

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2024

Public Authority: The Royal Parks
Address: The Old Police House
Hyde Park
London
W2 2UH

Decision (including any steps ordered)

1. The complainant has requested from The Royal Parks (TRP) information relating to residential lodges. TRP provided some of the information and relied on section 12 of FOIA (cost of compliance exceeds the appropriate limit) to refuse the remaining parts of the request.
2. The Commissioner's decision is that TRP was not entitled to rely on section 12(1) of FOIA to refuse parts of the request. The Commissioner also finds that TRP failed to provide reasonable advice and assistance in accordance with section 16 of FOIA to assist the complainant in refining their request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - issue a fresh response to questions five, six and eight of the request that does not rely on section 12 of FOIA.
4. 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

5. On 30 June 2023, the complainant wrote to TRP and requested information in the following terms:

"1: What is the renovation budget for the year for the residential lodges as a group under Royal Park remit? Is it used in full? If not, why not?

2: What is the process around annual budget planning at TRP? Who is involved? How far in advance do you plan renovation cycles and interact with residents?

3: What level of engagement does TRP have with tenants to understand ways to improve the residential properties over time?

4: Are all residential properties expected to be kept at similar interior standards?

5: What renewal rights does the tenant of Rangers Cottage have given they have heavily invested themselves in the structural fittings of the residence that is not their property and under a maximum 2 year licence with no renewal right? Please may you provide all correspondence (email and post) and communication (minutes) around this agreement with the tenant (redacted and anonymised)? This is in the public interest to ensure that the correct processes have taken place surrounding material sums of money that affect the Royal Parks.

What was the process around the agreement for the tenant to pay for upgrades of the property?

Are other tenants aware that this is possible and the process around approval? If not, why is this process not transparent and widely available?

- 6: You have quoted before:

There is a clear operational requirement for The Royal Parks to have employees living in, or very near, the park in which they work to be able deal with out of hours incidents and emergencies.

Do you have any records of any out of hours incidents or emergencies that required the attendance of any worker living in any lodge over last 5 years? Please give an example of a realistic scenario where this would be required and why tied accommodation is needed if there are no records ?

7: Why do some employees receive tied accommodation and others not who are on same salary for similar jobs, given the relatively very large

benefit-in-kind enhancement to employees given this heavily discounted accommodation?

8: Is an internal "conflict register" kept by TRP for gifts and entertainment received internally and from third parties? Please provide a copy of this for the last 24 months.

9: What is TRP's electric vehicle charging strategy/parking strategy? Has TRP considered restricting or taxing cars that are polluting to encourage the use of EVs in the Parks and wider society?

10: why was a company - Kapsian Limited - registered at Magazine Cottage on 7 February 2022 by Samy El Brahim Elhaj? Is this a resident of the property or partner of the resident of the property licensee?"

6. On 28 July 2023, TRP responded to the request. It provided answers to questions one – four, seven, nine and ten. In relation to questions five, six and eight, it applied section 12 of FOIA (cost exceeds appropriate limit) to refuse these parts of the request. TRP also mentioned that it could consider the application of section 40(2) but did not in fact feel it was necessary to do this at the time. In regard to question six, it simultaneously confirmed that records of out of hours incidents and emergencies were held and provided a description of duties and provided examples of scenarios that required attendance by workers living in lodges.
7. The complainant wrote to TRP on the same day and again on 29 July 2023 and asked it to carry out a review of its responses to questions five, six and seven. He said that TRP should be able to gather information from its own servers and that disclosure of the information is in the public interest.
8. On 25 August 2023, TRP conducted a review. In regard to questions five and six, it maintained its application of section 12 of FOIA. In regard to question five, it again said that it could consider the application of section 40(2) but did not feel it was necessary to do this at the time. TRP said that in order to provide 'advice and assistance' (under section 16 of FOIA), it 'narrowed the request' to TRP generated information that confirms its position in its initial response. It provided this information to the complainant with redactions that it applied section 40(2) (personal information) and 41 (information provided in confidence) of FOIA to withhold. In regard to question seven, TRP expanded on its previous response.

