

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 September 2021

Public Authority: London Borough of Waltham Forest

Address: Town Hall
Forest Road
London
E17 4JF

Decision (including any steps ordered)

1. The complainant wrote to the public authority seeking details of remedies, compensation or any other types of payment made to tenants over a five year period in relation to repairs or improvements to the condition of their properties. The public authority refused to comply with the request on the basis of section 12(1) FOIA (compliance would exceed the appropriate limit).
2. The Commissioner's decision is that the public authority was entitled to rely on section 12(1) FOIA.
3. The Commissioner however finds the public authority in breach of section 16(1) FOIA (duty to advise and assist applicants).
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The public authority should consider whether it can comply with a narrow version of the request for relevant records covering a period of less than five years from 15 July 2020, the date of the request, and inform the complainant further to its duty in section 16(1) FOIA.
 - The public authority should make it clear to the complainant whether this would include the request for information regarding any remedies and not just monetary awards by way of compensation payments.

- The public authority should focus on complying with a refined request and not on whether yet to be examined information in scope would engage other exemptions in the FOIA.
5. The public authority must take these steps within 35 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

6. On 15 July 2020 the complainant submitted a request to the public authority in the following terms:

"I am writing as in March 2019 I was handed over a council property which was in the state of not ready to be handed over. Although my flat is still having enormous disrepairs, I am paying the same rent as those tenants who got their properties in good conditions. I have never been offended by the council any remedy because of the disrepairs, despite some of those disrepairs negatively affect my health. At the same time, I was informed by somebody, who doesn't want to be named, that the council usually paid thousands of pounds of compensations to the tenants in cases where inappropriate state of the property was not the tenants' fault. This made me feel that I am being discriminated by Waltham Forest council because of my disabilities and my race.

Please provide me with detailed information about any remedies, compensations or any other types of payment in regard to repairs or improvement the conditions of the property, which the council provided to their tenants during the last five years.

I am only interested in the circumstances under which those payments were made and also in ethnic origins/nationalities of those people who received payments from the council.

I am not interested in their personal data and any other demographic details. I am not even interested in exact dates of the payments."

7. On 11 August 2020 the public authority provided the following response:
- "unfortunately I am unable to provide the information you require, which is detailed information about any remedies, compensations or any other types of payment in regard to repairs or improvement the condition of the property, which the council provided to their tenant during the last five years. We do not retain the information in the format

that you have requested, and this would also take the request over the threshold time to respond, if you could narrow down your request and submit again I will then have another look to see if we can provide the information requested. Under to GDPR guidelines I will not be able to advise on the ethnic origins/nationalities of the recipients.”¹

8. On 14 August 2020 the complainant requested an internal review of that response in the following terms:

“The response provided by FOI Waltham Forest is very general and not compatible with Freedom of Information Act. The council said that they don’t retain the information in the format I requested and asked me to submit a new request narrowing it down. At the same time, I haven’t been informed in which format the council retains the information and how I could narrow down my request. Therefore, submitting a new request and trying to guess what is the council’s format is about, would put me in the same situation again, that my request is not being process.

Moreover, the council refused to provide the information about the ethnic origin of the recipients and referred to GDPR. As far as I am aware, the council has the duties to monitor the ethnic origin of the people receiving their services and make this information public. GDPR only protects personal data. The statement of ethnic origin cannot be referred to any personal data.”

9. On 14 September 2020 the public authority wrote back to the complainant with details of the outcome of the internal review. It is difficult to ascertain from the review whether the outcome was in relation to the full request or only to the part of the request for a breakdown of tenants who had received compensation by ethnicity or nationality, whether the public authority considered that it did not hold this information, or whether it considered that it would exceed the appropriate limit to comply with the request in full.

¹ Although it is not entirely clear from the response, the Commissioner understands that the public authority was referring to all council properties (not just a property) in the borough within the period caught by the request.

