

Campaign for
Freedom of
Information



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FOI Good Practice

A survey of London local authorities



March 2019

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About the Campaign for Freedom of Information

The Campaign for Freedom of Information was set up in 1984. It played a key role in bringing about the Freedom of Information Act 2000 and improving what started out as an extremely weak bill. The Campaign now works to defend and improve the FOI Act, advise the public about their rights to information and provide training for both requesters and public authorities. It is funded by individual donations and by grants from the Joseph Rowntree Charitable Trust, The Indigo Trust and Trust for London.

This report

This report is part of a programme of work funded by Trust for London.

Research by Katherine Gundersen.

Home Office staff sit in on council interviews with migrant families

Guardian 28.10.18

Home Office workers embedded in local councils are sitting in on interviews with destitute migrant families to “conduct real-time immigration status checks” on families applying for support. FOI disclosures revealed that 10 London boroughs have employed on-site immigration officers.

Hackney, Haringey, Southwark, Greenwich, Enfield, Barking and Dagenham, Lewisham, Harrow, Croydon and Bexley have all employed officers. Some have since amended or cancelled the arrangements

Lawyers and charities expressed concern that the presence of a uniformed Home Office worker at interviews is invasive and risks deterring destitute families from accessing support.

London council splashes out on £90,000 Rolls-Royce for bigwigs as it cuts childcare

Evening Standard 18.1.16

Westminster Council came under fire for spending tens of thousands of pounds on chauffeur-driven cars as it prepares to slash funded childcare for primary pupils.

Westminster bought a Rolls-Royce Silver Seraph for £90,000 in 2015 and spent a further £11,800 running it. It paid nearly £30,000 to lease an Audi A8L over the previous three years. The Lord Mayor, six former Lord Mayors and five Alderman of the City have access to the vehicles for hundreds of ‘engagements’ every year.

The Freedom of Information figures came as it emerged last month that nearly 50 play workers and support staff were set to be axed as part of plans to cut youth services.

London councils 'spending millions of pounds renting back right-to-buy homes'

London councils are spending more than £22 million a year renting back homes sold to former tenants under the 'right to buy'. A survey using the FOI Act by London Assembly member Tom Copley has shown that at least 42% of homes sold through the 'right to buy' are now rented to private tenants in London, rather than being lived in by the former council tenants. At least 54,000 former council homes are now on the private rental market of which 2,333 are being rented back by London councils to house homeless families. It has been suggested that councils may be deterred from building new homes by the prospect of being forced to sell them to tenants at a discount - and then having to rent them back.

<https://tomcopley.com/wp-content/uploads/2014/01/Tom-Copley-AM-Right-to-Buy-Wrong-for-London-report-January-2019.pdf>

Garden Bridge procurement flaws revealed

Before the cancellation of the proposed Garden Bridge across the Thames in 2017, a series of FOI requests by the Architects' Journal (AJ) had revealed serious flaws in the procurement of the design contract. These appear to have provided a clear advantage to Thomas Heatherwick, the designer working with Joanna Lumley, the bridge's leading advocate.

In response to one FOI request the Greater London Authority revealed that, before the tender specification had been published, Mr Heatherwick had attended four meetings on the project with the London Mayor Boris Johnson or his senior officials. Another FOI request indicated that Mr Heatherwick had joined Mr Johnson at a meeting in San Francisco in an attempt to persuade Apple to sponsor the Garden Bridge. Mr Heatherwick who had been working on the bridge's concept pro bono was apparently being treated as the bridge's intended designer, before the procurement process - which requires equal treatment of all bidders - had even begun.

An FOI request to Transport for London revealed that Mr Heatherwick's bid for the design contract had been scored 4 out of 5 for 'relevant design experience', though he had previously built only one bridge. The other two bidders received scores of 3 out of 5 though one had previously built 25 bridges. Significantly, the 2013 tender specification had referred only to a *pedestrian* bridge and made no reference to a garden element. Mr Heatherwick's prior involvement meant that he would have been aware of the preference for a Garden Bridge.

A further FOI request by the AJ showed that the bidders' fixed prices had been ignored and the bids scored on the basis of their daily rates. Although their daily rates were not the same each had received the identical score for commercial criteria. Heatherwick Studios' total price was later revealed to have been more than three times more expensive than the next highest bid.

Introduction

This report examines the extent to which London councils are following good practice in complying with the Freedom of Information (FOI) Act. It is based on an examination of the councils' own FOI policies, guidance, performance reports and statistics, the handling of our own FOI requests to them and a review of relevant Information Commissioner (IC) decisions. **Although the specific data relates to London local authorities the issues are common to all public authorities and the recommendations may be of wider relevance.**

The research has been funded by a grant from *Trust for London*.¹

The FOI Act and related Environmental Information Regulations (EIR) have been in force since 2005. They give the public powerful rights to information from public authorities about their decisions, policies and services. Nationally, the rights are used by hundreds of thousands of people a year. Around 60,000 requests are made annually to London councils.²

Requesters can enforce these rights by complaining to the IC and, beyond that, by appealing to a tribunal and the courts. But as important to the Act's effectiveness, is the spirit in which authorities approach it.

An authority that approaches FOI positively, recognising it as an important right and an opportunity to be open and accountable will respond in an entirely different way to one that is indifferent, badly informed, or worse, actively obstructive.

Some of the indicators of good practice that we consider in this report include:

- How well London councils comply with the statutory time limits for answering requests
- Whether they monitor and seek to improve their own FOI performance
- Whether they publish their FOI compliance statistics
- How they fulfil their duty to advise and assist requesters
- Whether they publish the information they have disclosed under FOI, so that it is available to the wider public and not just the requester
- The quality of the FOI guidance they produce for their staff
- Any special procedures they adopt in dealing with requests likely to attract publicity.

¹ <https://www.trustforlondon.org.uk>

² This figure has been compiled from information published by individual councils or released to us in response to our FOI requests.

Methodology

Our research covers London's 32 borough councils plus the City of London Corporation and Greater London Authority. We started by carefully searching each authority's website for its published information on FOI. We then made FOI requests to each, tailored to exclude the publicly available information. The request asked for copies of or links to any other information showing (a) their FOI policies and guidance (b) any FOI performance reports produced during the last two years, and (c) annual FOI statistics for the last two years. Our initial requests were made in 2016. We made further requests limited to more recent statistics/performance reports in January 2017, January 2018 and August 2018.

In this report, we generally use the term 'FOI' to refer to both the FOI Act and the EIR, unless the context indicates otherwise. We use the term 'London council' to refer to the 34 authorities covered by this report.

Number of requests

The number of FOI requests received by each London council is shown in Figure 1.³ The precise figures can be found in Appendix 1.

