

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 March 2016

Public Authority: The Department for Communities and Local Government ("the DCLG")

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information from the Department for Communities and Local Government ("the DCLG") concerning his local authority's interpretation of the Housing Acts of 1988 and 1996.
2. The Commissioner's decision is that the complainant's request is not a valid request for recorded information and therefore the provisions of section 1 do not apply to it. The Commissioner has also decided that the DCLG has failed to provide the complainant with appropriate advice and assistance in order for him to make a valid request. Consequently the DCLG has breached section 16 of the FOIA. However, in view of the information which the DCLG has provided the complainant by way of assisting his understanding of annual tenancy visits, the Commissioner does not require the DCLG to take any further steps in this matter.

Request and response

3. On 3 December 2015, the complainant wrote to the Department for Communities and Local Government and requested information in the following terms:

"Where in the Housing Acts of 1988 and 1996, it says it's legal or against my tenancy agreement signed in 1997. That it's ok to have police-like searches every year where I live by Birmingham City Council landlords?

They call it annual tenancy visits, but my experience shows it was like a police search invasion of privacy and against my human rights and my right to live in peace, failure to let them in for a police-like search, means you have broken your tenancy agreement and I will be evicted making you homeless.”

4. The DCLG responded to the complainant's request on 11 December providing him with explanations of the provisions of section 81 of the Housing Act 1985 and the Prevention of Social Housing Fraud Act 2013. Additionally, the Department advised the complainant of his right to complain to Birmingham City Council, his local councillors, his MP and the Housing Ombudsman.
5. On 18 December the DCLG wrote to the complainant again. The Department referred to his request as being made in respect of the Social Housing Act 2013 and specifically about tenancy visits by the landlord of his property. The Department advised the complainant that it agreed with its original assessment that the DCLG has provided him with all the information it holds which he are entitled to receive under the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 22 December 2015 to complain about the way his request for information had been handled.
7. The focus of the Commissioner's investigation was to determine whether the DCLG has handled the complainant's request in accordance with section 1 of the FOIA. What follows is the Commissioner's Decision.

Reasons for decision

8. Section 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.”
9. It is the DCLG's position that it does hold copies of the two pieces of legislation which are referred to in the complainant's request. This is due

to the nature of the Department's work with regards to the planning process.

10. Both of the Acts referred to in the complainant's request are publicly available via the website 'www.legislation.gov.uk'.
11. The complainant has not requested copies of the two Acts of Parliament. Rather, he has asked the Department for what appears to be an interpretation of these Acts.
12. Section 1 of the FOIA provides a general right to access recorded information held by public authorities. This general right of access does not extend to an interpretation of that recorded information unless that interpretation itself exists in recorded form.
13. Following the Commissioner's enquiry in this case, the DCLG has now reconsidered its position in respect of the complainant's request. It has informed the Commissioner that it does not consider the complainant's request to be valid under the terms of the FOIA.
14. The DCLG has explained to the Commissioner why it responded to the complainant's request in the ways it did. It has assured the Commissioner that its responses were considered appropriate so as to assist the complainant in his understanding of the annual tenancy visits which have been conducted at his property by his local authority.
15. The DCLG explained why it had referred to the Social Housing Act 2013. The Department accepts that it was in error and that it was not referred to by the complainant in his original request.
16. The DCLG also accepts that it could have provided the complainant with appropriate advice and assistance in respect of him making a valid request for information under the FOIA. It conceded that it should have explained to the complainant that section 1 of the FOIA only concerns the provision of recorded information.
17. The Commissioner has considered the DCLG's position against the terms of the complainant's request. He agrees with the DCLG that the complainant's request is for interpretation of recorded information rather than for the recorded information itself. He therefore agrees with the DCLG that the request is not valid for the purposes of section 1 of the FOIA.
18. The Commissioner notes that the Acts referred to in the complainant's request are available to him via the www.legislation.gov.uk website. Had the complainant requested copies of these Acts from the DCLG he would have made a valid request under the FOIA but it would have been open

to the DCLG to have refused the request in reliance on section 21 – where the information is reasonably accessible to him by other means.

19. The Commissioner's decision is that the complainants request is not a request for recorded information and therefore it is not subject to the general right of access which is provided by section 1 of the FOIA.
20. The Commissioner considers that the DCLG should have informed the complainant that his request was not a valid request under the FOIA: The DCLG should have provided appropriate advice and assistance to the complainant to allow him to determine what, if any, recorded information the DCLG holds, which could be provided to him should he wish to make a different and focussed request. In view of this conclusion, the Commissioner must also conclude that the DCLG has breached section 16 of the FOIA which provides it with a duty to provide appropriate advice and assistance.

Other matters

21. The Commissioner notes that the complainant's request concerns the provisions in the Housing Acts for annual tenancy visits. He is informed by the DCLG that, whilst there is no provisions in these Acts to that effect, conditions of tenancy are regularly updated. The DCLG understands that the council would have had to give the complainant appropriate notice of this change in conditions under section 103 of the Housing Act 1985. Information on annual tenancy visits is available to the complainant from his local authority's website. Information linked to, from the local authority's website, explains that the Annual Visit has been included in the Conditions of Tenancy that were signed and agreed, and that the terms of these visits were consulted upon.

Right of appeal

22. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
Group Manager
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Wycliffe House
Water Lane
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Cheshire
SK9 5AF