Scope of the case

10. The complainant submitted her complaint to the Commissioner on 18 September 2020 on the grounds that she disagreed with the public authority's refusal to provide the requested information.
11. The complainant provided the following submission in support of her complaint:
12. "I asked the council to provide me with detailed information about any remedies, compensations or any other types of payment which the council provided to their tenants during the last five years in regard to repairs or improvements of conditions of the council properties they occupied. I specified that I was only interested in the circumstances under which those payments were made and also in ethnic origins/nationalities of those people who received payments from the council. I made it clear that I not interested in any personal data. I believe the information I requested was available to the council. However, the council refuse to respond to my request....I believe that the information I requested is essential to me as I live in a property with enormous disrepairs but paying the rent for the property as those tenants who are not dealing with disrepairs. I was not offered any remedies by the council. As the council refuses to provide the information about nationalities and ethnic origins of the people who received the payment, I feel that I am being discriminated by Waltham Forest council because of my disabilities and my race..."
13. On 24 May 2021 the Commissioner set out the scope of her investigation to the complainant. The Commissioner also invited the complainant to let her know whether there was any information in particular that the public authority could disclose in order to satisfy her request. The complainant did not respond.
14. The Commissioner's investigation therefore focussed on whether the public authority was entitled to rely on section 12(1) FOIA and, whether the public authority had discharged its duty to advise and assist the complainant further to the provision in section 16(1) FOIA.

Reasons for decision

Section 12(1) FOIA – cost of compliance

15. Section 1(1) FOIA states:

“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.”²

16. Section 12(1) FOIA states:

“(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”³

17. The “appropriate limit” is set in the [Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004](#) (the Fees Regulations) at £450 for all public authorities save a public authority that is listed in Part I of Schedule 1 to the FOIA. Schedule 1 is a list of public authorities subject to the application of the FOIA. Local authorities fall under Part II of Schedule 1. Therefore, the appropriate limit for the public authority is £450.

18. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour. This means that the public authority may refuse to comply with a request for information if it estimates that it will take longer than 18 hours.

19. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds information;

² Full text of [section 1](#)

³ Full text of [section 12](#)

- locating the information or a document containing it;
 - retrieving the information or document containing it; and
 - extracting the information, or a document containing it.
20. Section 12 FOIA explicitly states that public authorities are only required to estimate the cost of complying with a request, not give a precise calculation. However, the Commissioner considers that such an estimate must be one that is sensible, realistic and supported by cogent evidence.

Public authority's submissions

21. The public authority's submissions are summarised below.
22. A list of relevant payments was initially taken from its finance database, SAP. However, the list did not specify whether such payments were for compensation and a manual process was necessary to establish this. Ultimately, from that list, its Housing Assets team identified 400 compensation payments within the scope of the request. However, the ethnicity or nationality of individuals awarded compensation is not recorded alongside the compensation payments because it has no bearing on whether a claimant is entitled to compensation. The public authority estimated that the process of locating and retrieving the compensation payments excluding information on the ethnicity or nationality of claimants took six hours. This involved sending the list of relevant payments to the Housing Assets team who "searched their own relevant files within their drives. This revealed that there were 400 compensation payments made over the time period specified, this information was collated in a spreadsheet."
23. In order to provide the relevant ethnicity or nationality related information, each claimant's details would have to be checked against their corresponding record in Northgate, the tenant and leaseholder database. The public authority estimates that it would take three minutes to complete the process of matching the ethnicity or nationality record for a claimant, a total of 20 hours for the 400 records. However, it added that the information will only be available if a tenant had chosen to reveal their ethnicity or nationality to the public authority.
24. Therefore, in addition to the six hours the public authority estimated it had already taken to locate and retrieve the compensation payments, it would take an estimated 26 hours in total to comply with the complainant's request.
25. In response to the Commissioner's enquiries, the public authority added that disclosing a summary of the circumstances under which compensation payments were made within the period covered by the

request would involve interrogating each record and producing a summary description of the reason(s) for compensation and that this would similarly exceed the appropriate limit.

Commissioner's considerations

26. The Commissioner's findings with respect to the application of section 12(1) are set out below.
27. A public authority may rely on section 12(1) if it becomes apparent while carrying out some initial work including searches in response to a request that complying with the request would exceed the appropriate limit.
28. In this case, the public authority has located and retrieved the 400 records of compensation payments within the scope of the request. The steps it took in order to locate and retrieve the records are less than clear which might cause one to question whether it should have taken six hours to complete this task. However, the Commissioner acknowledges that due to how data is stored in SAP, the public authority's financial database, undertaking searches against a variable such as whether a particular disbursement was a payment by way of compensation is likely to have been done manually.
29. More significantly, a sample of compensation payment records from April to June 2021 provided by the public authority to the Commissioner for the purposes of her investigation does not include the ethnicity or nationality of tenants. Therefore, the Commissioner is persuaded that details of recipients of compensation payments for the last five years from July 2015 to July 2020 would have to be matched with corresponding records in Northgate, the public authority's tenant and leaseholder database, in order to comply with the complainant's request. The Commissioner considers that 3 minutes for each record is a reasonable estimate to undertake this task. This task alone would take 20 hours.
30. Judging by the comments in the "Notes" column of the sample compensation payment records from April to June 2021 provided by the public authority to the Commissioner pursuant to her investigation, the reasons for issuing compensation payments to tenants are likely to vary quite considerably. The Commissioner is therefore persuaded that the public authority would need to interrogate most of the 400 records in scope in order to establish the reasons for issuing a compensation payment. The Commissioner accepts that undertaking this task would exceed the appropriate limit. The Commissioner has not seen any evidence to suggest that compensation payments are recorded by the

public authority under individual categories such as in relation to repairs or improvements to the condition of properties.