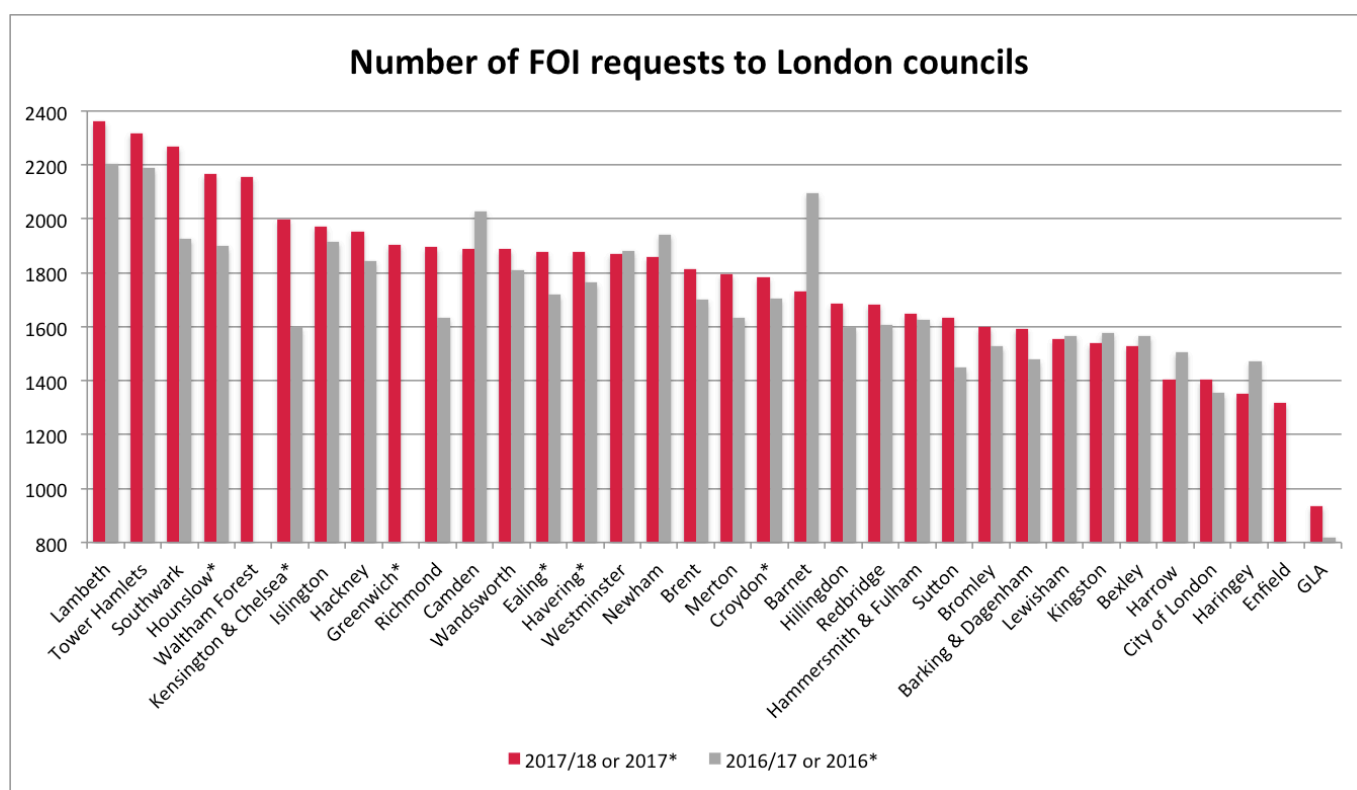


Figure 1 Number of FOI requests to London councils in 2017/18 & 2016/17 or 2017* & 2016*

³ Most of the statistics in Figure 1 and Appendix 1 are for the financial years 2017/18 or 2016/17, however those for Croydon, Ealing, Greenwich, Havering, Hounslow and Kensington & Chelsea are for the 2017 and 2016 calendar years. *Waltham Forest* wasn't able to extract the number of requests received in 2016/17 from its system. *Greenwich's* published statistics for 2016 cover an irregular period (5/11/15 – 31/12/16) and have therefore been omitted. *Bromley's* statistics for 2016/17 include subject access requests, made under the Data Protection Act. *Enfield* provided an extremely high figure for 2016/17 that was 50% greater than the previous year and 38% higher than the following year. This is likely to be an inaccurate figure caused by the switch in that year to a new IT system for recording FOI requests and has been omitted from the chart.

Across all London councils there was an average increase of 4.2% in the volume of requests between 2016/17 and 2017/18.⁴ However, the volume of requests to some councils fell during the period, most notably in **Barnet** where a substantial increase in the volume of information published proactively has led to a fall in the number of FOI requests.

Compliance with time limits

Public authorities are required to respond to FOI requests promptly and within 20 working days, though extensions are permitted in certain circumstances.⁵

Some London councils deal with virtually all FOI requests within 20 working days, others only manage to answer around 60% within this period - a deeply disappointing level of performance.⁶ In 2017/18 (or 2017 in certain cases):

- Three London councils (**City of London**, **Tower Hamlets** and **Barnet**) answered more than 95% of requests on time. The next most punctual responders were **Richmond** (93%), **Barking & Dagenham** (93%), **Redbridge** (92%) and **Brent** (91%). These seven councils' figures refer solely to requests answered within 20 working days and do not include requests answered within 'permitted extensions'. The **GLA** and **Greenwich** both answered 90% of requests on time.
- At the other end of the scale, **Hounslow** answered just 60% of requests on time. The next least punctual responders were **Lewisham** (61%), **Bromley** (64%), **Enfield** (66%), **Harrow** (68%) and **Croydon** (69%). These council's figures refer to requests answered in 20 working days. **Hackney** answered 66% on time, including those answered within a permitted extension.
- Three quarters of London councils (**25/34**) failed to meet the IC's expectation that authorities should respond to at least 90% of requests on time.⁷

Detailed figures are shown in *Figure 2* below and *Appendix 2*. For further notes on some councils' figures see the footnote below.⁸

⁴ Although this figure refers to the financial years 2016/17 and 2017/18 it includes data from 6 councils which provided statistics for the calendar years 2016 and 2017. It excludes 3 councils for whom we did not have reliable data for both years.

⁵ The FOI Act contains a series of exemptions, but in many cases even exempt information may have to be disclosed if the public interest in disclosure equals or is greater than the public interest in upholding the exemption. Where an authority is considering disclosure in the public interest it may extend the Act's normal 20 working day time limit by a 'reasonable' period. The ICO says any extension should not normally exceed a further 20 working days, making 40 working days in total. The EIR position is different. The only permitted extension is where the authority reasonably believes that the volume and complexity of the requested information makes it impracticable to comply within 20 working days in which case an extension of up to another 20 working days is permitted.

⁶ A timely response to an FOI request is often vital. If there are significant delays the information may be too late to be of any use. For example, in a case involving a request for information about school travel plans, the IC found: *'The complainant had a vested interest in receiving this information as he required it to prepare for a planning application meeting, for development adjoining his property. In this case the delay of 61 working days, whilst not only being considerably outside the 20 working day limit, also meant that the complainant did not have the information he required for the planning meeting.'* Decision Notice FER0524908, London Borough of Richmond upon Thames, 21 May 2014.

⁷ The ICO says it may decide to monitor an authority's performance if *'it appears that less than 90% of requests are receiving a response within the appropriate timescales.'* How the Information Commissioner's Office selects authorities for monitoring, v4, 3 March 2017, <https://ico.org.uk/media/action-weve-taken/monitoring/2791/how-the-ico-selects-authorities-for-monitoring.pdf>

⁸ Most of the statistics in *Figure 2* and *Appendix 2* are for the financial years 2016/17 and 2017/18. However those for Ealing, Greenwich, Havering, Hounslow and Kensington & Chelsea are for the 2016 and 2017 calendar years. Kingston wasn't able to extract a figure for the number of requests answered on time in 2016/17 from its system. Greenwich's published statistics for 2016 cover an irregular period (5/11/15 – 31/12/16) and have therefore been omitted. Bromley's figure for 2016/17 includes subject access requests made under the Data Protection Act. The following London councils said their statistics for requests answered 'on time' meant answered within 20 working days: These were Barking & Dagenham, Barnet, Brent, Bromley, City of London, Croydon, Enfield, Haringey, Harrow, Havering, Hillingdon, Hounslow, Islington, Kensington & Chelsea, Lambeth, Lewisham, Redbridge, Richmond, Southwark, Sutton, Tower Hamlets and Westminster. The remaining third of councils include requests answered within a permitted extension as 'on time'