Scope of the case

9. On 27 August 2023, the complainant contacted the Commissioner and complained about TRP's application of section 12 of FOIA to refuse parts of the request. During the course of the Commissioner's investigation, the complainant asked if he could also consider TRP's application of section 40(2) and 41 to withhold the redacted information from the information it disclosed.
10. The Commissioner's section 12 guidance¹ states that where some information within the scope of the request can be provided within the cost limit, the public authority must first inform the requester of this, the requester should then decide if they wish to narrow the request. In this case, he notes that TRP in fact narrowed the scope of the request itself and released the information to the complainant without their agreement.
11. The Commissioner also notes that although TRP mentioned (in its initial response and review) that it could consider the application of section 40(2) to withhold all the information under question five, it did not in fact feel it was necessary to do this at the time. He also notes that in its submission to the Commissioner (details below), TRP has not in fact identified and compiled all the information within the scope of the request that is personal information.
12. The Commissioner considers the initial issue for consideration is whether TRP was entitled to rely on section 12 of FOIA to refuse questions five, six and eight of the request.
13. If the Commissioner determines that section 12 does not apply, he will ask TRP to issue a fresh response to the complainant where it must first identify all the recorded information held within the scope of the request before either disclosing it or applying exemptions to withhold it. TRP must inform the complainant of its updated position. If it decides to apply section 40(2) and/or 41 to question five more widely (in addition to the information already disclosed), and the complainant is not satisfied with this, then after asking TRP to carry out a review of its decision, the complainant may raise a new complaint to the Commissioner concerning TRP's fresh response.

¹ [Requests where the cost of compliance exceeds the appropriate limit \(section 12\) | ICO](#)

Reasons for decision

Section 12 – cost of compliance

14. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
15. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”)
16. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the public authority is £450.
17. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the public authority.
18. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
19. 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. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent evidence. 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.
20. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

The complainant's position

21. The complainant said he is seeking 'all communications' to and from the licensee held in devices, emails and servers, including iMessage and Whatsapp. He said information from TRP's own servers should be 'easy' to gather.
22. The complainant also said that disclosure of the information is in the public interest to understand what was agreed between TRP and the licensee – particularly as the licensee has no contractual right to renewal. That it would be helpful to understand if 'tacit agreements' were made to give them 'comfort of renewal'.

The public authority's position

Aggregated costs

23. TRP said that it may be entitled to aggregate the cost of complying with other requests it has received as part of its application of section 12 of FOIA in this case. It provided the Commissioner with details of four previous requests submitted to it within the 60 working day time period (backwards) of the principal request. It also provided details of a further request received on 30 July 2023. It said that the requests all sought similar information about TRP's residential lodges.

Question five – Renewal rights of the tenant of Ranger's Cottage. Correspondence / communication around the agreement with the tenant, etc

24. TRP explained to the Commissioner that, it has interpreted the scope of the request to include all written material relating to the approval in principle, planning and licensing of the refurbishment of the property in question. As well as its subsequent monitoring of the conduct of the works to ensure the works specification and licence terms were strictly adhered to.
25. TRP said that the information it holds includes the 'Works Licence' and the Escrow agreement that accompanied it. Written material relating to the agreements was generated over a period of four years from 2018 to 2022. It includes internal email discussion and meeting notes, email correspondence between TRP and the Licensee / their representatives, correspondence between TRP and its legal advisors, and the Licensee's legal advisors. As well as email discussion and 'correspondence' between TRP's Estate's team, Works Team and the Hyde Park management team and the Licensee's representatives / contractors relating to planning, conduct and monitoring of the works.
26. TRP said that the information is held electronically in multiple files and folders in relation to the property and the park and not held in files dedicated solely to the refurbishment agreement. The information is

contained within files and folders within its SharePoint system, individual Outlook folder system, electronic filing system (Trim) and some are on 'server-based file locations'.

27. TRP said that the officer most closely involved with the work throughout the four year period assessed the written material relevant to the request to include 'at least' 300 emails. A portion of the emails 'standalone' but a substantial number carry multiple attachments which informed the agreements mentioned above, e.g., development of iterations of the Heads of Terms, works specifications, traffic management places etc
28. TRP estimated that it would take one member of staff approximately 20 hours to locate, retrieve and extract all material relevant to question five held within its head office sections (Estates and Projects Directorate and Finance teams). It also estimated that it would take a further four hours to locate, retrieve and extract any additional email exchanges relevant to the request held 'independently' by the Hyde Park Management team. Totalling an overall estimate of 24 working hours at £25/per hour = £600 to locate, retrieve and extract the information.
29. TRP said an Estates officer 'began' a sampling exercise to locate, retrieve and extract minutes of the meeting at which the proposal was discussed, the final Heads of Terms for the agreement and cover correspondence. In addition they started retrieving emails directly with, or copied to, that one officer to one folder. It said that this work took five hours.

