

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 March 2012

**Public Authority:** London Development Agency<sup>1</sup> (a functional body of The Greater London Authority)

**Address:** Palestra, 197 Blackfriars Road  
London  
SE1 8AA

#### Decision (including any steps ordered)

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1. The complainant requested information relating to the amounts deducted from compensation paid to residents of Clays Lane estate in Stratford East London following the enforcement of a Compulsory Purchase Order. The complainant also requested minutes of meetings held with one of the resident groups.
2. The Commissioner's decision is that, on a balance of probabilities, the public authority did not hold information relevant to items i and ii of the request. The public authority however held information within the scope of item iii of the request which has since been disclosed to the complainant. The Commissioner subsequently finds that, on a balance of probabilities, the public authority does not hold additional information within the scope of item iii.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

#### Request and response

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4. On 13 July 2011 the complainant wrote to public authority and requested the following information:  

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<sup>1</sup> The London Development Agency (the LDA) is not a public authority itself. It is part of The Greater London Authority (the GLA) which is responsible for the LDA. Therefore, the public authority is actually the GLA not the LDA. However, for the sake clarity, this decision notice refers to the LDA as if it were the public authority.

- i. Information to show the reasons for the deductions made by the LDA and CBHA<sup>2</sup> from compensation paid to those Clays Lane tenants who had these deductions made.
  - ii. A full set of accounts (with personal details redacted) showing all compensation payments to all residents of Clays Lane estate.
  - iii. Minutes of the Clays Lane Temporary Moves Group meetings until September 2008.
5. The public authority responded on 11 August 2011. It stated that the statement of monies paid to each occupier (with personal information redacted) had been previously supplied to the complainant and reiterated that deductions were made via arrangements between individual occupiers and CBHA. Therefore, the information (if any was held) collected would be held by CBHA. The public authority stressed that there was no specific policy in place in respect of deductions as individual circumstances could vary widely.
6. It however advised that, in the majority of cases, the deductions related to costs incurred on behalf of the tenants by the CBHA in respect of their relocation and storage costs as well as to account for other individual circumstances that arose from time to time. Where a deduction was intended, this was discussed with the individual occupier prior to doing so. If the individual was not content with the proposed deduction, there were a range of mechanisms available to query and challenge the decision.
7. In terms of item ii of the request, the public authority explained that it did not hold a specific set of accounts for the compensation and deductions because such specific and individual compensation payments are not subject to separate audits. However, a table showing the amounts of compensation (after deductions) paid to all tenants was subsequently provided to the complainant. Personal information was redacted but the information provided included the total compensation paid to individual tenants and where applicable, the total deduction from the amount paid out to an individual tenant.
8. In response to item iii of the request, the public authority provided the complainant with redacted copies of the minutes of the relevant meetings held on 4 June 2007, 2 July 2007, 9 October 2007 and 13

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<sup>2</sup> Community Based Housing Association. It is part of the Peabody Housing Association which, according to its website, manages more than 20,000 homes across London.

November 2007. The redacted information was withheld on the basis of section 40(2) of the Act.

9. Following an internal review the public authority wrote to the complainant on 13 September 2011. It upheld the original decision and specifically explained that reasonable efforts had been made to locate all of the minutes requested under item iii of the request.

## Scope of the case

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10. On 11 October 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. The complainant specifically clarified that he was not questioning the decision to redact personal information from items ii and iii of the request.
12. However, he submitted that the public authority should be able to provide a full copy of the account showing the compensation paid out to individual tenants and details of deductions under specific headings such as rent arrears, storage costs, home disturbance etc. He argued that if the information was held by the CBHA, it was held by the CBHA on behalf of the public authority.
13. He further questioned why the minutes of the remaining meetings had not been provided. He specifically pointed out that he was present at all the meetings and the minutes had been taken by the same official. He therefore could not understand why some of the minutes were kept secure and others had not.
14. The scope of the investigation therefore was to determine:
  - Whether the public authority held information within the scope of items i and ii of the request (excluding personal information) which it had failed to provide to the complainant.
  - Whether the public authority held information within the scope of item iii of the request (excluding personal information) which it had failed to provide to the complainant.

## Reasons for decision

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15. Section 1(1) of the Freedom of Information Act 2000 (the Act) grants a presumptive right of access to applicants so that unless an exemption is relied upon, a public authority is under a duty to inform an applicant in

writing whether it holds the information requested and if it does, to then have it communicated to the applicant.

16. In determining whether a public authority holds information requested by an applicant the Commissioner applies the civil standard of proof which is based on a balance of probabilities.
17. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.<sup>3</sup>

#### Items i and ii of the request

18. As mentioned, the public authority provided the complainant with details of the level of deductions made and also explained why it did not hold information specifically showing the reasons for individual deductions. In its submissions to the Commissioner, the public authority further explained that its agreement with CBHA for providing housing and advice services during the period of the relocation of residents was in force from 1 August 2005 to 1 August 2007. The public authority therefore submitted that CBHA no longer had a contractual obligation to either retain any information collected under the terms of the agreement or to provide the public authority with access to such information.
19. The Commissioner agrees that in the circumstances, the public authority's right of access to information held by CBHA had expired at the time of the request. As he understands it, the public authority and CBHA did not have an ongoing contractual relationship specifically in relation to the relocation of residents on Clays Lane estate beyond 1 August 2007. Given the varying individual circumstances, the Commissioner can also understand why the public authority did not consider it necessary to ask CBHA to specifically collate information relating to the reasons for individual deductions. He however notes that the public authority was able to provide individual figures reflecting the amount paid in compensation and where relevant, the amount deducted.
20. The primary consideration in any event is whether, on a balance of probabilities, the public authority held information showing the reasons for the deductions. Based on its explanations, the Commissioner is

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<sup>3</sup> These views were expressed in more detail by the Information Tribunal in *Linda Bromley & Others v The Information Commissioner & Environmental Agency* – EA/2006/0072

satisfied that the information was not held by the public authority at the time of the request.