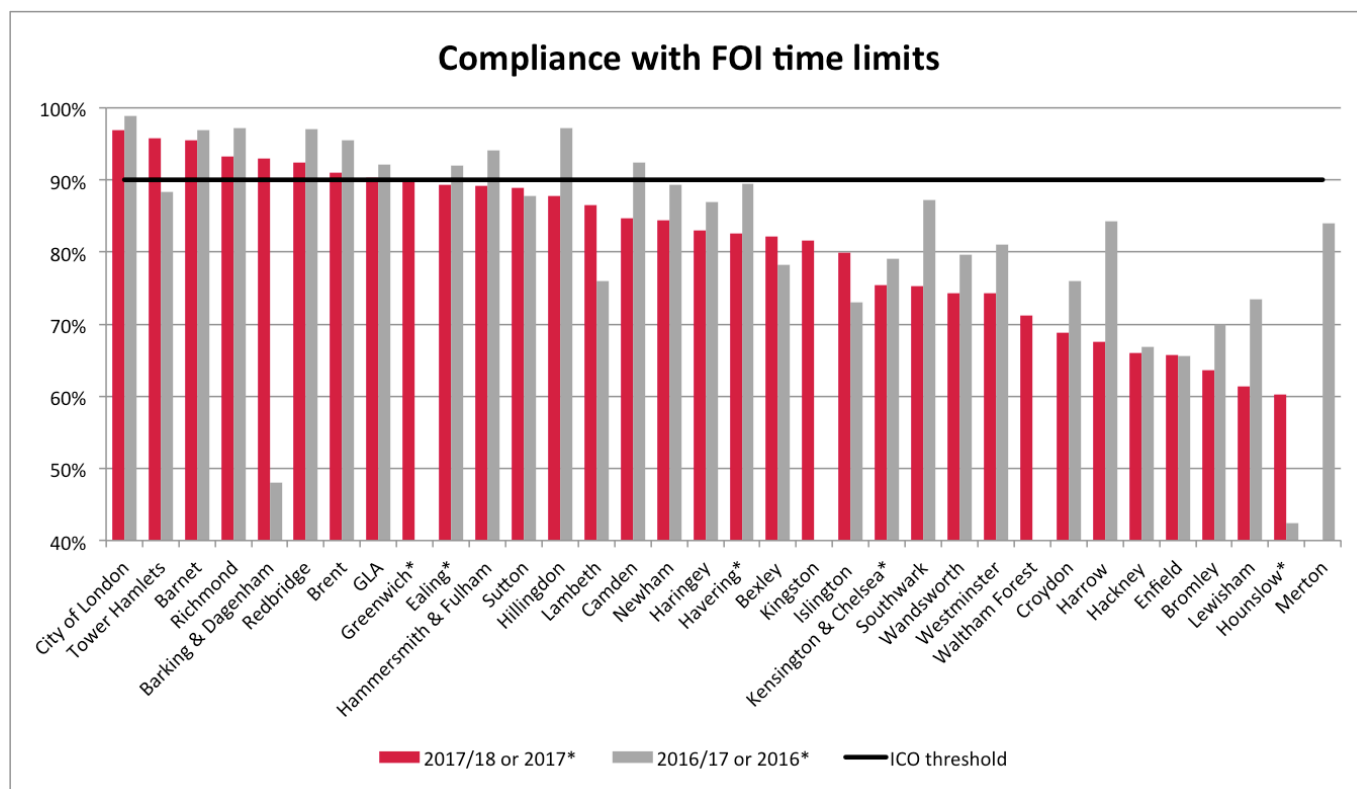


Figure 2 Percentage of FOI requests answered within the statutory time limits in 2017/18 & 2016/17 or 2017* & 2016

There was a similar disparity in the time taken to respond to our own 2016 request for London councils' FOI policies, guidance, performance reports and statistics. Response times varied between 1 and 220 days.

- A few councils replied almost immediately – **Haringey** provided the information the next day, **Redbridge** and the **Greater London Authority** within two working days, **Harrow** within 3 working days, **Camden** and **Merton** within 4 working days.
- **Most councils (25/34) replied within the required 20 working day time limit.** Four others replied slightly outside the limit, after 21 to 25 working days.
- **Enfield** took almost 5 months to reply, **Wandsworth** almost 4 months.
- The most delayed responses came from **Kingston** and **Greenwich**. Both took **more than 10 months to reply** and only did so after the IC intervened.
- **Barking & Dagenham** took 55 working days to reply, then wrongly claimed that it did not hold the requested information: its own web site clearly indicated that it did.⁹ It subsequently ignored our requests for it to carry out an internal review, only doing so when the IC intervened.¹⁰ **After almost a year, it finally disclosed 9 documents it had previously claimed did not exist.**

Detailed results are shown in *Figure 3* and *Appendix 3*.

⁹ Our FOI request included a request for any internal FOI guidance produced by Barking & Dagenham. A report to a council committee available on its web site said 'An updated FOI guide has been produced and the FOI process has been revised. The new guide has been supported by additional material published on the Council's intranet.'

¹⁰ Decision Notice FS50649699, London Borough of Barking & Dagenham, 17 January 2017.

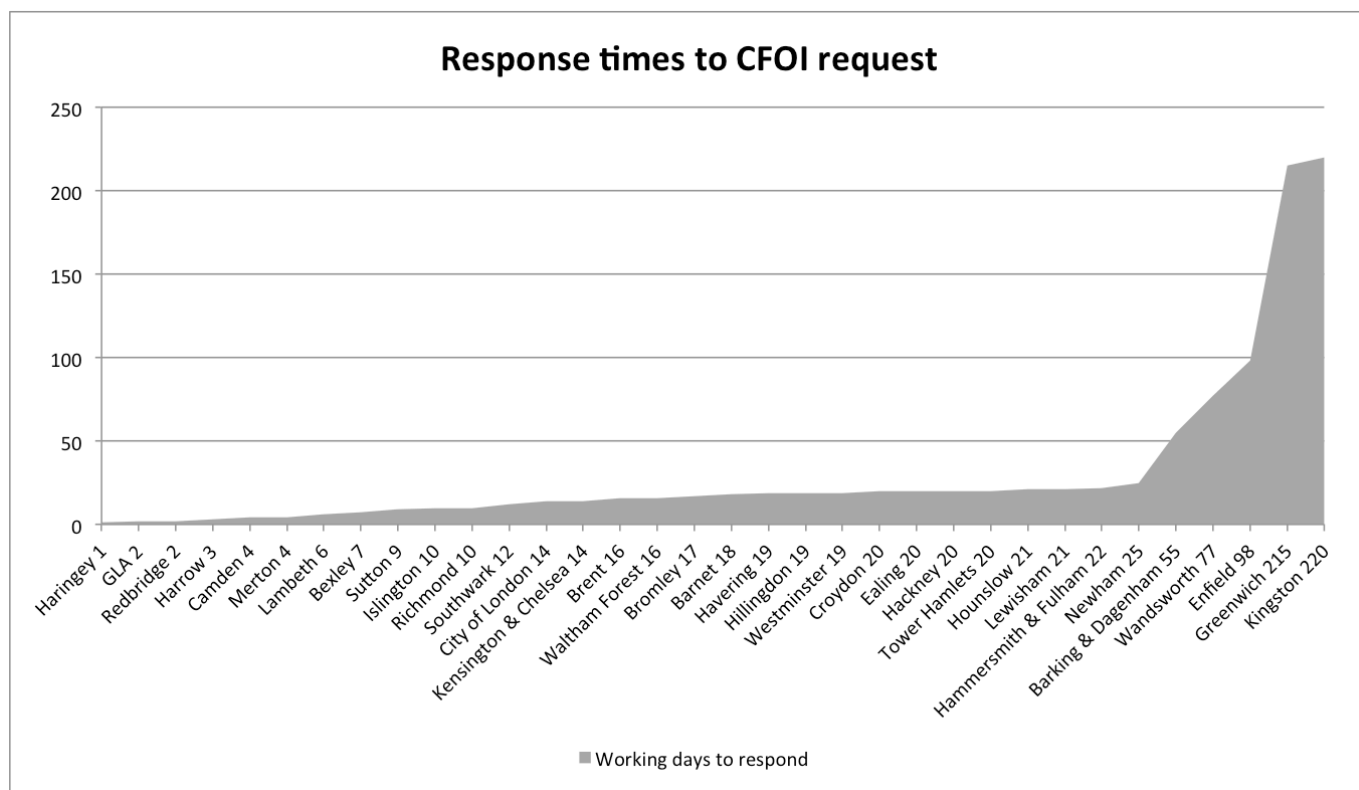


Figure 3 Number of working days to respond to CFOI request made in 2016

Complaints to the Information Commissioner

In the course of this project, we have had to make eight complaints to the IC about seven London councils which had failed to respond to one or more of our requests for information or internal review.¹¹

The complaints about **Barking & Dagenham**, **Greenwich**, and **Kingston**, have been referred to above.

