

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 April 2020

Public Authority: London Borough of Camden
Address: Town Hall
Judd Street
London
WC1H 9JE

Decision (including any steps ordered)

1. The complainant requested policies relating to the recognition of tenants' associations. The London Borough of Camden ("the London Borough") refused the request because it estimated that the cost of complying would exceed the appropriate limit.
2. The Commissioner's decision is that the London Borough has made a reasonable estimate and was therefore entitled to rely on section 12 of the FOIA to refuse the request.
3. The Commissioner does not require further steps.

Request and response

4. On 3 September 2019, the complainant wrote to the London Borough and requested information in the following terms:

"I wish to know the following information concerning the registration of Tenants Associations by the LB Camden and the A and B lists:

1. *When were the policies and provisions for registering and recognising TAs in the LB Camden made and by whom?*
2. *Were the policies and provisions for registering and recognising TAs in the LB Camden made by a committee or by a council officer and if so whether this was under delegated authority?*
3. *What is the text of the policies and provisions for registering and recognising TAs in the LB Camden?*

4. *When were the policies and provisions for removing TAs from the A List to the B list in the LB Camden made and by whom?*
 5. *Were the policies and provisions for removing TAs from the A List to the B list in the LB Camden made by a committee or by a council officer and if so whether this was under delegated authority?*
 6. *What is the text of the policies and provisions for removing TAs from the A List to the B list in the LB Camden?*
 7. *Why has information regarding the policies and provisions for registering and recognising TAs in the LB Camden and for removing TAs from the A List to the B list in the LB Camden not been put up on the Housing pages of the LB Camden web site?"*
5. The London Borough responded on 1 October 2019. It refused this request citing section 12 of the FOIA. It estimated that it would require 229 hours to carry out a thorough search for relevant information.
 6. The London Borough completed its internal review on 4 November 2019. It upheld its original response but revised down its estimate to just 53 hours and provided some advice and assistance.

Scope of the case

7. The complainant contacted the Commissioner on 10 November 2019 to complain about the way his request for information had been handled.
8. The Commissioner considers that the scope of her investigation is to determine whether a reasonable estimate of the cost of complying with the request would exceed the appropriate limit.

Reasons for decision

Section 12 – Cost of Compliance Exceeds Appropriate Limit

9. 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.*

10. 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.*

11. 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 Council. 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.

12. 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.

13. 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.

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

The complainant's position

14. The complainant argued that the London Borough should provide him with the information because it:

"should have known what their policies were relating to the registering of Tenant and Residents' Associations in the borough with the council, and also relating to policy documents regarding registered Tenant and Residents' Associations going from the A List to the B List."

15. He further argued that the London Borough should have the information readily available on its website because it would be of use to the various tenants' associations and their officers.

The London Borough's position

16. The London Borough estimated that it would need 53 hours to search for information relevant to the request.

17. The London Borough believed that the policy referred to in the request had been operating for around 15 years and any relevant information would be contained within the individual District Management Committee (DMC) files – which it had inherited from the Camden Federation of Tenants and Residents Associations in 2010. It further noted that the files themselves were:

"not in good order, being inherited from another organisation. Whilst it would be ideal for the information to be held in a centrally searchable resource, in this case this is not the situation and in depth searching of the records will be required."

18. The London Borough argued that, in order to be certain that it had identified all relevant information, it would need to conduct a manual search of the records of each of the five DMCs. As each DMC held four meetings per year, there were 20 sets of meeting notes to review per year. Because it was unsure as to which records would be most likely to contain relevant information, it estimated that it would need to search ten years' worth of records to be certain that it had located all information within the scope of the request.
19. The London Borough estimated that it would take a minimum of four minutes, on average, to locate and review each meeting agenda and a further 10 minutes to read any minutes and background papers. It confirmed that these numbers had been derived from a sampling exercise.

20. When the Commissioner queried why it was necessary to search the files of each DMC, the London Borough explained that:

"Each one is an independently constituted group that has its own committee. Each would have variations on policies and take their own approach as needed. Although there are some common items of discussion, each DMC has its own separate agenda set by its committee with separate minutes. So the actions, decisions and minutes of DMC meetings are not pooled, they remain individual documents for each DMC."

21. Furthermore, during the course of the Commissioner's investigation, the London Borough noted that the chairs and vice-chairs of each DMC would hold quarterly minuted meetings – which could potentially contain relevant information. The London Borough had not scoped the time necessary to review these minutes but also noted that it had not included any provision for such a review in its overall estimate.

The Commissioner's view

22. The Commissioner's view is that section 12 of the FOIA is engaged.
23. Section 12 of the FOIA does not require a public interest test. Whether or not the exemption is engaged is not affected by the information which *ought* to be easily available, or the way in which particular records *ought* to be held. The Commissioner is only concerned with the way that information is, as a matter of fact, held.
24. In this particular case, the Commissioner accepts the London Borough's argument that each DMC will have its own policy on recognition of tenants' associations. As each DMC has its own separate records, any work done to identify information is immediately multiplied by a factor of five.
25. Given that the London Borough does not know precisely when the relevant decisions were made, the Commissioner does accept that it will need to search a large volume of records to establish this. It may be fortunate and find all the relevant information in the first file it checks – equally it may be very last file.
26. The Commissioner does not accept that the London Borough will necessarily need to search all the background papers for every meeting. She considers that it will be reasonably obvious, from the agenda, where background papers will need reviewing and where they will not. Nevertheless, she does accept that some packs will need to be searched and that this will take time.

27. In addition, she notes that the minutes of meetings of chairs and vice-chairs would also need to be searched and this would add to the time taken to locate all relevant information.
28. Searching the agendas alone would take in excess of 13 hours. An hour spent searching background papers per DMC would tip the request over the cost limit, thus engaging section 12.
29. The Commissioner is therefore satisfied that section 12 of the FOIA is engaged and therefore the London Borough is entitled to refuse the request.

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@justice.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

Phillip Angell
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