

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 June 2019

Public Authority: Lewisham Homes
Address: Old Town Hall
Catford Road
Catford
London
SE6 4RU

Decision (including any steps ordered)

1. The complainant has requested information relating to scaffolding complaints to Lewisham Homes since its formation 11 years ago. Lewisham Homes responded to say that the cost of compliance exceeds the appropriate limit and therefore cited section 12 of the FOIA.
2. The Commissioner's decision is that Lewisham Homes is entitled to rely on section 12 to refuse this request. However, it failed to respond within 20 working days and to provide adequate advice and assistance to help the complainant refine his request and thus breached section 16 for the lack of assistance provided and section 10 of the FOIA in respect of the late response.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide adequate advice and assistance to help the complainant refine his request within the cost limit.
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 12 September 2018, the complainant wrote to Lewisham Homes and requested information in the following terms:

"Dear Lewisham Homes,

I'm writing to request information about scaffolding complaints and compensation.

for all of the following questions, I would like to receive data going back to the formation of Lewisham Homes.

The data requested will - in the form you currently hold it - contain personal data, protected under the DPA. Of course, I do not expect or want this - please redact the minimum necessary data.

Data requested:

1) All complaints received by you which relate to scaffolding on any properties which are owned or managed by Lewisham Homes.

2) Details of any compensation of any kind (for example, but not limited to payments, bill reductions, non-financial benefits of any kind) that Lewisham Homes has awarded/conceded or suchlike, for any issues related to scaffolding (including, but not limited to the scaffolding being left in place for longer than anticipated).

Scaffolding was up on my building for longer than planned. I plan to lodge a complaint about that. I am requesting the data for that reason."

6. Lewisham Homes responded on 11 October 2018. It stated that providing the information the complainant requested would take too much time and was therefore advising it was refusing the request under section 12 of the FOIA.
7. Following an internal review, Lewisham Homes wrote to the complainant on 13 November 2018. It stated that it was maintaining its position on the matter.
8. Since the Commissioner accepted the case for investigation, the complainant has been in contact with Lewisham Homes in an attempt to refine his request but has reported to the Commissioner that the authority advised that as his complaint about the request made on 12 September 2018 is being investigated by the Commissioner, it will not address any refined requests.

Scope of the case

9. The complainant contacted the Commissioner on 22 October 2018 to complain about the way his request for information had been handled.
10. Once an internal review had been completed, the Commissioner accepted the case for investigation on 16 November 2018.
11. As previously mentioned, the complainant confirmed with the Commissioner that Lewisham Homes advised him while the Commissioner was investigating the complaint which was submitted to the authority on 12 September 2018, it would not address a similar request.
12. The Commissioner considers the scope of this case is to determine whether Lewisham Homes has acted in accordance with the FOIA and whether it can rely on section 12 to refuse the request.

Reasons for decision

Section 12 – Cost of compliance exceeds appropriate limit

13. 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.*

14. 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.*

15. The Freedom of Information and Data Protection (Appropriate Limit and Fees) regulations 2004 ("the Fees Regulations") sets the appropriate limit at £450 for Lewisham Homes.
16. A public authority can charge £25 per hour of staff time for work undertaken to comply with a request in accordance with the appropriate limit set out above. This equates to 18 hours of officer time. If a public authority estimates that complying with a request may cost more than the cost limit, it can consider time taken in:
 - a) Determining whether it holds the information;
 - b) Locating the information of 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.
17. In determining whether the council has correctly applied section 12 of the FOIA in this case, the Commissioner asked Lewisham Homes, with reference to the four activities above, to provide a detailed estimate of the time/cost it would take for it to provide the information, to clarify whether a sampling exercise has been undertaken and confirm that the estimate has been based upon the quickest method for gathering the information.
18. It is important to note that 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 task for the Commissioner in a section 12 matter is to decide whether the public authority made a reasonable estimate of the cost of the request.
19. Lewisham Homes responded to the Commissioner's enquiries to explain that the requestor had asked for information about complaints relating to scaffolding since the formation of the authority, 11 years ago. Lewisham Homes explained that the scope of the request was also wide considering it covered any complaint where scaffold is a factor. Therefore in order to complete the searches, the authority would need to sift through and review 11 years' worth of complaints data.
20. This could be in different casework systems and different inboxes such as the Customer Relations Team ("CRT") inbox and other points of contact that may not have formally been dealt with by the CRT.