Having found that some councils had ignored our earlier requests for up to 10 months until the IC intervened, we complained to the IC promptly about delayed answers to our subsequent requests. We made five further complaints to the IC about delays in providing more recent council statistics. The most significant were:

- **Kensington & Chelsea** which had failed to respond to our request for two and a half months. After being contacted by the IC it provided the figures **59** working days after the request.
- **Wandsworth** failed to respond to a request for statistics, or to a reminder from us, or an email from the IC. After being served with a decision notice it provided the statistics after **70** working days.
- **Hackney** failed to answer a request from us for over 4 months, despite two reminders. After being contacted by the IC the council finally supplied its statistics after **110** working days.

¹¹ The Information Commissioner will usually not investigate a complaint unless the requester has first asked the authority to reconsider its decision and this 'internal review' has been completed.

We received no response from **Westminster** to an August 2018 request for recent statistics despite a reminder from ourselves and several IC interventions, including a decision notice. After the passage of the 35 calendar days allowed for complying with the decision notice, a warning of action for contempt of court if it did not comply within another 7 days, and contact preparatory to such action by the IC's lawyer, Westminster finally responded to the IC. It claimed to have replied to our request more than three months earlier, and provided the IC (though not us) with a copy of the reply that had purportedly been sent. No such reply had been received by us or, despite repeated checks, been found in our spam folder. Assuming it had indeed been sent on the day in question, the council had displayed remarkable disrespect to the IC by ignoring its requests for action or explanation. We received the statistics via the IC **104** working days after our request.

The severe delays in the handling of our requests by some councils are remarkable because:

- **We had expressly stated that our requests were for a report to be published on good FOI practice. It must have been obvious that failure to answer would be conspicuous evidence of poor practice.**
- **The requests were for information about FOI policies, performance and statistics which the FOI teams would have held themselves. They would not have needed to chase other departments for information and should have been able to answer promptly.**

Further evidence of delays

The problems that we experienced are not unique. Many other cases of severe delay can be found in the decision notices published by the IC between 2016 and 2018:

- A request to **Lewisham** was unanswered after **231** working days (more than 11 calendar months). The request asked for policies on the provision of accommodation and financial support to families whose immigration status barred them from obtaining most benefits. The IC twice intervened to tell the council to answer, without success, until finally ordering it to reply.¹²
- A different request to **Lewisham** on the same topic was still unanswered after **112** working days, despite twice being chased by the requester. The council claimed to be relying on a permitted extension to the normal time limit¹³ but had not taken any of the steps necessary to invoke it, eliciting a forceful rebuke from the Commissioner.¹⁴ The council then withheld some of the requested information, adopting the correct procedure. After significant delay on the IC's part, this eventually resulted in a second decision notice ordering its disclosure, by which time the requester had been waiting for **301** working days or **fourteen and a half months**.
- Another requester asked **Lewisham** for information relating to the care of her deceased brother and associated information. The request was still outstanding after **111** working days, despite three IC reminders to the council.¹⁵ In 2017/18 Lewisham answered only 61% of requests on time.

¹² Decision Notice FS50633026, London Borough of Lewisham, 14 June 2016.

¹³ The Act allows an extension to the 20 working day response period where this is required to consider disclosing exempt information in the public interest. Where an authority is relying on this provision, it must notify the applicant within 20 working days and provide an estimate of when its decision on the public interest test will be reached.

¹⁴ The decision states: *'The Commissioner does not regard the Council's handling of this request as acceptable and understands why it has given rise to considerable frustration on the part of the complainant. He expects the Council to rectify its failings as a matter of urgency and would not expect to see a recurrence of similar problems in future.'* Decision Notice FS50625137, London Borough of Lewisham, 23 June 2016.

¹⁵ Decision Notice FS50729759, London Borough of Lewisham, 9 March 2018.

- A request to **Newham** was unanswered after **136** working days. The applicant was seeking information about the council's rights to social housing built in the Olympic Park. This was the applicant's third request, the previous two having been refused as too broad. The requester had been trying to obtain the information for **9 months** by the time the IC ordered the council to respond.¹⁶
- Another request to **Newham** for copies of two fire risk assessments at a specific address was answered after **84** working days. The requester chased the council three times before it disclosed the information.¹⁷
- A request to **Waltham Forest** about its policies to assist male partners and their children fleeing from domestic violence remained unanswered after **133** working days, although the IC had twice asked the council to respond.¹⁸
- Another request to **Waltham Forest** about planning decisions relating to Leyton High Road was still unanswered after **112** working days.¹⁹
- A request to **Southwark** about the leases and development of two day centres had not been answered after **121** working days, at which point the IC ordered it to respond.²⁰
- A request to **Bromley** for information about the Adult Social Care Precept was answered after **112** working days.²¹
- A request to **Wandsworth** for information about a market rate evaluation of allotments was outstanding after **111** working days. The IC had chased the council without success.²²
- A request to **Ealing** about the outcome of an application for a sexual entertainment venue licence (which the licensing subcommittee had said had been refused) was still outstanding after **109** working days. The requester had chased the council three times and the IC had twice asked it to reply before finally ordering it to do so.²³
- A request to **Hammersmith & Fulham** for information relating to parking meters and the introduction of the new £1 coin was outstanding after **106** working days.²⁴
- Two requests to **Croydon** for information about planning applications were outstanding after **104** and **64** working days respectively. The council later explained that it had changed its FOI email address but that its old mailbox, which was no longer being checked, had continued to accept correspondence without always generating an automated response.²⁵

¹⁶ Decision Notice FS50640394, London Borough of Newham, 1 December 2016.

¹⁷ Decision Notice FS50723127, London Borough of Newham, 1 March 2018.

¹⁸ Decision Notice FS50625951, London Borough of Waltham Forest, 13 June 2016.

¹⁹ Decision Notice FS50648096, London Borough of Waltham Forest, 4 January 2017.

²⁰ Decision Notice FS50681158, Southwark Council, 29 August 2017.

²¹ Decision Notice FS50761605, London Borough of Bromley, 30 July 2018.

²² Decision Notice FS50766218, London Borough of Wandsworth, 7 September 2018.

²³ Decision Notice FS50609184, London Borough of Ealing, 12 April 2016.

²⁴ Decision Notice FS50750956, London Borough of Hammersmith & Fulham, 27 July 2018.

²⁵ Decision Notice FER0745851, London Borough of Croydon, 28 June 2018.

- No fewer than 8 decision notices were served on **Kensington and Chelsea** on a single day in March 2018 for failing to respond to requests about the Grenfell fire. In the most delayed case there had been no reply after **178** working days. The Commissioner recognised that the council was faced with *'exceptional and difficult circumstances'* but said that the council's *'complete failure to engage with her office in any way'* had made any attempt at informal resolution of the complaints *'impossible'*.²⁶ The problem was not restricted to requests about Grenfell: the IC later issued two decision notices against the council for ignoring other requests and the IC's emails about them. These involved a lease with a local school²⁷ and street trading licences for the Notting Hill Carnival.²⁸ The council had failed to respond to the latter for **8 months**.

Most of these decision notices would simply have required the council concerned to *respond* to the request rather than disclose information. If the council then withheld the information, for example on the grounds that an exemption applied, there might be further months of delay while those grounds were challenged.

