

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 October 2021

**Public Authority:** London Borough of Haringey Council

**Address:** 6th Floor, River Park House  
225 High Road  
Wood Green  
London N22 8HQ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information, generated by the prosecution of offences under section 179 of The Town and Country Planning Act 1990, by London Borough of Haringey Council.
2. The Commissioner's decision is that London Borough of Haringey Council correctly relied on section 12 (costs) not to meet the complainant's request for information. However it failed to comply with its obligations under section 16 to provide reasonable advice and assistance to the complainant.
3. The Commissioner requires the public authority to take no steps to ensure compliance with the legislation.

#### **Background**

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4. It is a criminal offence to fail to comply with an enforcement notice (issued by a local authority) by virtue of section 179 of the Town and Country Planning Act 1990 which provides:

(1) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.

(2) Where the owner of the land is in breach of an enforcement notice he shall be guilty of an offence.

## **Request and response**

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5. On 16 December 2019 the complainant requested information, from London Borough of Haringey Council (the public authority), by saying as follows.

"1) The number of prosecutions carried by your council out over the past six years involving offences under section 179 of The Town and Country Planning Act 1990.

2) The number of prosecutions under the said section disposed of in the Magistrates Courts.

3) The number of prosecutions under the said section disposed of in the Crown Court either by election or through referral from the Magistrates Court.

4) The details of the enforcement notice and or stop notice giving rise to the prosecution in question.

4A) Details of the Enforcement Reference Number, details of the breach alleged, details of the effective date and details of the date for compliance.

5) The name address and reference of the agent, if any, representing the alleged transgressor of the council planning policies etc.

6) Details of the PINS reference number in the event of an appeal being filed against the enforcement notice in question.

7) Details of the outcome of the section 179 Prosecution. Whether the defendant pleaded guilty/not guilty or was found guilty/not guilty or other outcome as the case may be.

7) Details of the fine or other sentence passed on the defendant.

- 8) Whether an order was made under Part 2 of the Proceeds of Crime Act 2002 (POCA).
- 9) Details of the POCA order made, i.e., what was the monetary or other extent of the POCA order”.
6. On 13 January 2020, the public authority responded. It refused to provide the requested information and cited the following section as its reason for so doing.
- Section 12 (costs)
7. The public authority explained to the complainant as follows.
- “We issued 477 enforcement notices over your relevant period covering all sorts of breaches of planning control. The only way we can extract the information you have requested is to manually read through every single notice. This is expected to take about 10 minutes for each case, taking the total duration to 4770 minutes, which translates to approximately 80 hours.
  - This amount is therefore over the appropriate limit as specified in the regulations and consequently we are not obliged by the Freedom of Information Act to respond to your request. We will not therefore be processing your request further”.
8. The public authority suggested it may be possible for the complainant to amend the request and advised that if he was unhappy with the response, he could request an internal review.
9. The complainant had a number of further exchanges with the public authority on 14 January 2020, and the public authority went on to suggest as follows.
10. “ The alternative is for you to carry out the enforcement search of the relevant notices on our website and then there you can identify the relevant appeal decisions (if any) yourself, hoping that the remaining request will come under the £450.00 threshold. All the enforcement notices within the relevant period of your FOI are available on the website and are therefore exempt under s21 Freedom of Information Act (Section 21 – Information accessible by other means - this often means it is already in the public domain, in which case the authority is obliged to direct you to where it is held)”.
11. The complainant wrote back again (on the same day) to the public authority and opined that there must be an easier way to provide the requested information and suggested that the information must be held also by the public authority’s legal department. The public authority replied, on 20 January 2020, stating that any such requested

information held by its legal department would be exempt from disclosure by virtue of Section 42 (Legal Professional Privilege) of FOIA.

12. The public authority went on to say as follows.

"I wish there was a quicker and easier way. We do not have a prosecutions officer. The individual planning enforcement officers progress their cases to prosecution, and like a lot of the London Boroughs we have a high staff turnover.

As I said previously, the only way to find the information is to examine the individual cases which have enforcement notices; you are welcome to do this using our website".

13. Subsequently, also on 20 January 2020, the complainant modified his request by amending its first part as follows.

"1) The number of prosecutions carried out by your council since 1st January 2017 to date involving offences under section 179 of The Town and Country Planning Act 1990".

However parts two to nine remained the same as above.

14. On 14 February 2021, the public authority responded and stated;

"You amended your request from the last six years to information from 01 January 2017. I can advise you that from 01 January 2017 to date we have issued a total of 192 notices. As explained in the original response, the only way we can extract the information you have requested is to manually read through every single notice. This would take about 10 minutes for each case, therefore the time it would take would be 32 hours and is therefore above the 18 hours considered to be the appropriate limit.

Section 12 of the Act allows public authorities to refuse requests for information where the cost of dealing with them would exceed the appropriate limit, which for local government is set at £450. This represents the estimated cost of one person spending 18 hours in determining whether the department holds the information, locating, retrieving and extracting the information. Therefore your amended request would have still attracted a fee notice".

