

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 February 2020

Public Authority: London Borough of Waltham Forest
Address: Town Hall
Forest Road
London
E17 4JF

Decision (including any steps ordered)

1. The complainant requested information about charges levied on residents of a particular building. The London Borough of Waltham Forest ("the London Borough") supplied some information.
2. The Commissioner's decision is that London Borough failed to provide all the information it held within the scope of the request within 20 working days and thus breached section 10 of the FOIA. The London Borough also breached section 11 of the FOIA by failing to give effect to the complainant's preference to receive information in hard copy.
3. The Commissioner does not require further steps.

Request and response

4. On 31 July 2019, the complainant wrote to the London Borough and requested information in the following terms:

"Please will you provide me with the following:-

1) A copy of the rent statement (including a breakdown of the water rates, service charges or anything prescribed as 'other') for the following properties at Hopson House:-

1 bedroom property

2 bedroom property

3 bedroom property

"I would like the above information to be provided to me in paper format."

5. The London Borough responded by email on 14 August 2019. It provided some information.
6. The complainant sought an internal review because she did not believe that the London Borough had supplied all the information it held. Following an internal review the London Borough wrote to the complainant on 17 January 2020. It stated that it could not provide actual rent statements as these would be the personal data of the residents involved. However it did provide a breakdown of the average charges applicable to each type of property.

Scope of the case

7. The complainant contacted the Commissioner on 15 August 2019 to complain about the way her request for information had been handled. At that point, the complainant had yet to seek an internal review of the way her request had been handled, but she was unhappy that its response had been provided to her electronically.
8. On 2 December 2019, the complainant contacted the Commissioner again to point out that she was yet to receive the outcome of the internal review– despite having requested it on 30 August 2019.
9. In line with her usual practice, the Commissioner contacted the London Borough on 11 December 2019 to highlight the fact that the internal review outcome remained outstanding and ask it to respond within 5 working days. The London Borough responded the following day to say that it had not received a request for an internal review of the above request. However, it agreed to carry one out.
10. No breach of the FOIA would turn on this and therefore the Commissioner has not investigated the matter further, however she saw no reason why the London Borough would not have received the original request for internal review. Therefore when the London Borough failed to meet the Commissioner's deadline, she exercised her discretion and accepted the case for further review without waiting for the London Borough to complete its internal review.
11. When the Commissioner commenced her formal investigation on 22 January 2020, the London Borough had completed its internal review. The Commissioner wrote to the complainant, agreeing that there appeared to have been a breach of section 11 and inviting the

complainant to update her grounds of complaint, in light of the internal review. The complainant responded two days later, referring to the internal review, to say:

"Unsurprisingly, it is not fit for purpose. And I shall be forwarding my concerns when time permits." [sic]

12. However, despite the Commissioner chasing three days later, the complainant had yet to outline any further concerns she had at the point that this notice was issued.
13. The scope of this decision notice has therefore been to consider the London Borough's compliance with section 11 of the FOIA and the timeliness with which it provided information.

Reasons for decision

14. Section 1(1) of the 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.*

15. Section 10 of the FOIA states that a public authority must comply with its section 1(1) duty *"promptly and in any event not later than the twentieth working day following the date of receipt."*
16. The London Borough provided some information with its initial response and further information when it issued its internal review.
17. From the evidence presented to the Commissioner in this case, it is clear that the London Borough did not provide all the information it held, within the scope of the request, within 20 working days. The London Borough therefore breached section 10 of the FOIA.

Section 11 – Means of Communication

18. Section 11(1) of the FOIA states that:

Where, on making [her] request for information, the applicant expresses a preference for communication by any one or more of the following means...the public authority shall so far as reasonably practicable give effect to that preference.

19. The complainant, on making her request for information, set out a clear preference to receive any relevant information in paper format. The London Borough supplied the information electronically and provided no explanation as to why this was not reasonable practicable to give effect to that preference. This matter was remedied at the internal review stage.
20. The London Borough therefore breached section 11 of the FOIA in the way it responded to the request.

Other matters

21. The Commissioner notes that, in recent months, she has dealt with several complaints about the London Borough's compliance with section 11 of the FOIA (or the equivalent EIR provision).¹ Whilst it is reasonable to note that she has not always upheld those complaints, the Commissioner is concerned that the London Borough is making minor but avoidable errors which are resulting in complaints to her office. Such errors are preventing the London Borough from dealing with the requests in a way that is both fair and robust.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2616869/fs50878058.pdf>

<https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2616870/fs50878089.pdf>

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@justice.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

Phillip Angell
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