The first stage in challenging an authority's refusal to disclose is to ask it to carry out an 'internal review' to reconsider its decision. The IC says this process should take *'no longer than 20 working days in most cases, or 40 in exceptional circumstances.'*²⁹ However, decision notices show that:

- **Hackney** took **153** working days to carry out one internal review.³⁰
- An internal review by **Waltham Forest** took **112** working days before confirming its decision that its housing benefit policies and legislation on the subject could be found on the internet.³¹ The time needed to confirm this should have been minimal.
- An internal review by **Islington**³² and one by **Lambeth**³³ each took **109** working days.
- An internal review by **Lewisham** took **94** working days.³⁴
- One by **Westminster** took **85** working days.³⁵
- **Hammersmith & Fulham** took **84** working days in one case³⁶ and **79**³⁷ in another.
- **Croydon** took **67** working days to respond to one request with the subsequent internal review still outstanding after a further **79** working days.³⁸

The overwhelming majority of London councils (31/34) publish no statistics on the time they take for internal reviews - so the actual delays may be worse than these examples suggest.

²⁶ Decision Notice FS50700493, Royal Borough of Kensington & Chelsea, 2 March 2018

²⁷ Decision Notice FS50733831, Royal Borough of Kensington & Chelsea, 18 May 2018

²⁸ Decision Notice FS50730437, Royal Borough of Kensington & Chelsea, 18 May 2018

²⁹ Guide to Freedom of Information, page 60,

<https://ico.org.uk/media/for-organisations/guide-to-freedom-of-information-4-9.pdf>.

³⁰ Decision Notice FER0620853, London Borough of Hackney, 8 February 2017.

³¹ Decision Notice FS50610846, London Borough of Waltham Forest, 9 May 2017.

³² Decision Notice FS50651501, London Borough of Islington, 25 September 2018.

³³ Decision Notice FS50619532, London Borough of Lambeth, 3 May 2017.

³⁴ Decision Notice FER0623313, London Borough of Lewisham, 20 October 2016.

³⁵ Decision Notice FER0655597, London Borough of Westminster, 6 May 2017.

³⁶ Decision Notice FER0616171, London Borough Hammersmith and Fulham 2 August 2016

³⁷ Decision Notice FS50599759, London Borough of Hammersmith and Fulham, 26 May 2016.

³⁸ Decision Notice FER0767380, London Borough of Croydon, 5 September 2018.

Some councils have been slow to respond to the IC's requests to reply to requesters or have ignored the IC altogether. The same has sometimes been true of her requests for information needed for an ongoing investigation. On occasions, the IC has had to issue or threaten to issue a formal Information Notice,³⁹ compelling councils to provide her with information:

- **Hammersmith & Fulham** failed to reply to IC's inquiry about property development schemes for three and a half months, leading the IC to serve an Information Notice. The IC had asked a relatively straightforward question: why the council considered the information fell under the FOI Act and not, as would normally be the case for such schemes, under the EIR.⁴⁰ In another case an Information Notice was served on the same council after the IC reported that she had experienced '*several significant delays*' in obtaining information from it.⁴¹
- **Lewisham** was served with an Information Notice during an investigation into a complaint about the refusal to disclose a PFI contract relating to housing stock. The council failed to comply with the notice within the required period. Although the information was eventually provided the Commissioner noted that '*this significantly delayed the completion of her investigation and wasted a considerable amount of her staff's time.*'⁴²
- The IC cited **Croydon's** '*poor engagement*' with her office during a 2018 case, noting that '*It took the London Borough two months and the potential of an Information Notice to provide a substantive response to her initial investigation. When the London Borough did respond, it disclosed the wrong information and provided arguments in relation to that incorrect information.*'⁴³

Progress of individual authorities

Some councils have been struggling to meet the statutory time limit for several years:

- **Lewisham** answered only 61% of requests on time in 2015/16, improved to 73% in 2016/17 and returned to 61% in 2017/18.⁴⁴
- **Wandsworth's** performance has deteriorated steadily from 89% answered on time in 2014 to 74% in 2017/18. Performance in Quarter 2 of 2018/19 was just 56%.⁴⁵
- **Bromley's** performance slid from 77% in 2014 to 71% in 2015, 70% in 2016/17 and 64% in 2017/18. Since 2012 requests have been handled by officers in individual departments after budget savings resulted in the removal of its central FOI resource. Concerns were expressed at the time '*that capacity for coordinating requests and holding expertise centrally was being lost.*'⁴⁶

³⁹ Issued under section 51 of the FOI Act.

⁴⁰ Decision Notice FS50601532, London Borough of Hammersmith & Fulham, 26 May 2016.

⁴¹ Decision Notice FS50649977, London Borough of Hammersmith & Fulham, 19 April 2018.

⁴² Decision Notice FS50612528, London Borough of Lewisham, 6 December 2016.

⁴³ Decision Notice FS50737881, London Borough of Croydon, 20 November 2018.

⁴⁴ Figures supplied in response to our FOI requests.

⁴⁵ London Borough of Wandsworth, Finance and Corporate Overview and Scrutiny Committee on 22 November 2018, Progress Report - including Q2 Performance on Toplines and Key Issues (Paper No. 18-430), page 10, <https://democracy.wandsworth.gov.uk/documents/s62171/Paper%20No.%2018-430%20-%20Progress%20Report%20-%20Including%20Q2%20Performance%20on%20Toplines%20and%20Key%20Issues.pdf>.

⁴⁶ London Borough of Bromley, Minutes of the General Purposes and Licensing Committee held on 14 March 2012, <https://cde.bromley.gov.uk/documents/g4084/Printed%20minutes%20Wednesday%2014-Mar-2012%2019.30%20General%20Purposes%20and%20Licensing%20Committee.pdf?T=1>.

- **Enfield's** performance was below 65% in five successive quarterly periods (from Q2 2017/18 to Q2 2018/19). A November 2018 report stated that performance in responding to FOI requests, complaints and member's enquiries '*has significantly reduced following centralisation of the team and a reduction in resources.*' A number of actions are reportedly being taken to improve performance by the end of 2018/19.⁴⁷
- **Hackney** answered only 54% of requests on time in 2013/14 and despite improving since then has only been answering between 66% and 70% on time in the three years to the end of 2017/18.⁴⁸
- **Hounslow's** performance fell sharply from answering 72% of requests on time in 2014 to 42% in 2016 and was only up to 60% in 2017/18. In January 2018 the council reported that despite measures to improve its efficiency it was still 'poorly performing' partly because of a backlog of requests.⁴⁹ It answered 71% of requests on time in Quarter 2 of 2018/19, but was predicting performance of 60% for the following two quarters.⁵⁰
- The IC required **Islington** to sign an undertaking in 2011 to ensure that it answered requests on time.⁵¹ Despite this, its performance actually deteriorated in each of 4 subsequent years, falling from 82% in 2011/12 to 63% in 2015/16. The council's performance improved to 73% in 2016/17 and 80% in 2017/18, although it is still below the IC's standard.

However, some councils have achieved substantial improvements:

- **Barnet** was monitored by the Information Commissioner's Office (ICO) in 2010 when it was answering only 71% of requests on time. By 2012/13 it was answering 92% on time. Between 2013/14 and 2017/18 it consistently answered at least 96% of requests in 20 working days.⁵²

The measures it took included recruitment to address understaffing, a new case management system to track requests, a disclosure log to publicise released information, proactive publication of datasets containing regularly requested information and monthly and weekly performance monitoring reports.^{53,54}

⁴⁷ London Borough of Enfield, Cabinet meeting on 12th December 2018, Q2 Performance Report, Appendix 2, page 3.

<https://governance.enfield.gov.uk/documents/s72005/newCabinet%20Q2%20APDX2%20002.pdf>

⁴⁸ Figures obtained from Hackney Council show the percentage of requests it answered on time was 54% in 2013/14, 73% in 2014/15, 70% in the 2016 calendar year, 67% in 2016/17 and 66% in 2017/18.

