

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 June 2011

Public Authority: Homes for Islington
Address: Highbury House
5 Highbury Crescent
London
N5 1RN

Summary

The complainant requested information relating to expenses claims made by Homes for Islington (HFI) Board members. The complainant did not receive a substantive response within the statutory time frame and therefore contacted the public authority to request an internal review. The public authority completed the internal review acknowledging the delay in responding and confirmed information was held. The complainant contacted the Commissioner to complain about the handling of her request.

Prior to the Commissioner commencing his investigation, HFI provided the information to the complainant. The complainant remained dissatisfied with the response. The Commissioner has investigated and requires no steps to be taken by the public authority.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. Homes for Islington (HFI) manages Islington Council's rented and leasehold homes. It was established in April 2004 as an Arms Length Management Organisation (ALMO), a local authority-controlled company solely owned by Islington Council.

3. According to its website, HFI operates "*an annualised allowances scheme as opposed to an out-of-pocket expenses scheme*". This scheme was introduced in October 2007. Special Responsibility Allowances were included in the scheme in April 2010. The scheme is based on assessments of average annual out-of-pocket expenses.

The Request

4. The complainant wrote to Homes for Islington (HFI) on 16 September 2010, making the following request for information:

"As an Islington Leaseholder I feel entitled to make a Freedom of Information Request to identify how much each resident board member on the HFI Board claims in expenses and what those expenses are itemised as covering. I would like to have the details in spread sheet form for each director, showing each item and how much it cost covering the duration of HFI's existence since forming in 2004."

5. The authority responded on 12 October 2010 advising her of a delay in responding "*as the information you have requested is particularly voluminous and is not currently in a format that is 'user friendly'*". HFI also told the complainant that it was working on a publication for its website that would clearly display the requested information. In addition, HFI advised her of the date when it anticipated being able to respond fully to her request.
6. There followed a series of correspondence between the complainant and HFI. The Commissioner has set out the key correspondence below.
7. On 14 October 2010, HFI wrote to the complainant confirming that it held the requested information.

"It is the case that HFI holds the raw data in a format, but that format would currently be difficult to interpret in its current state. The data therefore requires a statement of explanation of the allowances scheme to accompany it as well as presentation in a format that, hopefully, will not simply lead to requests from any individual for a further explanation of the particular details of any allowances paid."

8. The complainant emailed HFI later the same day, expressing dissatisfaction with this response and requesting an internal review.
9. HFI provided a partial response to the request for information on 10 November 2010: it disclosed some expenses information together with a

document explaining how the allowances scheme operates. It also told the complainant that it anticipated being able to provide the outstanding information by 15 November 2010. A further disclosure was made on 15 November 2010.

10. On 15 November 2010 London Borough of Islington responded to the complainant's correspondence of 14 October 2010 in which she requested an internal review. It told her:

"Homes for Islington has withheld the information but not quoted a legal exemption from the Act. It appears that the relevant exemption might have been Section 22 'Information intended for future publication'.....What has been provided to you is the Board allowances broken down into detailed categories. This will be routinely available on the Homes for Islington website going forward. Therefore the council feels that Homes for Islington has now provided a full response to this request."

11. The complainant contacted HFI on 22 November 2010, again asking it to review its response and to send her the information she had requested. The complainant also contacted HFI on 23 November 2010 detailing the information she considered remained outstanding. At this stage she told HFI:

"I didn't say this before but I would like the information for each year in one spread sheet for each director itemising each expense, in a clear format that one would expect from any set of professional set of accounts."

12. HFI wrote to the complainant on 3 December 2010 to say that the information had not been withheld. It provided an explanation of what had been provided and why the formats were different for expenses claimed between 2004 and 2007 and from October 2007 to the time of writing.

13. The complainant responded the same day. In that correspondence, she told HFI:

"I also asked for itemised receipts for every expense with dates, which on the behalf of HFI you have failed to provide".

14. HFI wrote to the complainant on 24 December 2010 providing what it described as *"the remaining data relating to HFI Board expenses since 1/4/04"*. This related to the information requested on 16 September 2010.

The Investigation

Scope of the case

15. The complainant contacted the Commissioner by email on 14 October 2010. This was prior to her having been through HFI's internal review process. The reason for her email appears to have been to record the fact that she had contacted the Commissioner's Helpline to discuss HFI's response to her request for information. She told the Commissioner:

"all I have asked for is simple itemised spreadsheets, and not for the information to be laid out in a web format".

16. Having received a response to her request for an internal review, the complainant contacted the Commissioner on 26 November 2010. She told him:

"As you can read, the response does not address the fact that I still have not been sent all the information, and as far as I can see does not address my concerns. I'm also attaching what has been sent to me, so you can see for yourself the lack of itemised receipts, (therefore what's all this nonsense about the bulk of documents as they sent 7 sheets, not 7 volumes of receipts. The information is also not complete, so no full financial information for 2008, 2009, or 2010, and i did request an itemised list of expenses, not subject headings. I also never requested that the information be published on HFI's website, and therefore am not clear why this would be used as a reason to delay sending me the information, or changing the format that the information should be presented in."

