



# City of Westminster

Mr Owen Sheppard  
By email only

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**Our ref:** 10829925

**Your ref:**

**Date:** 7 January 2020

Dear Mr Sheppard

**Re: Request for Internal Review – 10829925**

Thank you for your correspondence dated 3 December 2019 regarding the response to your recent request to the Council (10829925).

In your correspondence you asked for an internal review of the handling of your Freedom of Information Request, disputing the refusal under section 12.

**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 5 August 2019 you requested the following information:

*“As part of negotiating planning permissions, it is common practice for section 106 agreements to include cash payments from a planning applicant/developer to the council.*

*As part of section 106 agreements, it is common practice for time limits to be placed on the council's use of the cash, before it will have to be returned to the developer. For example, a section 106 agreement could stipulate that X amount of money that the council received from a developer will have to be paid back if it's not spent within five years from when the agreement was*

ratified.

*With regards to the above, could I please request the following information:*

*1 - In each of the financial years 2014/15 to 2018/19, the total, gross amount of section 106 money the council returned to developers due to not spending said money within the agreed timeframe*

*2 - In each of the financial years 2014/15 to 2018/19, the number of instances when the council had to return section 106 money due to not spending the money within the agreed timeframe: 2014/15, 2015/16, 2016/17, 2017/18, 2018/19*

*3 - In each instance noted from question 2, the gross amount of money that was paid back to the developer*

*4 - In each instance noted from question 2, the planning application that each 106 agreement was associated with (please provide the planning reference number to identify each planning application)”*

On 30 August 2019 the council refused to provide the requested information on the grounds of cost. The council set out that it would exceed the ‘appropriate limit’ to comply with the request for the following reasons (copied verbatim):

*During the years in question, the Council received over 600 Section 106 agreements. (On average, an Agreement has 4 financial contributions and individual terms attached. Some contributions are ring-fenced others are generic in spending terms. Information about actual spend of the funds requires collating from the relevant departments and finance teams for consistency and accuracy of information being provided)*

*It is estimated it would take an officer one hour on average to review each record to establish the extent to which the requested information is held.*

On 30 August 2019 you emailed the council to dispute the estimation of costs as follows (copied verbatim):

*“The council should be keeping clear records of its 600 section 106 agreements from this time period, particularly as to whether planning applicants have provided the finance they were obligated to 106 agreements, and whether these financial contributions have been spent by the council.*

*Can you confirm that the council holds up-to-date records of how it has spent money from individual section 106 agreements?*

*In addition, can you provide an explanation of how these records are kept and in what form? For example are they kept in spreadsheets? If so, can you please confirm the names of these spreadsheets?”*

On 3 September 2019 the council re-issued its response to the original request.

On 4 September 2019 you further emailed the council with the following specific queries (copied verbatim):

*1 - Can you confirm that the council holds up-to-date records of how it has spent money from individual section 106 agreements?*

*2 - Can you provide an explanation of how these records are kept and in what form? For example are they kept in spreadsheets?*

*3 - If so, can you please confirm the names of these spreadsheets?*

On 2 October 2019 you emailed the council to chase an answer to the above questions.

On 30 October 2019, the council responded to the above questions, including as follows:

*1 - Can you confirm that the council holds up-to-date records of how it has spent money from individual section 106 agreements?*

The Council keeps up to date records on S106 agreements. There is not reason to believe that spent money from individual agreements are not up to date.

*2 - Can you provide an explanation of how these records are kept and in what form? For example are they kept in spreadsheets?*

Historically, the records have been kept in different formats including spreadsheets, manual records and data management systems

*3 - If so, can you please confirm the names of these spreadsheets?*

Some of the records are kept in a spreadsheet called 'S106 Holding Account'

On 31 October 2019 you emailed the council to request the following information:

*"Could I please request a copy of the spreadsheet called 'S106 Holding Account'."*

The above request was logged under the new reference 12250473. It is noted that you have requested an Internal Review into that request, which will be dealt with separately under that reference: this response will focus on the refusal to your original request of 5 August 2019.

### *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 the original refusal on the grounds of cost, this Internal Review will focus on section 12 of the Act as set out in full under the Advice & Assistance section of this letter.

The Freedom of Information Act 2000 requires a public authority to confirm if requested information is held and if so communicate it unless an exemption applies in respect of it.

Under section 12 a public authority is exempt from complying with the above requirement where to do so would exceed the appropriate limit of 18 hours (equating to a cost of £450).

On this occasion, the council has confirmed that it holds records in relation to section 106 accounts, by way of its response of 30 August 2019 and in its response to your additional questions on 30 October 2019. However, the council also set out that it would exceed the 'appropriate limit' to comply with the request.

You have queried the estimate of time it would take to check for the records.

In estimating the cost of compliance a public authority may only include the following activities: determining if the requested information is held, locating it and retrieving and/or extracting it.

This review can confirm that, as set out in the response of 30 August 2019, the details in relation to section 106 agreements may be held across a number of departments and systems. This is further explained further below.

As contributions from S106 agreements are of varying categories and mitigating purposes, some receipts are not paid directly to the S106 team. The other recipients of these funds are Highways and Crossrail (TFL). Some are ringfenced e.g. Affordable Housing funds which transferred to the relevant service to monitor and record location and time of the spend.

When funds are transferred from the S106 Holding account to the spending services, the S106 monitoring team may not necessarily keep all the requested details of when the funds have been spent or the location. That responsibility passes to the individual services and their finance teams.

Further, over time the information has been kept in different formats (manual files, databases, spreadsheets etc).

In sum, therefore, the request encompasses a large number of agreements, the details of which are held across several departments as explained above. Further the request covers a 5 year period, over which time the information has been held in different formats. As a result, searching for the information would entail several departments searching records held in a number of formats and locations to comply with the request. Even if the estimate of time it would take to comply with the request was halved to 30 minutes per agreement, it would still significantly exceed the appropriate limit as set out under section 12 of the Freedom of Information Act 2000.

**Complaint outcome:** your complaint is not upheld.

## **Advice & Assistance**

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

- **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](http://www.ico.org.uk)

Should you have any queries, please contact me at the address at the top of this response.

Yours sincerely

Information Management Team