⁴⁹ 'Last year there were over 2,000 FOIs and there is a legacy of 200 overdue FOIs...A new case management system which logs complaints and FOIs has been implemented. Directors monitor performance monthly in order to improve this position. There is also an effort to improve the range of stock answers to answer repeat FOIs.' Minutes of the Overview and Scrutiny Committee held on 22 January 2018

<https://democraticservices.hounslow.gov.uk/documents/g9993/Printed%20minutes%20Monday%2022-Jan-2018%2019.00%20Overview%20and%20Scrutiny%20Committee.pdf?T=1>

⁵⁰ London Borough of Hounslow, CEX 335 Quarter Two (July to September 2018) Performance Monitoring Report, Appendix 3 Revised action plans – Q2 2018/19, <https://democraticservices.hounslow.gov.uk/documents/s147476/Appendix%203%20-%20CEX%20335%20Revised%20Action%20Plans.pdf>

⁵¹ ICO press release 'Government departments facing regulatory action for transparency delays', 12 April 2011,

https://webarchive.nationalarchives.gov.uk/20110601171824/http://www.ico.gov.uk/~media/documents/pressreleases/2011/foi_monitoring_news_release_20110412.ashx

⁵² Datasets on Barnet's performance against the 20 working day time limit are published on its Open Data portal <https://open.barnet.gov.uk/topic/council-democracy?tag=FOI>.

⁵³ Letter from Interim Chief Executive of Barnet Council to Information Commissioner, 30 April 2013.

https://www.whatdotheyknow.com/request/159944/response/395622/attach/html/8/130430_ICO_response_from_Chief_Executive_FINAL.pdf.html

⁵⁴ Examples of Barnet's monitoring reports were disclosed in response to our request and can be viewed on its disclosure log by searching requests received on 14/1/16 and 'freedom of information'.

Although the annual volume of requests Barnet received increased by 36% in the four years between 2012/13 and 2016/17 (from 1,542 to 2,097) it then fell by 17.5% (to 1,731) in the following year. The council attributed this to the volume of open data it had published and the publication of a disclosure log. **A third of all requests and no less than 73% of those dealing with business rates and parking were dealt with by referring requesters to such published information. This is a striking indication of the value of proactive publication targeted at issues attracting large volumes of requests.**⁵⁵

- **Brent** went from answering only 55% of its requests on time in 2013/14 to answering 96% on time in 2016/17 and 91% in 2017/18. The steps it took included an upgrade of its case management system, FOI officers began circulating a list of requests due in the next 3 days, strategic directors were sent reports indicating requests that were due and overdue and the Corporate Management Team were provided with monthly performance information.⁵⁶
- **Tower Hamlets** answered 96% of requests in 20 working days in 2017/18, an improvement on the 88% figure for 2016/17 and 85% in 2015/16. In the same period, the volume of requests it received increased by 19%. It attributed the improvement to an *'increase in awareness and officers becoming more familiar with the new [case management] software.'*⁵⁷ It also said *'Monitoring measures were emphasised to improve performance which was effective as the rate of responding in time improved throughout the year.'*
- **Ealing** answered 92% of requests on time in 2016, a 9% improvement on 2010, despite a 72% increase in the number of requests during the period. In 2017 it answered 89% of requests on time.⁵⁸ A significant factor appears to have been the use of internal deadlines for dealing with each stage of a request and the systematic chasing of staff to comply with them.
- **Greenwich** answered only 37% of requests on time in 2013 and only 43% on time in 2014. This led the IC to carry out extended monitoring of the council for a full year. By 2017 it was answering 90% of requests on time. A number of measures have been put in place to maintain this, including regular reports to senior management, updated guidance and procedures, regular meetings of departmental FOI staff to deal with any issues, a recently improved IT system, random checks on the quality of responses and the review by the council's legal services of all exemptions claimed.⁵⁹

⁵⁵ London Borough of Barnet, Information Management Report, 19 January 2018 and presentation by Barnet's Information Management Officer at a seminar held by Campaign for Freedom of Information in July 2018.

⁵⁶ London Borough of Brent, Audit Committee meeting on 26 June 2014, Internal Audit Year End Progress 2013/14, June 2014, <http://democracy.brent.gov.uk/documents/s24778/4.1%20Internal%20Audit%20Progress%20Report%20appendix%201.pdf>.

⁵⁷ London Borough of Tower Hamlets, Complaints and Information Governance Annual Report 2016-17, , <https://democracy.towerhamlets.gov.uk/documents/s116863/CI Annual Report 2016 2017 Draft 2017 Sep 04 v2 1.pdf>. This report is marked draft but was considered by the Overview and Scrutiny Committee on 23 November 2017.

⁵⁸ London Borough of Ealing, Standards Committee meeting on 22 March 2018, Overview of the Council's Freedom of Information Performance, available from <https://ealing.cmis.uk.com/ealing/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/5628/Committee/10/Default.aspx>.

⁵⁹ London Borough of Greenwich, Corporate Finance and Performance Scrutiny Panel meeting on 27 September 2017, Responses to Freedom of Information Requests, <http://committees.royalgreenwich.gov.uk/documents/s59324/FOI%20Reports.pdf>.

- **City of London** says it has reduced the average time taken to answer a request from 9.42 hours in 2005 to 4.2 hours in 2015 *'in spite of a perceived trend towards larger and more complex individual requests.'*⁶⁰ It says this improvement is *'a reflection of the continuing build-up of expertise within departments (under central guidance and supervision).'* It also says better request handling has reduced the number of complaints to less than 1% of requests in 2015, with significant savings of staff time.⁶¹
- **Barking & Dagenham's** compliance with the time limit was extremely poor for a number of years, falling from 77% in 2013/14 to just 53% in 2016/17. The council brought its FOI team back in-house in April 2015 (it had been outsourced to a joint venture) and established a new centralised team.⁶² In 2017/18 it answered 93% of requests in 20 working days, an improvement of 40% over the previous year despite receiving 8% more requests. It stated that workshops were taking place to support further improvement and it was in the process of publishing its FOI requests, responses and performance rates online.⁶³
- Some poor performance may partly be explained by something as simple as the loss of an experienced FOI officer. In **Newham** the return of such an officer from leave helped performance recover from 66% in 2015/16 to over 90% in April 2016, though better monitoring, more proactive publication and other measures were also said to have contributed.⁶⁴ In 2017/18 it answered 84% of requests on time.
- **Lambeth** reported that a dip in its performance coincided *'with the departure of the Council's FOI Coordinator in June [2016] and the gap before a replacement joined in October and the absence of other staff responsible for coordinating responses to FOI requests...With appointment of a new FOI Coordinator and other Corporate Complaints Unit staff caseloads are at a more manageable level.'*⁶⁵ Performance improved from 76% in 2016/17 to 87% in 2017/18 despite a 7% increase in the volume of requests over the period.

⁶⁰ A report to its chief officers, which was disclosed in response to our request, says: *'It is considered that these improvements are a reflection of the continuing build-up of expertise within departments (under central guidance and supervision).'* City of London Corporation, Freedom of Information / Environmental Information Regulations 2015 Annual Report to Summit Group.

⁶¹ It states: *'It is considered that the proper, detailed arguing of exemptions obviates possible complaints, which have the potential to be time consuming and draw in senior management and the Comptroller & City Solicitor's Department; and therefore the standard of responses has been maintained at a high level over the years.'*, *ibid.*

⁶² London Borough of Barking & Dagenham, Public Accounts and Audit Select Committee meeting on 3 February 2016, Information Governance Annual Report, <https://modgov.lbbd.gov.uk/internet/documents/s98915/PAASC-Report-InformationGovernance.pdf>.

⁶³ London Borough of Barking & Dagenham, Public Accounts and Audit Select Committee meeting on 24 January 2018, Information Governance Annual Report and Local Government Ombudsman Complaints, <https://modgov.lbbd.gov.uk/internet/documents/s118927/Report.pdf>.

⁶⁴ *'Better monitoring and escalation when services do not respond in time are now in place, and regular updates will be given to services on performance, with a breakdown of where delays in receiving information are occurring. Information is shared to identify hot topics that are emerging, so that steps can be made to handle information more effectively through communications, making information available on the web, etc. In addition potential future requests are identified and steps are taken accordingly in order to deal with increase in requests, such as standard responses, information on the web, etc.'*, London Borough of Newham, Audit Board meeting on 28 June 2016, Freedom of Information Annual report – Requests received in 2015/16, <https://mgov.newham.gov.uk/documents/s105713/FreedomofInformationFinal2016.pdf>.