## **Scope of the case**

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15. The complainant contacted the Commissioner on 10 March 2020 to complain about the way his request for information had been handled. He opined that the public authority had misread his request and have

consequently failed to deal with it as they should, within the time scale anticipated, and within budget.

16. During the investigation of the complainant's complaint, the public authority in a letter dated 25 March 2021, explained that it also wished to rely on section 14 (vexatious request) not to meet the request.
17. Regarding its reference to relying on section 42 to withhold information it said as follows

"We stand by this statement in that some of the information that (the complainant) was requesting was, at the time of the response, held by the legal team, subject to ongoing legal proceedings, and therefore would have been legally privileged as that.

18. The Commissioner considers she has to determine whether the public authority correctly relied on section 12 not to provide the requested information as per the amended request. The amended request substituting the original request. If the Commissioner determines this to be in the negative, she will then consider the public authority's reliance on sections 42 and 14.

### **Reasons for decision**

19. Section 12(1) of the FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
20. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") sets the appropriate limit at £450 for the public authority.
21. 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 staff 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, 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.
22. In determining whether the public authority has correctly applied section 12 of the FOIA in this case, the Commissioner had regard to the

explanations the public authority had given to the complainant (as stated above) with reference to the four activities and submissions provided to the Commissioner. The public authority has also provided her with examples of the withheld information.

23. In its reply of 14 February 2020 to the complainant's amended request for information, the public authority (as stated above) explained "that from 01 January 2017 to date we have issued a total of 192 notices. As explained in the original response, the only way we can extract the information you have requested is to manually read through every single notice. This would take about 10 minutes for each case, therefore the time it would take would be 32 hours and is therefore above the 18 hours considered to be the appropriate limit".
24. The public authority had also advised the complainant on 14 January 2020, "we currently do not have a system of identifying instances where there have been prosecutions (and all the further questions that you have raised) without manually going through the individual addresses with enforcement notices to obtain that information. That exercise is the one that we said would take us above the £450.00 limit".
25. In order to determine the veracity and reasonableness of the public authority's assertions in the above paragraphs, the Commissioner asked the public authority to provide her with a sample of information it would have to interrogate to meet the complainant's request for information.
26. The public authority provided the sample that the Commissioner was seeking. The public authority also reminded the Commissioner that the number of notices covered with the amended request was reduced from 477 to 192.
27. The Commissioner reminds herself, as re-iterated by the Upper Tribunal (Reuben Kirkham v Information Commissioner [2018] UKUT 126 (AAC)), that:

"The issue is whether or not the appropriate limit would be reached. The estimate need only be made with that level of precision. If it appears from a quick calculation that the result will be clearly above or below the limit, the public authority need not go further to show exactly how far above or below the threshold the case falls".
28. Having regard to the volume and extent of the information that has been requested, the Commissioner does not doubt that it will take in excess of the cost limit stipulated in section 12 to provide the requested information. The complainant seeks (for example) the number of prosecutions under section 179, the source of those prosecutions, the outcome of those prosecutions, the agents involved and what orders under the Proceeds of Crime Act flowed from those prosecutions.

29. Having viewed a copy of examples of the information sought the Commissioner finds it is not difficult to conclude that to provide the requested information would take in excess of the statutory limit.
30. The Commissioner also inquired of the public authority, whether the amended request information could be taken (within the cost limit) from information held by its legal department. The public authority explained that "the information requested is not held centrally and our system does not identify instances of prosecutions". As above, "it would mean an officer manually going through each file, then each document to find the information". By way of an example, it provided the Commissioner with an example of a relevant file. Having viewed the example and considered the public authority's submissions the Commissioner is satisfied that the requested information held by the public authority's legal department cannot be extracted under the statutory cost limit.
31. Having found that section 12 was properly utilised by the public authority, not to provide the requested information, the Commissioner did not go on to consider its reliance on sections 14 and 42.

Section 16: Duty to provide advice and assistance

32. Section 16(1) of the Act states:

"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."

33. The Commissioner has published guidance on providing advice and assistance when refusing to comply with a request on the basis of section 12. Paragraph 59 of the guidance states:

"In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is: either indicate if it is not able to provide any information at all within the appropriate limit; provide an indication of what information could be provided within the appropriate limit; and provide advice and assistance to enable the requestor to make a refined request."

34. In the context of the above the Commissioner takes cognisance that the public authority did advise the complainant how he may be able to bring or amend his request so that it fell within the statutory cost limit. In that, it explained how he could undertake some research by viewing the relevant cases which have enforcement notices on the public authority's website. However the public authority did not suggest to the complainant that he shorten the period of time from (the revised request) "1st January 2017 to date" so as to bring it within the cost

limit. This seems a reasonable thing to do however given the public authority's failure so to do the Commissioner finds that section 16 was breached by the public authority.



## Right of appeal

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35. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.

37. 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 .....**

**Gerrard Tracey  
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