

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 May 2020

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

Complainant: on behalf of LMD Ltd

Decision (including any steps ordered)

1. The complainant has requested information about council-owned buildings. The London Borough of Barnet (“the London Borough”) provided some information but the complainant argued that it was not what she asked for.
2. The Commissioner’s decision is that the London Borough has complied with its duty under section 1(1)(b) of the FOIA because it has provided the information which it holds. However, it failed to comply with this duty within 20 working days and thus breached section 10 of the FOIA.
3. The Commissioner does not require any further steps.

Request and response

4. On 20 June 2019, a work colleague of the complainant wrote to the London Borough and requested information in the following terms:

“Under the Freedom of Information Act, I would be grateful if the council could please identify which blocks in their borough are under their ownership and, within each, how many units exist. We also would like information on how many of those are still under ownership of the local authority and how many have been sold as leasehold under Right to Buy.”

5. The London Borough responded on 22 July 2019. It provided two spreadsheets, one showing the individual addresses of the flats that it rented out and a second showing the properties that it had sold under the Right to Buy scheme.
6. The complainant herself took on responsibility for the request and responded on 9 August 2019. She noted that she had been provided with information which she did not need and that the information was not a single spreadsheet. After a further exchange of correspondence, the London Borough noted that, whilst it had provided the raw data in the format in which it was held, a relatively simple PivotTable could be created on Excel to arrange the data into approximately the format the complainant was seeking. However, the complainant was still not satisfied and formally requested an internal review on 11 September 2019.
7. Following an internal review the London Borough wrote to the complainant on 6 November 2019. Whilst it accepted that this had not been done in the complainant's preferred format, it stated that it had provided the information which it held. It argued that providing the complainant with the same information in a different format would require the creation of new information and would thus fall outside the FOIA.

Scope of the case

8. The complainant first contacted the Commissioner on 6 September 2019 to complain about the way her request for information had been handled. At that point she had yet to request an internal review. Once the internal review had been completed, the complainant asked the Commissioner to investigate.
9. Having considered the chain of correspondence, the Commissioner wrote to the complainant on 28 January 2020. She expressed her view that, whilst the London Borough may have supplied the data in a format which did not make it easy for the complainant to re-use, it had nevertheless provided the information that it held. As the complainant had not expressed a preference at the point the request was made, the Commissioner also noted that the London Borough was under no obligation to communicate the requested information in a particular form or format. Based on the low likelihood that proceeding with the complaint would reach a result which would be satisfactory, the Commissioner therefore suggested that the complaint be withdrawn.
10. On 10 February 2020, the complainant responded to the Commissioner agreeing to withdraw her complaint, but followed that up with a further

email, just three hours later, arguing that she had not received the requested information and asking for the case to be re-opened. The Commissioner sought clarification of exactly what information the complainant believed to be outstanding, bearing in mind the letter of 28 January 2020.

11. The complainant did not respond again until 10 March 2020, when she provided copies of further correspondence she had exchanged with the London Borough. The Commissioner notes from this correspondence that the complainant appears to have engaged in further correspondence with the London Borough (despite being aware of the Commissioner's view that the London Borough had provided all the information it held) and, when this further negotiation failed to produce the desired result, the complainant had decided to return the matter to the Commissioner.
12. As it is apparent that the complainant, disagrees with the Commissioner's initial view, the Commissioner now considers it necessary to record her view in a formal decision notice.
13. The Commissioner considers that the scope of this notice is to consider whether the London Borough complied with its duty under section 1(1)(b) of the FOIA.

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 11(1) of the FOIA states that:

Where, on making his request for information, the applicant expresses a preference for communication by any 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 authority shall so far as reasonably practicable give effect to that preference.

16. The wording of the original request did not specify that the requestor wished to have the information communicated in a particular format. Therefore the London Borough was under no obligation to provide the information in any particular format. Its only obligation was to provide the information it held.
17. Whilst the complainant *subsequently* expressed a preference for the format in which she wanted the information communicated, section 11 is very clear that the preference must be expressed *when making the request*.
18. The Commissioner does not agree with the London Borough's assertion that providing the information in a different format would have required the creation of new information – merely expressing the raw data in a different form. Whilst the London Borough could, had it wished, have supplied the data in a different form as a matter of excellent customer service, there was no *obligation* for it to do so.
19. As the section 11 obligation did not arise, the Commissioner has therefore gone on to consider whether the London Borough provided the information it held.
20. The Commissioner was provided with a copies of the information that the London Borough had disclosed. The Commissioner has reviewed this raw data and notes that it is possible to convert the data into a spreadsheet, approximating what the complainant appears to be seeking, without requiring specialist skills or expert knowledge. Whilst the resulting spreadsheet may not be in a format which suits the purpose for which the complainant wishes to use it, the responsibility lies with the person making the request to specify a format at the point that the request is made. The only responsibility on the London Borough was to provide a copy of the information it held – which it has done.
21. Equally, the fact that other public authorities (the Commissioner is aware that identical requests were made to numerous councils) may have provided the information in a different format does not mean that the London Borough has not complied with its section 1(1)(b) duty. The obligation is for the public authority to provide the information it holds.

Where no preference has been expressed, the public authority is entitled to have regard to the precise way in which the requested information is stored when responding to the request – and this will differ from public authority to public authority.

22. The complainant has not disputed that the London Borough holds *additional* information beyond that it has provided, only that it has not communicated that information in a format she considers is useful to her.
23. The Commissioner considers it highly unlikely that the London Borough would have held any additional relevant information at the point it responded to the request. She therefore concludes that it has provided all the information it holds and thus discharged its duty under section 1(1)(b) of the FOIA.

Section 10 – Timeliness

24. Section 10 of the FOIA states that a public authority must comply with its duty under section 1(1)(b) “*promptly and in any event not later than the twentieth working day following the date of receipt.*”
25. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the London Borough has breached section 10 of the FOIA.

Right of appeal

26. 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

27. 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.
28. 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
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**