Question six - records of out of hours incidents / emergencies

30. TRP confirmed that it holds records of out of hours incidents and emergencies that required the attendance of workers living in lodges over the last 5 years.
31. TRP estimated that it holds 1,560 reports 'possibly' containing information within the scope of the request across 6 parks. It provided a cost estimate of 41.9 hours of work x £25 per hour = £1,047.50 to determine, locate, retrieve, and extract the information within the scope of the request. It also estimated that it holds a further 520 'wildlife officer reports' that also 'possibly' contain information within the scope of the request. But did not provide a cost estimate to determine, locate, retrieve and extract any information within scope of the request from these reports.
32. TRP said that the estimates were based on conversations with staff who undertake 'on call' duties and their recollection of data collection and management over the five year period. It did not carry out a sampling exercise to confirm if the estimates were correct.

33. For the reasons specified in paragraphs 51 - 54 the Commissioner has not reproduced TRP's full cost estimate in relation to question six in this decision notice.

The Commissioner's view

34. The Commissioner is not satisfied that complying with this request would exceed the appropriate limit.
35. The Commissioner notes that in the complainant's opinion there is a public interest in the information. He however also notes that section 12 is not subject to a public interest test.

Aggregated costs

36. The Commissioner has viewed the dates and the summaries of the requests provided.
37. The Commissioner notes that the four previous requests were received within the 60 working days (backwards) timeframe and relate to TRP lodges. He also notes that two are from the complainant and two from a separate requester, and that they vary in terms of the information being sought about lodges. For example, information layout and dimension of buildings, information about a garden surrounding a lodge, communications between TRP and the managing agent, a licence agreement between TRP and Metropolitan Police Service, the criteria used to award a licence etc. The requests also cover information about 'the Old Police House' and 'access to the entrance of the Mandarin Orient Hotel'.
38. The Commissioner also notes that the further request (received on 30 July 2023) is outside of the 20 working days timeframe from the date of receipt of the principal request.
39. The Commissioner also notes TRP's view that the costs to comply with the previous requests could be aggregated in its application of section 12 to the principal request in this case. However it did not in fact aggregate all parts of the principal request.
40. The Commissioner is therefore not satisfied that the costs of complying with the previous / subsequent requests can be aggregated in TRP's application of section 12 in this case.

Question five – Renewal rights of the tenant of Ranger's Cottage.
Correspondence and communication around the agreement with the tenant,
etc

41. The Commissioner has reviewed and sought clarification from the complainant about the scope of the request. He has also reviewed TRP's initial response, its review (including an annex of disclosed information), and considered its two page cost estimate in its submission.
42. The Commissioner notes what renewal rights the tenant at Rangers Cottage has. TRP confirmed in its initial response that there were / are no formal renewal rights for third-party occupation of residential lodges (including the licensee of Rangers Cottage). That it does not grant any third-party residential occupational licences for a period greater than two years.
43. The Commissioner also notes that in its review, TRP said that the licensee had no contractual right to renewal and that 'due process' was followed in respect of licence renewals for third-party occupation of residential lodges. It also said that 'the parties enter negotiations for occupational licence renewal in accordance with TRP's usual licence for renewal'. He also notes that in the 'Heads of Terms' document disclosed to the complainant, it states "On completion of the Works the Licensor and Licensee will agree to a new Licence to Occupy the premises effective from the date of the completion of the works".
44. With regard to the process around the agreement for the tenant to pay for upgrades of the property, the complainant clarified with the Commissioner that he is seeking information about TRP and the tenant coming together to make this agreement. The Commissioner notes that as a part of its review, TRP provided a detailed account of the 'approval process' relating specifically to Rangers Cottage, and that it disclosed information relating to this. The Commissioner has reviewed this information and is satisfied that it demonstrates the process of TRP and the tenant coming together in agreement for the tenant to pay for alterations to the property.
45. With regard to whether other tenants are aware that paying for 'upgrades' at their properties, the process around approval for this, and why this process is not transparent, the Commissioner notes that TRP confirmed in its initial response that Lodge Licenses do not permit alterations and therefore no formal process is in place for Licensees to be aware of. Due to an 'unsolicited and exceptional' approach from the Licensee of Rangers Lodge, it was considered in the 'round' in terms of its potential impact on value, sustainability and marketability of the property. It was concluded that what was proposed would be for the benefit of the charity. It said that it would judge exceptional approaches on their merits as it did in the case of Rangers Lodge.

