



City of Westminster

Doyle

By email only

Information Management Team
Westminster City Council
64 Victoria Street
London
SW1E 6QP
Telephone 0207 641 3921
Email foi@westminster.gov.uk

Our ref: 9541365

Your ref:

Date: 15 July 2019

Dear Sir/Madam

Re: Request for Internal Review – 9541365

Thank you for your correspondence dated 8 May 2019 regarding the response to your recent request to the Council (9541365).

In your correspondence you asked for an internal review of the handling of your Freedom of Information Request.

Internal Review Procedure

I am sorry that you are dissatisfied with our handling of your requests and I have investigated your complaint in accordance with the Section 45 Code of Practice.

Should you remain dissatisfied with the handling of your request, you are entitled to contact the Information Commissioner under Section 50 of the Freedom of Information Act 2000. The contact details are provided at the end of this letter.

Response

Background

On 3 April 2019 the council received your original request for the following:

“Please provide the following information under the freedom of information act. Please commence with data in 3 month segments and work back in 3 month increments until the restrictions of a s12 are reached or to a maximum of 12 months

The information relates specifically to Housing Options transfer applications on disability and or medical grounds

It is understood that the information exists in relation to effectiveness and efficiency monitoring of 3rd party contractors as well as the process being

intrinsically linked to Adult Social Care and Disability requirements in the housing sector.

Please define the period of data being supplied in which should be reflected as the same in all questions

- 1. The number of applications to move under medical and or disability grounds*
- 2. The number of medical assessments made relating to applications to move on medical and or disability grounds*
- 3. The number of Housing Needs "V4" summary reports raised and the breakdown of accommodation requirement types stipulated in those forms from Mobility or "Mob" 1 to 4*
- 4. The number of Housing Option decisions sent to applicants in which the mobility assessments have remained the same as the V4, changed to a lesser category (eg Mob 2 to Mob 3) or higher category (eg Mob 3 to 2)"*

On 3 May 2019 the council responded to your request as follows (summarised)

1. Refused on grounds of cost, but advised could provide you with a number of acceptances as at a given point in time
2. Refused on grounds of cost
3. Requested clarification on what was meant by "*Housing Needs V4 Summary report*", but advised could provide number of applications for re-housing by mobility category 1-4 at a given point in time
4. Requested clarification on what was meant by "*Housing Needs V4 Summary report*"

On 8 May 2019 the council received your request for an Internal Review on the following grounds:

- That section 10 was breached "*by [the council] not complying with S1 of the Act as the response doubles as both refusal and seeks clarification which took place after the deadline to supply passed.*"
- You disputed the refusal under section 12, stating that:
 - That information should be provided in 3 month segments for all 4 questions working back from 1 May 2019,
 - That the refusal under section 12 is at odds with the obligations on the council under the Equalities Act 2010
- "*The "Housing Needs "V4" summary report" is a report raised by the contractor Able-2 in conjunction the contractor Effectable who are both contractors with the council.*"

Internal Review

The purpose of an Internal Review is to investigate the handling of a request in accordance with the Freedom of Information Act 2000.

As your complaint disputes that the response was issued within 20 working days and whether information can be provided within the "appropriate limit" this Internal Review will focus on sections 10 and 12 of the Act (as set out in full under the Advice & Assistance section of this letter).

- *Section 10*

Your request for an Internal review states the following in this regard (quoted verbatim):

“That the reasons given to refuse are not justifiable and in fact unreasonable under the FOIA commencing with a breach of S10 by not complying with S1 of the Act as the response doubles as both refusal and seeks clarification which took place after the deadline to supply passed.”

This review has considered the timescales in relation to this request: it was received by the council on 3 April 2019 which meant the 20 working day deadline for response, under section 10 of the Act was 3 May 2019. The deadline allows for a response to be issued up to the end of the day on that date.

The council issued a response on 3 May 2019, responding to questions 1 and 2 of the request, and asking for clarification on 3 and 4.

Although best practice advises that clarification on a request should be sought as soon as possible, the legal requirement is to seek it within the 20 working day deadline.

Further, the Section 45 Code of Practice sets out that the clock stops in respect of that aspect until clarification is received from the applicant, whereupon it restarts from 20 working days as follows (copied verbatim):

2.9 Where a public authority asks for further information or clarification to enable the requester to meet the requirements of section 8, the 20 working day response period will not start until a satisfactory reply constituting a valid request is received.”

As a result, this review finds that the council met the 20 working day deadline imposed by section 10 in issuing a refusal notice under section 12 to questions 1 and 2, and seeking further clarification on questions 3 and 4, on 3 May 2019.

Your complaint in this regard is therefore not upheld.

- *Section 12*

The council's response of 3 May 2019 issued a refusal notice in respect of question 1, setting out it would exceed the cost limit to provide the number of applications but that they could provide the number of *acceptances* at a given time, e.g. 1 April 2019.

Your email of 8 May 2019 set out the following in response:

“For the date, that can now be reset to the 1st of May as no information in line with the request was in fact rendered. Therefore I repeat that it should be provided in 3 month segments on all 4 questions working backward as opposed from the date of the original request.”

