer provided did not relate to the question asked.
10. The Council also advised that section 12 applied to the whole of the request for information and not just parts of it. The Council explained that it tried to be helpful where it could by providing information to some parts of the request, however this was not possible where to

obtain the requested information required to check each HMO and cross reference with the Housing Benefits service.

Scope of the case

11. The complainant contacted the Commissioner on 16 July 2024 to complain about the way their request for information had been handled.
12. Specifically, they disagreed with the Council's responses and its reasoning related to the above parts, namely parts A and B3-4, A and B5-8, A and B9 and A and B12.
13. In its submissions the Council also confirmed to the Commissioner, as it did to the complainant, that section 12 applied to the whole of the request and not just parts of it. However, the Council explained that by providing some of the information and responding to some parts of the request, the Council tried to be helpful.
14. Therefore, the Commissioner considers that the scope of his investigation is to determine whether the Council was correct to rely on section 12 to refuse the entire request.
15. The Commissioner wishes to mention that he will make further comments in relation to the way the request had been handled by the Council, including part response whilst relying on section 12, resulting in the complainant challenging specific aspects of the response they received.

Reasons for decision

Section 12 – Cost of compliance exceeds appropriate limit.

16. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations")
17. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. The appropriate limit for the Council in this case is £450.
18. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, effectively

imposing a time limit of 18 hours for the Council to deal with this request.

19. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
20. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
21. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

The complainant's position

22. As already mentioned, the complainant challenged specific parts of the Council's response based on specific provisions, according to the Council's responses to refuse the requested information.
23. For example, the complainant contended that providing "*anonymised statistical data (...) would enable the public to have a better understanding of the effectiveness of the Council and greatly assist in the quality and accuracy of public debate, which could otherwise be steeped in rumour and speculation*". They disputed that to retrieve the requested information "*would require substantial interrogation and collation of data that would require excessive staff resources*", and that it would require a manual search to locate and collate the requested information which would require an enormous amount of time to check for double entries.
24. The complainant further argued that the Council already provided an answer to the A2 part of their request, confirming that there were 102 licensed HMOs and therefore only those records needed to be searched. They concluded that "*Ealing Council has allocated housing support officers who have their own records of this information. One person can*

co-ordinate and enter information on a spreadsheet and ask each other person to spend an hour searching. Once on the spreadsheet duplicates can be easily removed by filtering. This work would not take 18 hours to complete by a reasonable competent person, and thus would not breach the threshold set by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004."

25. Similarly, the complainant challenged the Council's response to part B3 part of the request on the same basis as A3, clarifying that: *"this would require even less work by Ealing Council's Housing team than answering question A3), as there are only 20 licensed HMOs in polling district JU (the Medway Village) by your own disclosure. This is 20% of the number of HMOs across Perivale ward disclosed in answer to A3)."*
26. The complainant also disagreed with the response, where the Council said that it did not hold the requested information. This particularly related to parts 4 and 9 of the request.
27. Similarly, they challenged the Council's reliance on the NCND provision on the basis of sections 40, 38, 44 and 31 of FOIA, to refuse the request in relation to parts A and B5-8. They argued that:

"These statutory sections do not apply as I am not requesting personal identifiable information (PII) (as defined in the General Data Protection Regulation (GDPR) relating to individuals but anonymised statistical data – total numbers of people within categories – which is the same anonymised category numbers you provided in answer to my question A1)".
28. The complainant frequently referred to another local authority which provided them with the information in response to a similar request and therefore the complainant argued that the Council should be able to respond in a similar manner in this case.

The Council's position

29. The Council explained to the Commissioner that it utilises different record keeping systems to manage and discharge its statutory duties and deliver services.
30. However, it further explained that some requests are requests for information that the Council does not intentionally hold for any of its purposes and if it does hold any information relevant to such requests, it would be kept in a supplementary or auxiliary fashion to its primary purpose and there is no function enabling an efficient retrieval of such information. As an example the Council explained:

(...)“ a complaint is received by the Council by email from an occupier of a property about a neighbouring property. The complainant happens to mention in their email that they are an “asylum seeker”. The Council has recorded that information about asylum status in the retention of that email, but the email is recorded as a “housing complaint” – in no easily retrievable way is a box ticked or field completed stating “asylum seeker = yes”. To locate that information each record would have to be individually read.”

