

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 January 2017

Public Authority: London Borough of Tower Hamlets

Address: Town Hall
Mulberry Place
5 Clove Crescent
London
E14 2BG

Decision (including any steps ordered)

1. The complainant requested from the London Borough of Tower Hamlets ("the Council") information about credit balances on business rates accounts. The Council refused to provide the information on the basis that sections 12 and 31 applied to the request.
2. The Commissioner's decision is that the Council has correctly applied section 12 to the request but that it has not provided the complainant with appropriate advice and assistance under section 16.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - To provide the complainant with appropriate advice and assistance in accordance with its obligations under section 16 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 8 September 2015 the complainant requested the following information under FOIA:

"Under the Freedom of Information Act, I request a breakdown of credit balances accrued since your earliest records, for the amounts owing to all ratepayers within your billing area. Please include the following information;

- a) Occupier (where possible)*
- b) Full hereditament address*
- c) Rateable value*
- d) Property Description*
- e) Billing Authority Reference Number*
- f) Start Date of Account*
- g) End Date of Account*
- h) Value of unclaimed Credit Balance*
- i)) Period within which Credit Raised*

*I fully understand where the occupier is a sole trader, you are prevented from supplying us with the occupier name under the Data Protection Act. I would therefore reiterate that I am **not asking for the occupier name in the case of sole traders** and only requesting information relating to (b) to (i) above."*

6. The Council responded on 3 December 2015. It refused to provide the requested information on the basis that it was exempt from disclosure under section 31(1)(a) of FOIA.
7. The complainant requested an internal review on 3 December 2015. The Council provided the outcome of the internal review on 5 January 2016 in which it maintained its original position in relation to the application of section 31 and also applied section 12.

Scope of the case

8. The complainant contacted the Commissioner on 18 January 2016 to complain about the way her request for information had been handled. She specifically complained about the Council's failure to provide her with the information that she had requested.
9. The Commissioner considered whether sections 12 or 31 applied to the request.

Reasons for decision

Section 12 – Cost of compliance exceeds the appropriate limit

10. The Council argued that section 12 applied to the complainant's request.

11. Section 12(1) of FOIA states that:

"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."

12. The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). A public authority may take into account the cost of locating, retrieving and extracting the requested information in performing its calculation. The cost limit is currently set at £450 for a local authority. Under the Fees Regulations, a public authority is required to cost their spending on the relevant activities at £25 per person per hour. Consequently, the appropriate limit would only be exceeded if a local authority estimated that it would take longer than 18 hours to carry out the relevant activities in order to comply with a request.

13. Under regulation 4(3) of the Fees Regulations, a public authority may, for the purposes of estimating the cost of complying with a request, only take account of the costs it reasonably expects to incur in:

- a. determining whether it holds the information;
- b. locating a document containing the information;
- c. retrieving a document containing the information; and
- d. extracting the information from a document containing it.

14. The Council provided the Commissioner with an explanation of the estimate of the time/cost required to provide the information requested by the complainant. It informed her that there were over 3,000 accounts that held a credit balance and which therefore potentially fell within the scope of the request. It explained that on the system that it uses, a balance for business rates is only held for each financial year within an account, not an overall balance for the whole account for the period of time that the account has been existence. An account can therefore have several debts outstanding for different financial years or a mixture of debts and credits for different financial years. Whilst the Council confirmed that it could produce a list of credit balances for a particular financial year, it stated that it had to check on a case by case basis to ensure that any credit shown for one financial year was applicable in

light of credits or debits applicable for other financial years. It informed the Commissioner that it could only do this manually.