17. Having read the correspondence on the casefile, the Commissioner has found no evidence that the complainant requested individual, itemised receipts for all expenses. He contacted the complainant for clarification of this issue, but she did not provide any evidence to support this aspect of her complaint. The Commissioner has therefore investigated on the basis of her original request of 16 September 2010.
18. The Commissioner notes that, within the considerable amount of correspondence in this case, there are references to the exemptions in sections 12 (cost of compliance) and 22 of the Act (information intended for future publication). However, as HFI has now provided the information to the complainant, he has not addressed these matters in this Decision Notice.

Chronology

19. In response to correspondence from his office advising that he had received a complaint, HFI wrote to the Commissioner on 14 January 2011. It told him that, having re-examined the original request, it should probably have cited section 12 (cost of compliance). However, it told him that having not done so at the time of the request, it considered it best to provide the information in full to the requestor, which it had done on 24 December 2010.
20. In an attempt to resolve matters informally, the Commissioner wrote to the complainant on 7 February 2011 advising her that he did not intend to issue a Decision Notice in this case; instead the case would be closed on the basis that the requested information had been provided.
21. The complainant responded on 7 February 2011 objecting to this course of action.

Analysis

Procedural Requirements

Section 1 General right of access

22. Section 1 provides that, on receipt of a request for information, a public authority should confirm whether information is held within the statutory time frame. In this case the Commissioner accepts that the public authority confirmed, on 14 October 2010, that information was held. This was in accordance with the timescales laid out in section 1(1)(a).
23. The Act provides a right of access to recorded information. The Act does not require an authority to create new information in order to answer a request; however, an authority may be required to extract or compile information from its existing records in response to a request.
24. The complainant wrote to HFI on 12 October 2010:

"It is of concern that the records of HFI Resident Directors is not already held in a simple excel or word...."
25. The Act does not extend to what information public authorities should be collecting or how they should be using the technical tools at their disposal. Rather, as discussed in the case of *Johnson v Information Commissioner and the Ministry of Justice* (EA/2006/0085), it is concerned with the disclosure of the information they do hold.

26. The complainant expressed concern to the Commissioner about the information finally disclosed by HFI:

"... don't you think it's strange that some of the directors in one of the last remaining years sent across claimed exactly the same amount in the same months."

27. The Commissioner has considered this matter and notes that, since 2007, HFI has operated an allowances scheme rather than an expenses scheme. He understands that, prior to the introduction of the Annualised Allowance Scheme expenses were claimed on a cost incurred basis. He therefore considers it not unreasonable for board members to claim the same amount, under the allowance scheme, from one year to the next.
28. Although the complainant is dissatisfied with the response provided by HFI, the Commissioner is satisfied that she has been provided with the information HFI holds that falls within the scope of the request.

Section 11 Means by which communication to be made

29. Section 11 permits an applicant to express a preference as to the means of communication of information under section 1.
30. On receipt of the information provided by the HFI on 24 December 2010, the complainant responded on 12 January 2011:

"none of the information you have sent is in a consistent [sic] format or clear. We requested individual receipts for each director in spread sheets for each year in chronological order between 2004/ to 2010."

31. In the Commissioner's view, there is a distinction between the form in which a piece of information is communicated (e.g. an electronic form like email), and how the data is arranged within that form (e.g. the specific software format). He notes that there is no reference to "format" in section 11.
32. Accordingly, he considers that although an applicant can ask for an electronic or hard copy of the information they are not entitled to specify down to the next level, the specific software format. He therefore does not consider that HFI was required to present this requested information in spreadsheet format.

Section 17 Refusal of request

33. Section 17(1) provides that, when refusing a request, a public authority must issue a refusal notice to the requester within 20 working days following the date of receipt of the request. If an exemption has been

applied, a refusal notice must specify the section and sub-section, and must set out the full reasoning behind the decision.

34. An authority may take further time to consider the public interest test in relation to the duty to confirm or deny a qualified exemption. However, it must issue a notice to the requester within 20 working days stating why it requires more time to come to its decision, and it must give an estimate of the date by which it expects to answer the request in full.
35. The Commissioner notes that HFI issued a refusal notice within 20 working days in this case but that the reason it cited for requiring additional time to consider the request was not due to its consideration of the public interest test; rather, it related to the volume of material involved, which was not a proper exercise of the extension.

The Decision

36. The Commissioner's decision is that, in relation to the matters which he has investigated, no procedural breaches were committed by the public authority.

Steps Required

37. The Commissioner requires no steps to be taken.

Other matters

38. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

Piecemeal disclosure

39. Whilst the requested information was ultimately disclosed the Commissioner wishes to record his concerns about the practice of 'piecemeal' disclosure.
40. Piecemeal disclosure describes request handling which has the effect of delaying, whether intentionally or otherwise, an applicant's access to information falling within the scope of their request. The Commissioner would expect that in its future handling of requests, Homes for Islington will provide information in a manner which conforms to the letter and the spirit of the Act.

Alleged falsification of information

41. During the course of the Commissioner's investigation, the complainant alleged that the information provided by the public authority might have been falsified. This issue was referred to the Commissioner's Investigations Department which, after consideration of the available evidence, determined that the allegation did not warrant further investigation.

Right of Appeal

42. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

43. 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.
44. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 29th day of June 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides 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."

Time for Compliance

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Means by which communication can be made

Section 11(1) provides that –

"Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The public shall so far as is reasonably practicable give effect to that preference."

Refusal of Request

Section 17(1) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."