31. For the above reasons, the Commissioner is satisfied that, in respect of those activities, it would take the public authority slightly above the appropriate limit of £450 (equating to 18 hours) to comply with the complainant's request.
32. The complainant's request refers to "any remedies" which can include, but is not limited to, monetary awards. Therefore, it is unclear why the public authority's response focussed on compensation payments alone without first clarifying this with the complainant. Although the request appears to focus on information relating to monetary forms of remedies to tenants, as a matter of good practice, the public authority should have sought clarification on this point from the complainant.

Section 16(1) FOIA – Duty to provide advice and assistance

33. Section 16 FOIA states:

"(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

34. In light of the complainant's comments, the Commissioner asked the public authority to suggest how the complainant should consider narrowing the scope of her request in order for compliance not to exceed the appropriate limit.
35. The public authority did not provide any suggestions on how the complainant could narrow the scope of her request in order for compliance not to exceed the appropriate limit. It however explained that it could consider providing the complainant with a randomised sample of five compensation payments and the corresponding ethnicity of the recipients but that this would still be subject to evaluation under section 40(2) FOIA (personal data exemption).

Commissioner's considerations

36. The Commissioner's findings with respect to the application of section 16(1) are set out below.
37. Paragraph 6.9 of the [Code of Practice](#) issued pursuant to section 45 FOIA states that; where a public authority has decided that complying with a request would exceed the appropriate limit, the public authority should consider how it can provide advice and assistance to help an applicant narrow, reform or refocus their request with a view to bringing it within the cost limit. This may include suggesting that the subject or timespan of the request is narrowed.
38. It is not clear to the Commissioner that this happened in this case. The public authority appears to suggest that this is because the complainant is of the view that ethnicity or nationality plays a role in the authority's decision to award compensation payments to tenants. Therefore, the only way it could satisfy the complainant would be by providing ethnicity or nationality data along with the rest of the details requested in relation to the compensation payments in scope
39. This may well be the case in relation to complying with part of the request⁴. However, following the complainant's comments on 14 August 2020, the public authority could have advised the complainant of the information it considered it could retrieve within the appropriate limit. For example, it could have asked the complainant to narrow her request to one or two calendar years. Matching details of recipients of compensation payments for one or two calendar years with corresponding records in Northgate is unlikely to take the public authority over the cost threshold given that it estimates it would take 20 hours to do this for 400 records covering a five year period. The complainant was right to question the generic nature of the advice provided by the public authority on 11 August 2020. The public authority should have provided advice which was more tailored to the complainant's request despite the fact that in its view, some information within the scope of a refined request is still likely to engage the exemption at section 40(2).
40. The Commissioner therefore finds the public authority in breach of section 16(1) FOIA. Further to this finding, the public authority should consider, paying particular attention to the wording/elements of the request, whether it can comply with a narrow version of the request for

⁴ As mentioned, the request refers to any remedies not just to compensation payments.

records covering a period of less than five years from 15 July 2015 to 15 July 2020, the date of the request. The public authority should focus on complying with a refined request and not on whether yet to be examined information in scope would engage other exemptions in the FOIA.

Other Matters

41. On 14 July 2020, the Commissioner issued a [Practice Recommendation](#) to the public authority pursuant to section 48 FOIA. Amongst other things, the Commissioner recommended that “the [public authority] should ensure that its internal review process offers a truly fair and thorough assessment of the handling of the request for information.”
42. The Commissioner is concerned about the quality of the internal review issued to the complainant on 14 September 2020. Whilst it set out a detailed chronology of the request and the public authority’s original response, the public authority’s position was not very clear. The review appeared to conclude that the public authority did not hold details of compensation made to tenants for repairs or improvements to their properties broken down by the tenants’ ethnicities or nationalities and at the same time claimed that it would exceed the appropriate limit to comply with this request. This is not permissible under the FOIA. A public authority relying on a claim that requested information is not held is precluded from also claiming that it would exceed the appropriate limit to provide the same information.

Right of appeal

43. 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

44. 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.
45. 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

Terna Waya
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