Please be advised that change to the scope of the request, such as changing the range to include a later date in this case, would constitute a new request as it is asking for extra information to that which was originally asked for.

Additionally, the above reiterates your request for information in 3 month segments in respect of all 4 questions. As a result this review has sought to confirm the council's position in relation to your original request to determine if section 12 has been correctly applied.

This review has confirmed that the details of housing applications are stored on a system which does not allow them to be reported against for type of application, i.e. it is not possible to run a search and *only* retrieve those made on medical reasons and/or disability grounds. Consequently, it is not possible to comply with question 1 of your request for number of applications made on these grounds, in 3 monthly increments.

As set out in the council's response of 3 May 2019, as of that time there were over 4,000 applications on the system. Therefore, even just providing the data for one month (or one given point in time) would exceed the appropriate limit of 18 hours as it would require checking each of the approx. 4,000 applications (at the time of the request) to determine if it was made on medical and/or disability grounds. If it took just 5 minutes per application this would still be 333 hours of work for just one fixed date.

Consequently, it is not possible to provide the requested information for question 1 for one specific date in time, nor in 3 monthly increments. Given the above explanation, it is also not possible to provide advice and assistance in refining question 1 to bring it within the limit.

The council's response also refused question 2 under section 12, setting out that the medical assessment, where held, would be entered into a free text field.

Your email of 8 May 2019 set out the following in response:

"This is intrinsically misleading by the officers/contractor holding the information. If the provider cannot give a date in which the medical assessment took place then such an assessment did not take place and any decision made on the basis of such an assessment is void and a breach of duty under the law."

Please note that when the council uses the term "where held" above, this is in relation to where a medical assessment has been undertaken, i.e. where a medical assessment has been undertaken the date [undertaken] will be entered into a free text field.

Accordingly, this review can confirm it is not possible to run a search on the system to return only cases where a medical assessment has been carried out. In order to locate and retrieve the information to answer this aspect of your request the council would need to undertake a manual review of all applications (including accepted, rejected and closed cases) on a given date to determine how many have details of an assessment recorded. Even just checking all current 4045 households registered for housing at 5 minutes per application would take 337 hours, which would significantly exceed the appropriate limit.

Finally, your email of 8 May 2019 sets out that the "*release of information surpasses the public interest threshold*", however, section 12 is not classed as a qualified exemption which means it is not subject to the public interest test.

In sum, this review has considered the council's response of 3 May 2019 sets out why complying with questions 1 and 2 would exceed the appropriate limit. Accordingly this review maintains the council's application of section 12 in respect of the requested information.

As a result, your complaint in this regard is not upheld

- *Equalities Act 2010*

Your email of 23 May 2019 makes reference to the obligations on the council under the Equalities Act 2010, as follows:

“...under the Equality Act 2010 (Specific Duties) Regulations 2011, the council not only requires the information to comply with such reports, it has a duty to report on an annual basis.”

Please find below a link to the Supply and Allocation Report 2018/19 report (2019/20 still to be signed off but will be published when available) which sets out the required equalities data under section 5.2:

<https://www.westminster.gov.uk/how-we-allocate-housing>

- *Clarification*

Your original request referred to the following document in question 3 and 4: *Housing Needs "V4" summary reports*.

In its response of 3 May 2019 the council sought clarification on what was intended by the above term, which you provided in your email of 8 May 2019 as follows:

The "Housing Needs "V4" summary report" is a report raised by the contractor Able-2 in conjunction with the contractor Effectable who are both contractors with the council. The Able-2 contract is covered by the Adult Social Care Directorate while Effectable comes under Housing. These reports will be in primary possession of Adult Social Care but they will be shared with Housing. Needless to say the Council are proprietary owners of the reports in relation to on site assessments by Occupational Therapists and Surveyors to assess the property and tenant's needs under the categories defined in the Housing Allocation Scheme. This assessment is ordered and paid for through the Council. It is clear from correspondence and enquiries I have made with the council that both WCC and RMG are aware of this type of report, the origin, internal distribution and use.

The above clarification has been forwarded to both the Housing and Adult Social Care [services] and neither are able to identify the information being sought here under that title and description.

As a result, and for the purposes of section 1(4) the requested information is not held and the council is therefore unable to provide it.

Advice & Assistance

In the course of this Internal Review I have made reference to the following provisions of the Freedom of Information Act 2000

- **1 (4)** The information—
(a) in respect of which the applicant is to be informed under subsection (1)(a),
or
(b) which is to be communicated under subsection (1)(b),
is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.
- **10 (1)** Subject to subsections (2) and (3), 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.
- **12 (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.

This completes the internal review into the handling of your Freedom of Information Request under the Council's complaints procedure. Should you be dissatisfied with our response, you are entitled to contact the Information Commissioner under Section 50 of the Freedom of Information Act 2000. For your reference, I have provided the contact details below:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 0303 123 1113 or 01625 54 57 45
Fax: 01625 524510
Web: www.ico.org.uk

Should you have any queries, please contact me at the address below.

Yours faithfully

Information Management Team