Item iii of request

21. As mentioned, the public authority disclosed minutes of the meetings held on 4 June 2007, 2 July 2007, 9 October 2007 and 13 November 2007. It claimed that it did not hold minutes of meetings which took place after 13 November 2007 up until September 2008.
22. The public authority pointed out that it was a matter of public record following its internal reviews and the 'Mayor's Forensic Audit Panel' (FAP) report in July 2008 that there were significant shortcomings in relation to its records management practices. These included poor record keeping amongst others, which it stressed had since been resolved following a comprehensive improvement programme in response to recommendations made by FAP.
23. The public authority could not verify if it had a 'formal' records retention policy at the time the meetings were held. The earliest records retention policy it could find was in use in December 2010. According to that policy, official documents are to be kept for a period of 6 years before being destroyed. At the time of the request in July 2011, an updated version of that policy was in use.
24. According to the public authority, the procedure in terms of records management is that all official documentation relating to business activities should be filed appropriately within the corresponding filing structure and file plan of its records management system (AthenaDocs) which was introduced in 2006. The records relating to the Clays Lane relocation of residents were filed within a specific location in the file plan which was used solely by staff managing the relocation process. The public authority explained that AthenaDocs is an electronic data and records management system (EDRMS) which contains a corporate file plan designed to ensure consistency in the way information is stored. It allows advanced searches of millions of records made of emails, documents and spreadsheets.
25. According to the public authority, all official documentation in relation to the Clays Lane Compulsory Purchase Order (CPO) and in particular the process of relocating the residents should have been filed in a folder entitled 'Clays Lane residents' within the 'Group Move' sub-folder. The public authority stressed that although it had since become obvious that a complete record of all meetings were not stored in that folder, no project related documents had been formally destroyed.
26. The public authority explained that it had carried out extensive manual and electronic searches for the minutes of the remaining meetings. The CPO project officer identified and retrieved four boxes from the public

authority's archives which he considered might contain the minutes. The boxes contained a total of approximately 12 large files which were filed under the headings: 'Clays Lane on the Move', 'Clays Lane Residents', 'Clays Lane Shared Equity' and 'Group Move'. The project officer carried out a page turn of each document for the relevant minutes.

27. Electronic searches were conducted by both the CPO project officer and by staff in the records management team who for search purposes have unrestricted access to all records held by the public authority. The public authority however explained that officials who were involved in the Clay Lane relocation process were no longer in its employ. In line with its policy, information retained in their (individual) mailboxes was deleted after their departure and as such a search of their mailboxes was not possible.
28. Searches carried out in the EDRMS were based on the likely author(s) of the minutes, and the use of key words and documents filed within the time frame in which the activities would have taken place. AthenaDocs which holds 2.8 million records was searched as well as the 'Legacy' copy of the EDRMS which holds over 1 million older records. The Legacy part of the EDRMS holds records that are deemed to be closed but are retained for audit or historic purposes.
29. According to the public authority, the following keywords were used by staff to search for the relevant minutes in AthenaDocs and Legacy: 'CBHA', 'Peabody Trust', 'Clays lane', 'Temporary moves group' and 'Group Move' (contained anywhere in the title or the body of a record). Staff also carried out a name search of every member of the group (contained anywhere in the body or the title of a record).
30. Following the Commissioner's queries, the public authority conducted the above searches again which yielded a copy of the minutes of a meeting of the Temporary Moves Group on 19 December 2007 in the Legacy part of the EDRMS. A copy of the minutes was provided to the complainant on 29 February 2012.
31. As mentioned, in deciding whether a public authority holds information, the Commissioner applies the civil standard of proof which is based on a balance of probabilities. Given that the public authority subsequently discovered a copy of the minutes of the meeting held in December, it is reasonable to suggest that the previous searches had perhaps not been as thorough as they should have been. However, in view of the fact they were repeated during the investigation, the Commissioner is now satisfied with the thoroughness of the searches. He also considers significant the fact that at the time of the meetings, the public authority's records management practices fell short of the appropriate standards. Against that background, it is also significant that it was not

possible to search the mailboxes of the officials who had been involved in the Clays Lane relocation process.

32. In light of the subsequent disclosure, the Commissioner finds that, on a balance of probabilities, the public authority held further information relevant to item iii at the time of the request. However, in view of the subsequent searches and the explanations (which he considers reasonable), the Commissioner finds that, on a balance of probabilities, the public authority no longer holds any more information within the scope of item iii of the request.
33. The Commissioner appreciates the complainant's frustrations regarding the public authority's records management practices at the time of the meetings. However, his investigation was restricted to whether, on a balance of probabilities, the public authority held the outstanding minutes (at the time of his request) as opposed to whether it should have in fact held them. However, the Commissioner notes that the public authority appears to have made significant improvements to its records management practices in response to FAP recommendations.

## Right of appeal

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34. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

35. 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.
36. 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 .....**

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