21. Lewisham Homes said that while the CRT is the team to handle complaints, it is not the single point of contact for enquiries that reach the authority. Therefore the request was forwarded internally and searches were carried out by the Major Works Team, in addition to the CRT who manages the formal complaints using the iCasework database.
22. Lewisham Homes explained that its iCasework database is not designed for batch printing or extraction. It said that the cases need to be opened individually, then each document within the case, whether it is a letter, email or picture would need to be opened one by one.
23. Nonetheless, Lewisham Homes made attempts at printing the cases directly from the database but it was unsuccessful. The authority approached the database designers for assistance however the response was as follows:

"Unfortunately this is not possible, you would need to gather the details you require manually."

24. The authority also responded to the Commissioner's enquiries with the following to describe the process of ascertaining that the request triggered the use of section 12:

"The CRT carried out the following process to ascertain that the request triggered the use of Section 12:

- *The iCasework system was interrogated for all references to issues covering buildings where there had been scaffold erected and looked at recent complaints regarding this issue.*
- *The files were examined on screen. An estimation was made for the locating, opening and scanning of each logged entry.*
- *Each iCasework entry had attachments that were germane to the entry. These had to be opened and read.*
- *This was carried out for 3 entries, and associated attachments. The time for this number was consistent. Knowledge of the iCasework system and entries by the CRT led them to the conclusion that this would be an accurate time across the request.*
- *It was also established the difficulties associated with the ability to print out the information or easily transfer the files to a portable format, suitable to send to a requestor."*

25. Lewisham Homes then advised the below:

"This assessment formed the response to the requestor on the 13th November 2018, (ref. [redacted])

Narrative descriptions are recorded in some individual case entries on the database and documents related to the complaint are also stored. More information about the individual complaints can be found in these areas. To extract and review each entry to see whether it was about scaffolding, would take approximately 1.5 minutes per case. As our database records over 1000 cases annually, this would exceed the limit provided under Section 12 of the FOI Act."

26. The Commissioner considers 1.5 minutes per case is a reasonable estimate for the time taken to locate and extract all of the information within the scope of the request from the records the iCasework system holds. While the search function may bring a result for cases that mention "scaffolding", the act of sifting through this to find out whether a complaint was made and what the result of the complaint was over the past 11 years would take time for Lewisham Homes to identify and extract the precise data within the scope of the complainant's request. In the Commissioner's view, the time taken to search such records may have exceeded 1.5 minutes. If the database records over 1,000 cases annually, and the authority needed to sift through 11 years of data, it is estimated that this would take 16,500 minutes to complete (11,000 x 1.5 minutes) which equals 275 hours, 257 hours over the cost limit.
27. Even if Lewisham Homes had overestimated the time taken to assess each case for a complaint specifically about scaffolding and to check whether and what type of compensation was awarded as a result of that, the average time spent per case to fit within the cost of compliance would be a few seconds. The Commissioner appreciates that this is an unreasonable amount of time to complete the tasks described previously.
28. From the explanations and sample exercises provided by Lewisham Homes, the Commissioner is satisfied that the authority is entitled to rely on section 12 of the FOIA to refuse this request.

Section 16 – Duty to provide advice and assistance

29. Section 16 of the FOIA states that:

- (1) *It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.*

(2) *Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.*

30. The FOI Code of Practice¹ (issued under section 45 of the FOIA) states that:

"Where it is estimated the cost of answering a request would exceed the "cost limit" beyond which the public authority is not required to answer a request (and the authority is not prepared to answer it), public authorities should provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the costs limit."

31. Lewisham Homes told the complainant in its initial response that to recover and review the files for each part of his request would exceed the cost limit of £450 and explained the reasons why. However, the response did not include any information which, in the Commissioner's view, would have assisted the complainant in making a fresh request which fell within the cost limit.

32. As previously stated within this decision notice, the complainant reported to the Commissioner that Lewisham Homes had advised it would not address a more refined request any further as it had received notice from the Commissioner that she would be completing an investigation on the authority's handling of the complainant's request made on 12 September 2018.

33. As the Commissioner cannot see evidence of Lewisham Homes providing advice and assistance to help the complainant refine or refocus his request with a view to bringing it within the costs limit, she finds that the authority has breached section 16 of the FOIA.

Section 10 – Time in which to issue a refusal notice

34. Section 10(1) of the FOIA states:

"A public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

35. The complainant made the request on 12 September 2018. Lewisham Homes responded to this, refusing to provide the information requested on 11 October 2018.
36. As the authority sent its refusal notice to the complainant after 20 working days had lapsed, the Commissioner finds that Lewisham Homes has breached section 10 of the FOIA.

Right of appeal

37. 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

38. 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.
39. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF