

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 November 2019

Public Authority: London Borough of Barnet
Address: Hendon Town Hall
The Burroughs
London
NW4 4BG

Decision (including any steps ordered)

1. The complainant has requested information about a particular box junction. The London Borough of Barnet ("the London Borough") denied holding some of the requested information and refused to provide the remainder as it estimated that the cost of complying with the request would exceed the appropriate limit.
2. The Commissioner's decision is that complying with the request would exceed the appropriate limit and therefore the London Borough is entitled to rely on section 12 to refuse the request. However, she also finds that the London Borough's advice and assistance has not complied with its obligations under section 16 of the FOIA.
3. The Commissioner requires the London Borough to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to help her refine her request to within the appropriate limit.
4. The London Borough 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

5. On 20 May 2019 the complainant requested information of the following description:

"[1] I should like to request under the Freedom of information Act 2005 to know when the box junction located at Finchley Road junction with Golders Green Bus Station entrance (NW11) was first marked out on the road just before the traffic lights. Also, has this box junction been changed in size or position since first being marked out? If so, when was it changed?"

"[2] I should also like to know how many Penalty Charge Notices were issued to HGV1s for encroaching on this box junction since it was first marked out."

6. On 18 June 2019, the London Borough responded. It denied holding the requested information in respect of element [1]. In respect of element [2], the London Borough refused to provide the requested information. It stated that, to provide data for the 2017/18 financial year alone, it would need to review 148,141 Penalty Charge Notices (PCNs) manually to establish the tax class of each vehicle. It estimated that this would take 5 minutes per PCN, requiring a total of around 1250 hours work.
7. The complainant sought some advice and assistance on 20 June and then a formal internal review on 21 June 2019. The London Borough sent the outcome of its internal review on 26 June 2019. It upheld its original position and advised the complainant that even providing 24 hours' worth of data would be likely to exceed the cost limit.

Scope of the case

8. The complainant contacted the Commissioner on 31 July 2019 to complain about the way her request for information had been handled. She felt that the London Borough's estimate was not reasonable and that, because the information was stored electronically it must be possible to extract within a reasonable time period. She appeared to accept that the London Borough held no information within the scope of element [1] of the request.
9. During the course of the Commissioner's investigation, the London Borough admitted that the figure of PCNs it had originally claimed it would need to search was not the figure for the specific box junction

identified in the request, but was in fact the figure for the particular type of contravention (ie. blocking a box junction) across the entire Borough.

10. The London Borough thus provided the Commissioner with a fresh estimate of the cost of complying with element [2] of the original request – which, it still argued, was in excess of the cost limit.
11. The scope of the Commissioner's investigation has therefore been to
 - a. Establish whether the London Borough's revised estimate is reasonable and, if it is;
 - b. Determine whether the revised estimate would exceed the cost limit and;
 - c. Consider whether the advice and assistance offered by the London Borough, in refusing the original request, was reasonable.

Reasons for decision

Section 12 – Cost of Compliance Exceeds Appropriate Limit

12. 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.*

13. Section 12 of the FOIA states that:

- (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.*
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.*

14. The "Appropriate Limit" is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") and is set at £450 for a public authority such as the London Borough. The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 18 hours.
15. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent in:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.
16. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".¹ The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

The London Borough's position

17. The London Borough explained that, each time a contravention was identified it would be recorded and a daily batch of VQ4 requests would be sent to the DVLA. On receipt of the VQ4 request with the Vehicle Registration Number (VRN) for each contravention, the DVLA would issue a VQ5 form in respect of each VRN, informing the Council of the name and address of the Registered Keeper of the vehicle. This process happens electronically with the information populated automatically into

¹ <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

the London Borough's database to enable it to send a PCN to the Registered Keeper.²

18. Whilst the London Borough accepted that the VQ5 report from the DVLA did record the specific tax class of each vehicle (which would enable HGVs to be identified), because of the specific architecture of the database, it had no way of running a report which would allow it to isolate any individual class of vehicle. It argued that it had no business need to access this data (the PCN is the same regardless of vehicle class for this contravention) and thus its database was not designed to fulfil this function. Therefore the only way it could access the information necessary to fulfil the request would be a manual review of every PCN issued.
19. The London Borough, having given the matter further consideration, revised down its estimate of 148,141 PCNs to just 8,131 PCNs issued at the box junction in question during the 2017-18 financial year. It also revised down the time need to inspect each PCN from 5 minutes to 1. Therefore complying with the request would require 135.5 hours of staff time (£3,387.92).
20. The London Borough confirmed that its estimate had been based on a sampling exercise.
21. Finally, the London Borough noted that it already published a great deal of information about the issuing of PCNs on its website as part of a commitment to transparency. It wished to stress that it did not wish to withhold information of this type and that its refusal had been based solely on burden the request would have involved.

The Commissioner's view

22. The Commissioner considers that the London Borough's revised estimate is both reasonable and significantly in excess of the cost limit.
23. Whilst the London Borough did not provide exact details of its sampling exercise, the Commissioner notes that reviewing just the 8,131 PCNs issued in 2017/18 would require the Council to review each one in under 10 seconds in order to comply with the request in under 18 hours – which she considers would not be feasible.

² The London Borough noted that this process was managed by a private contractor but considered that the information was held on behalf of the London Borough

24. The Commissioner further notes that the request did not contain time parameters and therefore the London Borough would be required to search even more PCNs within the same time frame to comply with the request fully.
25. The Commissioner therefore considers that the request could not be answered within the cost limit and thus the London Borough was entitled to rely on section 12 to refuse it.

Section 16 Advice and Assistance

26. Section 16 of the FOIA requires a public authority to provide "reasonable advice and assistance" to those making or wishing to make a request.
27. In cases where a public authority considers that a request could not be answered within the cost limit, the Commissioner would normally expect advice and assistance to be provided to help the requestor bring their request within the cost limit.
28. In this particular case, the London Borough advised the complainant that it could not even supply her with 24 hours' worth of data. However, the Commissioner notes that this was based on the London Borough's previous, erroneous, estimate of the amount of information it was required to search.
29. Having revised its initial estimate downwards, the London Borough was, during the course of the Commissioner's investigation, able to identify parameters within which it would be able to provide information of this type to the complainant.
30. Given that the London Borough has now identified how the complainant could refine her request within the cost limit, it is under a duty to advise her of this. The Commissioner therefore finds that the London Borough has not yet complied with its section 16 duty and therefore the remedial step set out at paragraph 3 is necessary.

Right of appeal

31. 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

32. 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.
33. 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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