46. The Commissioner notes TRP's reasons why other tenants are not aware that paying for upgrades is possible etc and that it is in fact denying that it holds information within scope of this part of the request.
47. The Commissioner is therefore satisfied that the information provided by TRP in response to these parts of question five sufficiently answers the questions asked and that TRP would not be required to undertake any further work to respond to these parts of the request.
48. The Commissioner also notes that in regard to correspondence (email and post) and communications (minutes) around 'the agreement', the complainant clarified with the Commissioner that he is seeking correspondence and communication between TRP and the tenant, relating to negotiations for licence renewal (as the tenant resided at Rangers Cottage for longer than two years).
49. The Commissioner notes that in its cost estimate, TRP has included costs relating to information outside the scope of the request. It has included the time it would take to determine, locate, retrieve and extract the 'Works Licence' and the Escrow agreement and written material relating to these agreements generated between 2018 to 2022. It has also referred to email discussions and 'correspondence' between TRP's Estate's team, Works Team and the Hyde Park management team and the Licensee's representatives / contractors relating to planning, conduct and monitoring of works in addition to emails involving 'works specifications' 'traffic management places' etc.
50. The Commissioner does not agree that this information falls within scope of the request and therefore does not accept the cost estimate provided. He also notes that the current cost estimate requires a total of 24 hours to provide the information, and the likelihood that this could be reduced to 18 hours if work to locate information outside of the scope of the request is not included.

Question six - records of out of hours incidents / emergencies

51. The Commissioner has reviewed the wording of the request and he has also considered TRP's three page cost estimate.
52. The Commissioner notes that the complainant only asked TRP to confirm whether or not it holds records of out of hours incidents but did not in fact request a copy of the records. In addition, he asked TRP to provide a 'realistic scenario' where the attendance of a live-in lodge worker would be required and why tied accommodation is needed if no records are held.
53. The Commissioner notes that in its initial response, TRP confirmed that it holds the records and that it also provided a list ('realistic scenarios') of out of hours incidents and issues dealt with by on-site worker roles.

54. The Commissioner is satisfied that the information provided by TRP in response to question six sufficiently answers the questions asked and that TRP would not be required to undertake any further work to respond to this part of the request. He has not therefore included the cost estimate to respond to question six in his assessment of section 12 in this case.

Question eight - : internal "conflict register" kept by TRP for gifts and entertainment

55. The Commissioner notes that, although the complainant did not ask TRP to review its response to question eight, TRP's application of section 12 covers information within the scope of this question. The Commissioner asked TRP to provide a cost estimate about its application of section 12 to the request in this case.
56. The Commissioner however notes that TRP failed to provide any details in its submission for the cost to determine, locate, retrieve, and extract information in relation to this part of the request.
57. In light of the above, it is the Commissioner's view that complying with the request would therefore not exceed the cost limit and so the public authority was not entitled to rely on section 12(1) of FOIA to refuse the request.
58. The public authority must now issue a fresh response to parts five, six and eight of the request.

Procedural matters

Section 16 – advice and assistance

59. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
60. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
61. In this case, TRP informed the requester that although it applied section 12 to refuse the information in question five, it could provide some information within the scope of the question and disclosed that information without first seeking the complainant's agreement to narrow

the request. It is the Commissioner's view that TRP has not provided suitable advice and assistance to the complainant.

62. The Commissioner is therefore satisfied that the public authority did not comply with section 16 of FOIA when dealing with this request.

Other matters

63. The Commissioner is concerned that TRP has not adequately defined the scope of the request. It has also applied section 12 while simultaneously responding to and providing information in relation to some parts of question five and all the information in relation to question six. Its cost estimate also included information that is not within the scope of the request and failed to include an estimate to provide the information in question eight.
64. The Commissioner therefore requires TRP to ensure that when issuing a fresh response to the complainant the response provides its full position in relation to the scope of the request.

Right of appeal

65. 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

66. 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.

67. 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

**Pamela Clements
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