

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 November 2013

Public Authority: London Borough of Southwark

Address: PO Box 64529

London

SE1P 5LX

Decision (including any steps ordered)

1. The complainant has requested information regarding legal cases involving the public authority. The public authority relied on section 12 not to comply with the request.
2. The Commissioner's decision is that the public authority's reliance on section 12 was correct.

Request and response

3. On 14 February 2013 the complainant made the following written request for information under the FOIA to the London Borough of Southwark ("LBS") –
 - " 1. For the last five years (2008-2012 inclusive) please provide the following for each year.
 - a) How many cases have there been where LBS has taken leaseholders to court or there has been a dispute in the Leasehold Valuation Tribunal (if no court proceedings) about service charges for each year, irrespective of whether these are "annual service charges?
 - b) What is the overall figure of service charges claimed through courts and tribunals each year for Southwark?
 - c) What is the average claim per case?

- d) What is the figure for which Southwark obtained judgement in relation to those claims for each year?
 - e) How much of this money has actually been recovered?
 - f) How much did Southwark spend on external legal fees for solicitors or barristers in being represented in those cases each year?
 - g) How much did Southwark spend internally on in-house lawyers in relation to those cases for each year? If that is not quantifiable, please provide a reason why not. In that case please confirm how many hours?
 - h) Please confirm how many other staff hours were spent by for Southwark in staff attending courts or tribunals for these cases per year, either as witnesses or observers or in any other capacity.
 - i) What are the average legal costs per case for each year.
2. Please confirm the criteria that Southwark takes into account to decide on whether it is worthwhile pursuing service charge arrears through the courts?
 3. Please confirm the identity and/or office of the person who make that decision."
 4. LBS responded on 18 March 2013. It provided the information as requested for 1 (a), (b) and (g), 2 and 3. It relied on section 12 of the Act not to provide the information ("the withheld information") requested at 1 (d), (e) and (f). It said that it did not hold the information at 1 (c), (h) and (i).
 5. Following an internal review, LBS wrote to the complainant on 17 May 2013. It stated that it upheld its original decision.

Scope of the case

6. The complainant contacted the Commissioner on 17 May 2013 to complain about the way his request for information had been handled. He took issue with LBS not providing requested information on the grounds of cost. The complainant laid out why he thought LBS's cost analysis was erroneous. The Commissioner will consider this later on in the decision notice.
7. The Commissioner will adjudicate on the complainant's complaint that LBS wrongly relied on section 12 in respect of the withheld information.

Reasons for decision

8. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
 - the duty to inform the applicant whether or not requested information is held and, if so,
 - the duty to communicate that information to the applicant.
9. 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."

Section 12(3) states that:

"In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases."
10. The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). Under regulation 3(3) of the Fees Regulations the appropriate limit for local authorities such as LBS is £450.
11. Under the Fees Regulations, public authorities are required to cost their spending on the relevant activities at £25 per person per hour. Consequently, the appropriate limit would only be exceeded if LBS estimated that it would take longer than 18 hours to carry out the relevant activities in order to comply with the request.

12. Under regulation 4(3) 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.
13. LBS provided the Commissioner with an explanation of the reasons why it believed that compliance with the request would exceed the appropriate limit; this included estimates of time for complying with the request.
14. LBS explained that it did not hold the requested information in the form of statistical data. It asserted that to comply with the request it would require the manual interrogation of 4,000 litigation files, each of which would require a minimum of 15 minutes' attendance. This equates to 1000 hours to provide the withheld information requested, clearly well in excess of the 18 hours envisaged by the Fee Regulations.
15. The complainant explained to the Commissioner that he had contacted the company that provided the case management system as used by LBS. He was apparently told that the case management system included software that allowed for the correct recording of time spent on a case.
16. LBS explain, in reply, that most of the litigation against leaseholders is dealt with by its officers that do not use the case management system. Where cases are dealt with by its Legal Services Department, judgement sums are not inputted into the case management system. Its Legal Services Department does use the system to record fees paid to external solicitors and barristers. However the request would still require manual interrogation of every litigation file as the payment code used for the said fees includes a number of service areas with the Home Ownership Unit. Therefore it is not possible to identify fees paid specifically in relation to service charge recovery. It estimates that this manual extraction would take 15 minutes per file.
17. The Commissioner accepts that it would take at least 15 minutes, on average, to interrogate a litigation file to extract the material requested information. The Commissioner sees no need to doubt the veracity or accuracy of LBS's explanation of its case management system. A local authority is not running a legal department for commercial reasons. Accordingly, features on a case management system may be superfluous or underutilised in a local authority's legal department.

Similarly the Commissioner accepts that a litigation file at a local authority will also be dealt with by non-legal professionals who may not necessarily record their time as a legal professional in private practise.

18. In view of the explanation provided by LBS which the Commissioner considers reasonable, he finds that it would have grossly exceeded the appropriate limit to comply with the requests for information made by the complainant to which section 12 was applied. The Commissioner is further satisfied with its explanation as to why, notwithstanding its utilisation of a case management system, it cannot extract this information within the cost limits as provided for in the Fees Regulations.

Right of appeal

19. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. 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

Alexander Ganotis
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