31. The Council went on to further explain that:

“Some of the information requests are requests for information which the Council does not hold but which the request in effect asks to be created from analysis or cross-referencing of two or more existing data sets or with an external organisation’s data set.

For example, the Council retains a register of licensed HMO’s. The information on the register includes the name of the landlords, the maximum occupancy of the property and the applicable licence conditions. This information held or provided does not include the names of individuals occupying the property at any given time nor who has arranged for those individuals to occupy the property. This register is searchable by property address or refence and the database is based on properties and address. The Council will hold information on who they have arranged to occupy certain properties where there is a duty to accommodate people. That register is searchable by individual and the connected database is searchable by a person’s name. To triangulate data sets from the property database and the person database would require a manual comparison of data sets or creation of data which doesn’t exist in the Council.”

32. The Council confirmed that in relation to this case it does know the number of the licensed HMOs in the given area, which was provided to the complainant in response to their request. However, the Council does not have readily available information in relation to the non-licensed HMOs. It explained to the complainant that the reason for this is because:

“A) they haven’t come forward and licensed and as are required to do, so we will bring legal action against them once we identify them

B) some are exempted from licensing by government within the legislation and so are not required to license and are not required to notify us that they are an operating as a HMO's but are exempted.”

33. In response to the complainant's comment, the Council explained that the search is not simply a matter of searching 102 records, as suggested by the complainant. The Council said:
- "Individuals can be placed in supported or temporary/ emergency accommodation from various services of the Council, not just the Housing department. This would mean every service who may place individuals in a HMO would need to cross reference their records with the 102 addresses."
34. To retrieve the relevant information *"would involved cross referencing with Housing Solutions, Adult Social Care including mental health and social care, Childrens social care including children safeguarding, leaving care and others, Landlord Services, Community Safety."*
35. The Council therefore maintained that to carry out these activities by every relevant service that may place an individual in an HMO accommodation would cross the appropriate limit threshold as set by the Fees Regulations.
36. The Council also confirmed this to the Commissioner, saying that to fulfil the request two sets of data would need to be assessed, the first being licensed and non-licensable HMOs and the second, tenants placed in supported / emergency accommodation. The Council explained that, as already confirmed with the complainant, although the number of licensed HMOs is known, the Council does not hold information related to non-licensable HMOs.
37. It went on to explain that the term *"non-licensable HMO"* refers to dwellings of two or more occupants living as two or more separate households who share some amenity which is not 'licensable' because an exemption applies defined mainly by Schedule 14 of the Housing Act 2004².
38. The Council further said that it *"will hold information resulting from complaints and other investigations on properties which meet this definition to compile that set of data however this would involve the checking of each individual property record from the database (there are around 6,000 dwellings on the database in this area). If that action of checking a record took one minute (which is extremely conservative) the Section 12 limit would only enable the checking on 1,440 property records."* This would therefore breach the appropriate limit.

² <https://www.legislation.gov.uk/ukpga/2004/34/schedule/14>

39. In support of the above estimation, the Council provided a sample of records, containing examples of two different data sets, which would need to be cross-referenced to demonstrate the complexity of searching and extracting of the requested information.
40. The Council continued by asserting that even if the information could be collected within the appropriate limit, the process of cross-referencing to ascertain which of those properties housed tenants in for example supported, temporary or emergency accommodation, would exceed that limit.
41. The Council did not provide a sampling exercise as it deemed it unwarranted based on, what it viewed, a conservative estimate of one minute per record check.
42. It explained that the search would need to involve a manual cross reference of the records in scope of the specified requested information, based on people not premises and 'scouring' it from referencing to properties on another list. Therefore, using a conservative estimate of one minute per record check, and as outlined above around 6,000 checks might be necessary, the limit is obviously exceeded as it would only allow for 1,440 record checks.
43. The Council confirmed, as it also did to the complainant, that because most of the requested information would require cross referencing with different service areas, for the reasons explained, the Council was unable to provide any information within the specified limit and neither was the Council able to provide any appropriate recommendations to refine the request.