15. The Commissioner was informed by the Council that the checking of accounts required a physical inspection of each account on its computer system to validate that the credit balance was correct and not just a system error or other anomaly that showed a balance to be in credit. This also established that the data did not contain any personal data and that it was capable of being released.
16. The Council went on to explain that because of previous migrations of data from different computer systems, some personal data was held in different fields which meant that this process could not be automated without some sort of manual intervention. It also pointed out that it needed to be noted that because of differences in coding for some entries and transactions, this resulted in fictitious credits appearing which did not exist. It informed the Commissioner that migration notes were put onto individual accounts to ensure that the amounts were not refunded. However in order to establish such cases it would need a full check for each credit to ensure that it existed and determine that it could be refunded. This task was not capable of being automated in any way.
17. The Council provided the Commissioner with details of a sampling exercise that it had carried out to provide an indication of how long it might take to do the necessary manual checks. It confirmed that it had carried out this exercise in relation to 50 accounts to see how long it took to be able to produce the information that was requested, that is excluding the accounts of sole traders and determining the overall balance on the remaining accounts. It informed the Commissioner that it took 40 minutes to review 50 accounts. Based on this sampling exercise, it therefore estimated that it would take over 40 hours to complete this exercise in relation to over 3,000 business accounts.
18. The complainant asked whether, if the Council could only produce one list that included sole trader information, there was any way that that data (the sole trader name) could then be redacted. He wondered whether it would be possible to export all the data into an excel spreadsheet so that it might be quite easy to sort and identify those ratepayers beginning with "Mr" or "Mrs" and those cells be redacted.
19. The Council explained that it was unable to produce a listing that excluded sole traders due to the way the data was held on its computer system. It stated that in order to remove any accounts for individual persons each case would need to be examined manually and the data deleted from the listing as required. As it did not want to be in breach of

the Data Protection Act, it stated that this process needed to be very thorough and so was time consuming.

20. The complainant also asked, with regard to the credits being produced by year whether if these were exported into excel and each financial year was in a column on its own, it might be quite easy for the Council to add all the figures together.
21. The Council confirmed that the points that it had previously raised were not just confined to the fact that an account could have a credit balance for one particular year and a debit balance for another year. It pointed out that it had also stated that each account that had a credit balance needed to be examined to verify that the data was valid and again this process was very time consuming. It confirmed that it believed that the time required to complete the above two processes was greater than the appropriate limit.
22. The Commissioner has reviewed the explanation provided by the Council of the processes that it would need to follow to provide the information requested and the amount of time that this would take. She is satisfied that, based on this explanation, it is likely to take in excess of 18 hours to respond to the request. She is therefore of the view that it was reasonable for the Council to estimate that responding to the request would have exceeded the appropriate limit and she has consequently decided that it has correctly applied section 12 to the request.
23. As the Commissioner has determined that section 12 applied to the request, she did not go on to consider the Council's application of the exemption in section 31.

Section 16 - Advice and assistance

24. Section 16 states that a public authority should provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to a person who has made a request. A public authority will be deemed to have complied with this duty if it has provided advice and assistance in line with that set out in the code of practice on how public authorities are expected to discharge their functions under FOIA. This code is produced under section 45 of FOIA.
25. Under paragraph 14 of the code of practice, where a request is refused on cost grounds, the public authority should consider what, if any, information could be provided within the cost ceiling. There is also reference to advising the applicant to refine or reform their request.
26. The Council informed the Commissioner that in its internal review response letter of 4 January 2016, it gave the complainant details of the number of records held, falling within the scope of the request, and the

time required to be taken to consider this request. From this, it believed that the requester could deduce how her request could be amended so as not to fall within section 12. It confirmed, however, that it did not give additional specific advice and assistance under section 16 of FOIA.

27. The Commissioner notes that in its internal review response, the Council informed the complainant that it had applied section 12 as it believed that it would take over 100 hours to review all of the relevant accounts and extract the information requested. As it accepted, it did not provide the complainant with any advice and assistance in its response as to the possible different options that might be available to her as to how she might be able to refine her request so that it did not exceed the appropriate limit.
28. The Commissioner's guidance on section 12, states in relation to section 16 that:

"A public authority should inform the requestor of what information can be provided within the appropriate limit. This is important for two reasons: firstly, because a failure to do so may result in a breach of section 16. Secondly, because doing so is more useful than just advising the requestor to 'narrow' the request or be more specific in focus. Advising requestors to narrow their requests without indicating what information a public authority is able to provide within the limit, will often just result in requestors making new requests that still exceed the appropriate limit." (para 63)

29. As the Council has not attempted to provide the complainant with any advice as to how it might be possible for her to refine her request so as not to exceed the appropriate limit under section 12, the Commissioner has determined that it has not complied with its obligations to provide advice and assistance. She therefore requires it to provide the complainant with appropriate advice and assistance in accordance with its obligations under section 16 of FOIA.

Right of appeal

30. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. 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

Rachael Cragg
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