⁶⁵ London Borough of Lambeth, Corporate Committee meeting on 28 September 2017, Complaints, Members' Enquiries and Freedom of Information Act requests 2016/17, <https://moderngov.lambeth.gov.uk/documents/s91029/Complaints.pdf>.

- **Camden** improved the proportion of requests answered in 20 working days from 83% in 2014/15 to 92% in both 2015/16 and 2016/17, although performance dipped again to 85% in 2017/18. The dip was partly caused by the secondment of staff across the council to help with the evacuation of a housing estate because of concerns about its cladding and the failure of its case management system. The council said it was procuring a new case management system and trying to increase proactive publication. In Quarter 2 of 2018/19 Camden answered 98% of requests on time - the best performance it had ever achieved.⁶⁶

The council has also recorded a fall in the volume of FOI requests which it says is because it is now answering several hundred of its simpler requests on a 'business as usual' basis and no longer including them in its FOI statistics. The ICO permits requests for routine information to be answered in this way as long as it is provided in full. The effect is to reduce the reported volume of FOI requests while increasing the reported average response time, as many easily answered requests have been removed from the statistics. This makes its recent performance of 98% all the more impressive.

- **Kensington and Chelsea** met nearly 80% of its requests in 20 working days in 2016 and 75% in 2017. But following a 25% increase in requests after the Grenfell fire its performance collapsed: for most of 2018 it was meeting only 32% of requests on time. At one point it had 212 overdue requests some having been unanswered for many months. Its problems were exacerbated by the lack of internal performance monitoring and the fact that just a single member of staff dealt with requests, with some help from their manager where possible. It has since introduced a new case management system, trained additional staff in FOI and begun weekly performance reporting bringing its compliance rate up to around 80% in September/October 2018. It is proposing to put regularly requested information online and is studying best practice in other organisations.⁶⁷

These accounts draw heavily on London councils' own performance monitoring reports. However, two London councils (**Bromley and Hackney**) told us they don't produce such reports – and so appear to lack a basic tool for improving performance.

As these accounts show, poor performance is not inevitable. Some London councils (including Barking & Dagenham, Barnet, Ealing, Lambeth and Tower Hamlets) have not only significantly improved their compliance with statutory time limits, but done so despite an increasing volume of requests.

Many of the measures they have used are not cost intensive. They include better tracking and reminders to staff of approaching deadlines, closer monitoring by authorities of their performance, the use of disclosure logs and proactive publication to publish information known to attract frequent requests and, crucially, the retention of experienced FOI staff. Many authorities have made use of commercial case management systems, which track requests, provide alerts as deadlines approach, generate performance reports and publish released material to a disclosure log at the push of a button. **The similarities in the methods used by councils which have improved their performance suggests how others might go about this.**

⁶⁶ London Borough of Camden, Resources and Corporate Performance Scrutiny Committee meeting on 11 December 2018, Quarter 2 Performance Report 2018/19, <http://democracy.camden.gov.uk/documents/s76656/Q2%2018-19%20Corporate%20Services%20performance%20RCP%20Scrutiny%20draft.pdf>.

⁶⁷ Royal Borough of Kensington & Chelsea, Executive and Corporate Services Scrutiny Committee on 10 December 2018, Review of Freedom of Information Process, available from <https://www.rbkc.gov.uk/committees/Meetings/tabid/73/ctl/ViewMeetingPublic/mid/669/Meeting/7827/Committee/1539/SelectedTab/Documents/Default.aspx>.

The Information Commissioner's role

An essential incentive for authorities to improve their performance is the threat of IC enforcement action. Unfortunately, as this report shows, some authorities are prepared to ignore the IC's interventions altogether, unless made in the form of a legally binding notice.

If the IC finds a requester's complaint justified, she can issue a Decision Notice requiring the authority to take specified steps to comply with the legislation.⁶⁸ Our research has benefitted from several such notices. But while they provide a remedy for the individual complainant, a decision notice cannot require an authority to address a systemic problem.

The IC also has the power to issue an Enforcement Notice where the legislation has been breached even if the infraction has not been the subject of complaint.⁶⁹ An Enforcement Notice cannot require an authority to deal with *future* requests on time, but it can require it to respond to all *currently* overdue requests by a set deadline.

Yet only four Enforcement Notices have been issued since the legislation came into force in 2005, and - inexplicably - only two have ever dealt with delays.⁷⁰ It is not clear why successive Information Commissioners have proved so reluctant to use them.

An Enforcement Notice is capable of assisting dozens or even hundreds of requesters with overdue requests at a stroke. It provides a strong incentive to the authority to take steps to ensure that a build up of overdue requests does recur. It should also reduce the IC's workload, avoiding the need for separate investigations and rounds of correspondence as each requester complains about the same authority.

In 2010 the ICO announced that it would be taking a tougher approach to FOI enforcement:

*'Where there is evidence that a public authority is regularly or seriously failing to meet its obligations, the ICO will not hesitate to take regulatory action, particularly where organisations fail to respond to requests in a timely manner. The ICO has identified timeliness as a key target for action, in recognition that a quarter (between 20-25%) of FOIA complaints to the ICO relate, at least in part, to the time taken for public bodies to respond to requests.'*⁷¹

A significant element of this approach involved monitoring individual authorities which were not dealing with requests on time, usually for three months. Authorities were warned that if they failed to improve they might face enforcement action.⁷²

London councils which have been monitored in the past are:

- **Barnet, Croydon, Ealing, Hammersmith & Fulham, Islington, Newham and Westminster** (all in October to December 2010).
- **Kingston and Southwark** (April – June 2011)

⁶⁸ Freedom of Information Act 2000, section 50

⁶⁹ Freedom of Information Act 2000, section 52

⁷⁰ These were served on the Independent Police Complaints Commission in June 2010 and the Department of Finance and Personnel for Northern Ireland in June 2015.

⁷¹ ICO press release, ICO takes tougher approach to FOI enforcement, 21 July 2010, https://webarchive.nationalarchives.gov.uk/20101125173822/http://www.ico.gov.uk/~media/documents/pressreleases/2010/ENFORCEMENT_POLICY_200710.ashx.

⁷² Freedom of Information regulatory action policy, version 3.0, updated December 2012, https://ico.org.uk/media/about-the-ico/policies-and-procedures/1859/freedom_of_information_regulatory_action_policy.pdf.

- **Barnet** (April - June 2013)
- **Hackney** (January - March 2014)
- **Lambeth and Tower Hamlets** (September - Nov 2014)
- **Greenwich** (May 2014 - May 2015)
- **Newham** (September – November 2016)
- **Lambeth** (January - March 2017)

Monitoring contributed to significant improvements by **Greenwich** (which answered 90% on time in 2017) and **Barnet** (which has been above 95% for several years). After its 2017 monitoring, **Lambeth** improved from answering 76% of requests on time in 2016/17 to 86.5% on time in 2017/18, and acknowledged that the improvement had been *'influenced in no small part'* by the monitoring.⁷³

Other London councils with far worse performance records than Lambeth's appear to have escaped monitoring. These include **Bromley** (only 64% of requests answered on time in 2017/18), **Lewisham** (61%) and **Hounslow** (60%).

Three quarters of all London councils - and no doubt innumerable other authorities as well - are failing to meet the IC's trigger for monitoring, of answering at least 90% of requests on time.

Yet at the time of writing, the ICO appeared to have all but abandoned formal monitoring. In 2010, 33 authorities across the England, Wales and Northern Ireland had been monitored. But only two authorities were monitored in each of 2016 and 2017 and none appear to have been monitored in 2018.

This may partly be the result of the ICO having focussed heavily on data protection issues over recent years, which regulation of FOI has received far less attention, an imbalance which urgently needs to be addressed.