The Commissioner's view

44. Paragraph 6.6. of the s 45 of the Code of Practice³ says:

"Public authorities do not have to search for information in scope of a request until the cost limit is reached, even if the applicant requests that they do so. If responding to one part of a request would exceed the cost limit, public authorities do not have to provide a response to any other parts of the request."

45. The Council explained that contrary to the complainant's suggestion, the requested information would not be easy to locate. This is because it is

³https://assets.publishing.service.gov.uk/media/5bacc7eb40f0b62dbe5321ba/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

not just data held by property that needed to be located but also information about individuals within the HMOs and this is the part which would require wider and more complex searches because of the need to cross-reference the data sets from across the various Council's departments amounting to 6,000 records that would need to be analysed.

46. The Commissioner carefully considered the evidence provided to him in this case. Based on the above estimate and having the benefit of seeing the sample of the data sets, he is satisfied that the time estimated by the Council, as one minute per record check is reasonable.
47. Having accepted the time of one minute as reasonable, he is satisfied that searching 6,000 records would equate to 100 hours and therefore exceed the appropriate time limit of 18 hours. The Commissioner is therefore satisfied that the Council is entitled to refuse the request in its entirety under section 12.
48. The Commissioner acknowledges that the complainant has a clear idea of the information they want to receive and an expectation on how it could be collated. He notes the complainant's frequent comparisons of the Council's response to the response from another local authority which appeared to have been able to provide information in response to a similar request.
49. When dealing with a complaint he receives under FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources or how it chooses to hold its information.
50. Although he appreciates the complainant's expectation about the quality of response from the Council based on the response from a similar organisation, the Commissioner notes that the complainant is unlikely to know exactly how the Council's casework management system captures information and what its limitations are.

Section 16 – Duty to provide advice and assistance

51. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45

code of practice⁴ in providing advice and assistance, it will have complied with section 16(1).

52. In the circumstances of this case and the responses to the information request the Council appeared to have applied section 12 to only some of the parts of the request, to later confirm that it meant that section 12 applied to the whole of the request. It later also explained that by responding to other, specific parts of the request the Council simply tried to be helpful.
53. In the internal review, the Council advised the complainant:
- “Please be advised that Paragraph 14 of the section 45 Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it: “...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee.” However, as most of the information you are requesting involves the requirement to cross reference with a number of different service areas, for the reasons I have explained above the Council would not be able to provide any information within the appropriate limit.”
54. Therefore, the Council effectively advised that it is unable to provide any information within the appropriate limit. However, as already alluded to previously, the Council did provide some information in relation to the specific parts of the request. It also advised the complainant that in relation to other parts of the request, the information was not held or was adopting a neither confirm or deny position as to whether the requested information was held.
55. The Commissioner accepts that the information provided by the Council, as explained in the above paragraph, amounts effectively to the duty to provide advice and assistance under section 16 and the Council fulfilled this requirement.
56. However, the Commissioner wishes to make further comments about the format of the Council’s response.
57. It is accepted and a matter of good practice, that if section 12 applies to the request as a whole, then the public authority is not obliged to comply with any part of it under section 1. It should in fact avoid

⁴ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

providing information found through initial searches and then claiming section 12 for the remainder. It should then provide advice and assistance to enable the requester to make a fresh request.⁵

58. In light of this and in the circumstances of this case, the Commissioner finds it necessary to draw the Council's attention to the importance of being clear, when responding to the requester for information what your position.
59. The Commissioner appreciates that the Council tried to be helpful by responding to some parts of the request, however, he notes that the Council's reference to section 12 was not at all clear that it applies to the entirety of the information requested, which the Council later admitted.
60. The Commissioner also notes that the Council's reference to '*Paragraph 14 of the section 45 Code of Practice*' when informing the complainant about the assistance with refining a request.
61. The Commissioner wishes to draw the Council's attention to the importance of ensuring reliance on the correct sources. Notwithstanding the same approach in both versions of the code of practice, it appears that the Council, when advising the complainant, relied on the Code of Practice from 2004, which was replaced by the new Code of Practice in 2018⁶.

⁵ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/#searches>

⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

62. 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

63. 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.
64. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Gosia Kostrzewa
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF