

Please ask for: Iain Harrison
Direct line: (0116) 454 1300
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Website: www.leicester.gov.uk
Our ref: Appeal Ref: 18495/18336
Date: 27 June 2019



Mr Andrew Hill
request-574635-e28a7aa1@whatdotheyknow.com

Dear Mr Hill

Freedom of Information Act 2000 (The Act, FOIA)

Thank you for your emails dated 30 May 2019 requesting a review into our response to your FOIA request (reference FOIA 18336).

I have now completed my internal review into this matter and my findings are outlined below.

Your original request for information (Our ref: FOIA 18336)

On 06 May 2019, the Council received three requests from you via the Whatdotheyknow portal:

request-574635-e28a7aa1@whatdotheyknow.com
request-574208-d553cb52@whatdotheyknow.com
request-574206-0f2e85fe@whatdotheyknow.com

The Council has summarised them as follows:

We've noticed an alarming increase in unlawful advice being provided to tenants contrary to the Homelessness Reduction Act 2017 where tenants are advised by Leicester City Council to remain in possession of the property after end of the notice period forcing the landlord to cover the cost of eviction and enforcement proceedings.

The Homelessness Reduction Act 2017 and the guidance is clear that councils have 56 days to find alternate accommodation or otherwise have taken relevant action as per their duty of care to the homelessness applicant and this 56 days coincides with the shortest notice period of 8 weeks afforded by a section 21 notice.

I'd like to request thorough answers to the following questions so as to get an understanding of how expansive the failures of Leicester City Council have been with regards to protecting vulnerable people at risk of homelessness and to understand how many people have been made to sleep rough as a result of unlawful advice provided by Leicester City Council:

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4th Floor, City Hall, 115 Charles Street
Leicester, LE1 1FZ
www.leicester.gov.uk

- 1) *How many tenants have been advised to remain in the property beyond the 56 day timescale afforded by the Homelessness Reduction Act 2017?*
- 2) *How many tenants have been specifically advised to only make an application of homelessness once they've been evicted, rather than the point they become at risk of homelessness, contrary to the act?*
- 3) *How many landlords have been compensated or reimbursed the legal fees of enforcing a possession order after Leicester City Council advised them to remain in the property beyond the deadline in the possession order?*
- 4) *How many tenants have become rough sleepers as a result of Leicester City Council not being able to assist tenants when they've approached Leicester city council on the day they were removed by bailiffs/enforcement officers?*
- 5) *How many complaints has Leicester city council received regarding advising tenants to remain in the property until enforcement of a lawful possession order at the expense of the landlord?*

We have been made aware of the rising numbers of homelessness and the further restrictions on homelessness services over recent years including the closure of several Leicester City Council owned/operated hostels and temporary accommodation facilities. As such, we would like an answer to the following questions to understand Leicester City Council's reliance on private sector landlords and the private rented sector as a whole for the provision of temporary accommodation:

- 1) *On average, how many homelessness applications are made that result in Leicester City Council providing temporary accommodation that is owned by private sector landlords per month?*
- 2) *How many of these households who make homelessness applications that result in them being offered temporary accommodation live in accommodation that isn't owned by Leicester City Council?*
- 3) *What is the average occupancy as a percentage per month of temporary accommodation that is not owned by Leicester City Council?*
- 4) *What is the average cost per night for the provision of temporary accommodation that is not owned by Leicester City Council for a single person, a couple and a family?*
 - 4.1) *What is the average cost of providing temporary accommodation in the private sector overall per month?*
- 5) *How many properties are being used for the provision of temporary accommodation by Leicester City Council which Leicester City Council doesn't*

own? Excluding those owned by housing associations such as PA Housing, Midland Heart, etc.

6) How many properties that aren't owned by Leicester City Council but are being used by Leicester City Council for the provision of temporary accommodation are residential properties (eg. flats, houses, bungalows, etc)? Excluding those owned by housing associations such as PA Housing, Midland Heart, etc.

7) How many properties that aren't owned by Leicester City Council but are being used by Leicester City Council for the provision of temporary accommodation are non-residential properties (eg. hotel rooms, adapted commercial spaces, night shelters/hostels, etc)? Excluding those owned by housing associations such as PA Housing, Midland Heart, etc

The Council's response

The Council responded on 30 May 2019, advising that the information requested is not held in a reportable format. It further advised that the detail requested would be held on an individual's case file and would require the manual trawl of each service user record.

The Council's response advised that it estimated (allowing 15 minutes to locate and read through each housing file/homelessness application) would require over 700 hours of officer time. The Council applied the provisions of Section 12 of the Act, that makes provision for 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.

The response advised that under the provisions of section 12.1 of the Act, the Council estimated that to comply with your request in its current form would exceed this appropriate limit; in summary the Council considered the estimated cost of one person spending more than 18 hours in determining whether the department holds the information, locating, retrieving and extracting the information would occur in this case and therefore disclosure was refused.

The Council's response constituted a Refusal Notice, issued under section 17.1 of the Freedom of Information Act.

The response also advised of further routes of appeal.

Your request for internal review

On 30 May 2019, the Council received the following emails from you:

Email 1, 11.46, 30 May 2019

I feel your response is inadequate. As a city council, you'll have a legal obligation to be able to report homelessness figures to the relevant bodies in government, part of this will include a cost-analysis of the provision of homeless services in Leicester to

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establish how much it costs to deal with the situation.

I believe the information is available in a reportable format because you will naturally have accounts with private temporary accommodation providers, such as Leicester City Hotel on London Road and Westcotes Lodge on Westcotes Street, or Sky Plaza Hotel in the city centre prior to its closure some years ago.

These providers can also give a good idea as to how often you use their services and are just a phone call away.

I feel it is deeply concerning if Leicester City Council genuinely do not have a hold on the number or costs of temporary accommodation being used in the city, especially when, as a Leicester taxpayer, we are asking you to be accountable and allow us to scrutinise the costs of homelessness in the city.

Email 2, 11.49, 30 May 2019

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Leicester City Council's handling of my FOI request 'How many private dwellings are being used as temporary accommodation for homelessness applicants that aren't owned by Leicester City Council'.

I made two individual requests (three if you include the duplicate) and they have been treated as one request. These requests were individual of each other and had they been treated as such, they'd have taken less than the 450 hours the city council believe is appropriate to spend dealing with the request. It should be a reasonable time allotted for each individual request, rather than both requests being treated as one and the same.

The Council has interpreted your written expressions of dissatisfaction above as a request for internal review of its response to your request. Your request has been logged and acknowledged as such.

Before proceeding, it is worth clarifying that the Freedom of Information Act 2000 provides a right of access to information held by public authorities, subject to any exemptions (lawful reasons to withhold information under the Act-listed under Part 2 of the Act) that may apply.

The Act also contains several provisions to refuse requests under Part 2 of the Act, relating primarily to situations where a request is not valid, cost of compliance would exceed a certain level (as in this case) or requests are judged to be repeated or vexatious.

The Act also relates to recorded information held and does not require the creation of new information specifically to answer a request or the provision of views or opinions, or the answering of such questions posed.

It is also not a route to make complaints about provision of services by the Council, as this can be undertaken by other means.

All disclosures are judged to be made to the wider world and not to a particular person for a specific purpose. All responses made under the Act are published on the Council's public FOIA Disclosure Log, located at:

<https://directory.leicester.gov.uk/foi-directory/>

The FOIA also requires the Council to advise requesters if it holds the requested information and if held, to provide it to them, subject to any exemptions (lawful reasons to withhold information under the FOIA) that may apply.

Technical issues-compliance with Part 1 of the FOIA

I have reviewed the Council's original response for compliance with the requirements of Part 1 of the FOIA, relating to the handling of requests for information.

I find that your request was received and appropriately acknowledged.

I also find that a response was collated from the relevant Council department (Housing).

The Council then responded within the statutory 20 working day period allowed, complying with the requirements of Section 10 of the FOIA.

The Council also provided information in its response regarding appropriate routes of further appeal, thus meeting the requirements of Section 17 of the FOIA.

In summary, my review of this aspect of the Council's original response concludes that the Council complied with the requirements of the FOIA.

Part 1 compliance-my review

I have addressed your grounds for appeal in summary below.

The Council's legal obligation to report on the information you have requested

A major theme is your assertion that you consider that the Council should be able to answer your requests as it has a legal duty to report to the government on this matter.

I have investigated this matter and can confirm that it is the case that the Council collects information around homelessness under the provisions of the Housing Act 1996 (Part 7) (as amended) and reports high-level information to the Ministry of Housing, Communities & Local Government (MHCLG).

I have also established that the Council is working currently with MHCLG to revise what it can produce from its systems for this exercise, but it is not actually required to create the specific sets of information you have requested.

To advise and assist you further, I would recommend that if you wish to gain an idea of what is published (and required to be published) that you view the MHCLG published homelessness statistics at:

<https://www.gov.uk/government/statistical-data-sets/live-tables-on-homelessness>

On that basis I consider the Council's original response to be correct regarding the cost of compliance and while I note your helpful suggestion that the Council perhaps for example contact housing providers to create sets of information to answer your request, I would refer you back to the Council's actual obligations under FOIA, explained above.

There is no requirement for a public authority to create new sets of information, merely to answer a request for information!

Aggregation of requests

If I have one criticism of the handling of Part 1 aspects, it is that while the Council (in my view, correctly) aggregated your requests received on 06 May, it did not clearly advise you of this.

To clarify matters here, the provisions of Section 12(4) of the Act allow a public authority (when calculating the costs of complying) to aggregate (in effect, total) the costs of all *related* requests (my *italics*) received within 60 working days from the same person (or from people who seem to be working together).

Estimation of costs are made in line with the provisions of the Freedom of Information (Appropriate Limit and Fees) Regulations 2004.

While you have asserted in your appeal correspondence of 30 May that you consider your requests to be distinct, it is clear to me that (while one request-request-574208-d553cb52@whatdotheyknow.com was in effect a duplication of others) the other two are clearly a) from the same person (you); and b) related in topic and content.

On that basis I uphold the Councils aggregation of the requests for consideration of cost of compliance.

Technical issues-compliance with Part 2 of the FOIA

I have also reviewed the Council's original response in line with the Council's obligations with the requirements of Part 2 of the FOIA and specifically the appropriateness of any exemptions to disclosure were applied to any part of the response.

In this case, while a Part 1 reason to refuse that under Section 12 (4) Cost of Compliance, where requests are aggregated was applied, I find that no exemptions were applied as there was no requirement to.

On that basis, I consider the Part 2 compliance requirements of the Act were not engaged as no exemptions from Part 2 were applied.

My conclusion

As stated, I unreservedly accept that the original response should have clarified the aggregation of your requests and on behalf of the Council I apologise for this, I also however do not consider that the aggregation undertaken was incorrect in practice and I consider that this internal review response addresses that.

Overall, I find the Council's original response was compliant with the Council's legal obligations under the FOIA. I find that the Council answered your questions asked appropriately.

I therefore uphold the Council's previous response.

You have now exhausted the Council's internal appeals system in this matter. Should you remain unhappy with the outcome of this internal review you may contact:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Telephone: 0303 123 1113

<https://ico.org.uk>

Yours sincerely

Iain Harrison

Information Governance & Risk Manager