The IC's annual report for 2017/18 stated that it had:

*'engaged with a number of public authorities about their handling of responses to freedom of information requests. Following this, progress has been made on the timeliness of those bodies' responses.*⁷⁴

The ICO has not named these bodies but the move from publicly announced monitoring to private discussions with unnamed authorities is not encouraging. It makes it difficult to judge the extent and effectiveness of the ICO's efforts and removes a source of public pressure for improvement.

The absence of monitoring, coupled with the IC's reluctance to issue Enforcement Notices, suggests that, apart from the occasional Decision Notice, there are few practical repercussions for authorities which consistently fail to meet FOI time limits.

⁷³ London Borough of Lambeth, Corporate Committee on 21 March 2018, Complaints - 6-monthly update, <https://modern.gov.lambeth.gov.uk/documents/s94086/Complaints%206-monthly%20update.pdf>.

⁷⁴ <https://ico.org.uk/media/about-the-ico/documents/2259463/annual-report-201718.pdf>.

Recommendation 1: authorities should report publicly every quarter on the number of requests not answered within the required time scale, setting out the causes of the delay and the steps being taken to address them.

Recommendation 2: the IC should make clear that authorities which fail to respond to or even acknowledge her emails asking them to deal promptly with an overdue request (as some London councils have done) will make themselves prime candidates for further enforcement action.

Recommendation 3: the IC should reinstate its lapsed 2010 enforcement policy, including the monitoring of underperforming authorities, to ensure that authorities answer at least 90% of requests on time. It should demonstrate a readiness to issue Enforcement Notices where persistent delays continue.

Publication of FOI statistics

Some of the FOI statistics presented in this report were found in publicly available committee papers or published datasets. However, some councils publish no statistics at all and we had to make FOI requests to obtain them. In some cases we had to wait many months for the replies, only receiving them after the IC's intervention.

Figure 4 shows that, as of December 2018:

- **Nearly a third** of London councils (11/34) published **no FOI statistics of any kind**.⁷⁵
- **Most** London councils (22/34) **published the percentage of requests they answered within the statutory time limit** but 6 of these published no other FOI figures.
- **Most** of the authorities (9/12) which **don't publish their timeliness figures are in the bottom half** of the performance table.
- **30 of the 34** councils **failed to reveal the numbers of requests they answered or refused**.⁷⁶
- Only two councils (**Barnet** and **City of London**) said **how long they take to answer those requests not answered on time** - without this people don't know whether delays are modest or run on for multiple months.

⁷⁵ These are the councils at the bottom of Figure 4 with a red dot in every column.

⁷⁶ The only councils that say how many requests they answer and how many they refuse are Barnet, City of London, Greater London Authority and Haringey. See Column 3 in Figure 4.

- **Half** of London councils (17/34) **failed to publish the number of FOI requests** they received.
- Only **4** councils (**Barnet, City of London, Haringey** and **Tower Hamlets**) said **how long their internal reviews take**.
- **Three quarters** of the councils **don't state how many complaints to the ICO** have been made about them or the outcomes.
- In some cases there is a **significant delay** before statistics appear, resulting in them being out of date by the time they are published.⁷⁷

By comparison, FOI statistics for all central government bodies are published quarterly, and more detailed figures annually, allowing under-performers to be identified.⁷⁸ Government guidance issued in 2009, with the support of the Local Government Association, encouraged all public authorities, including councils, to do the same.⁷⁹

- Only two authorities, **City of London** and **Haringey** published statistics on all the key issues.
- The **City of London** went furthest and was the only London council to publish the same range of statistics as is published for central government bodies. The council has itself observed that: *'it is surprisingly difficult to find compliance information for any other authorities.'*⁸⁰

The fact that some London councils publish few or no FOI statistics makes it harder for requesters and the IC to recognise consistently underperforming authorities, shielding them from pressure to improve. The routine publication of statistics is an essential prerequisite for any concerted attempt to deal with delays. This problem is unlikely to be restricted to London councils.

Even where statistics are published, they can be hard to find. They often appear in reports to the committee that oversees FOI, which varies from council to council and may be the Audit and Risk Committee, Public Accounts and Audit Committee, Standards Committee, the Corporate Committee, Corporate Finance and Performance Scrutiny Panel or the Residents Committee. Some councils include FOI statistics in corporate performance reports along with other types of performance data. Others include them in their Annual Governance Statement published with their annual accounts.

It would be logical for councils to provide links to their performance statistics on their FOI or open data webpages. In fact, only **Barnet**,⁸¹ **City of London**,⁸² **Greater London Authority**,⁸³ **Harrow**⁸⁴ and **Haringey**⁸⁵ do so.

⁷⁷ For example, Barking & Dagenham's statistics for 2017/18 were published in an annual report nine and a half months after the end of the financial year.
<https://modgov.lbbd.gov.uk/internet/documents/s128117/Report.pdf>.

⁷⁸ <https://www.gov.uk/government/collections/government-foi-statistics>

⁷⁹ Ministry of Justice, Summary guidance on publishing Freedom of Information data, Ministry of Justice, 30 July 2009,
<https://webarchive.nationalarchives.gov.uk/20091009075719/http://www.justice.gov.uk/guidance/foi-guidance-local-authorities.htm>.

⁸⁰ City of London Corporation, Freedom of Information / Environmental Information Regulations 2015 Annual Report to Summit Group.

⁸¹ <https://www.barnet.gov.uk/citizen-home/council-and-democracy/data-protection-and-freedom-of-information/freedom-of-information-act.html>

⁸² <https://www.cityoflondon.gov.uk/about-the-city/access-to-information/Pages/freedom-of-information.aspx>

⁸³ <https://www.london.gov.uk/about-us/governance-and-spending/sharing-our-information/freedom-information>

⁸⁴ https://www.harrow.gov.uk/info/200031/data_protection_and_freedom_of_information_foi/1032/council_wide_information_datasets

⁸⁵ <https://www.haringey.gov.uk/contact/information-requests/freedom-information-foi>

| | REQUESTS | | | INTERNAL REVIEWS | | | ICO COMPLAINTS | |
|----------------------|------------|--------|---------|------------------|--------|---------|----------------|---------|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| Authority | Timeliness | Number | Outcome | Timeliness | Number | Outcome | Number | Outcome |
| City of London | ● | ● | ● | ● | ● | ● | ● | ● |
| Haringey | ● | ● | ● | ● | ● | ● | ● | ● |
| GLA | ● | ● | ● | ● | ● | ● | ● | ● |
| Tower Hamlets | ● | ● | ● | ● | ● | ● | ● | ● |
| Barnet | ● | ● | ● | ● | ● | ● | ● | ● |
| Greenwich | ● | ● | ● | ● | ● | ● | ● | ● |
| Ealing | ● | ● | ● | ● | ● | ● | ● | ● |
| Lambeth | ● | ● | ● | ● | ● | ● | ● | ● |
| Enfield | ● | ● | ● | ● | ● | ● | ● | ● |
| Barking & Dagenham | ● | ● | ● | ● | ● | ● | ● | ● |
| Camden | ● | ● | ● | ● | ● | ● | ● | ● |
| Harrow | ● | ● | ● | ● | ● | ● | ● | ● |
| Newham | ● | ● | ● | ● | ● | ● | ● | ● |
| Redbridge | ● | ● | ● | ● | ● | ● | ● | ● |
| Sutton | ● | ● | ● | ● | ● | ● | ● | ● |
| Kensington & Chelsea | ● | ● | ● | ● | ● | ● | ● | ● |
| Bexley | ● | ● | ● | ● | ● | ● | ● | ● |
| Brent | ● | ● | ● | ● | ● | ● | ● | ● |
| Croydon | ● | ● | ● | ● | ● | ● | ● | ● |
| Hounslow | ● | ● | ● | ● | ● | ● | ● | ● |
| Merton | ● | ● | ● | ● | ● | ● | ● | ● |
| Richmond | ● | ● | ● | ● | ● | ● | ● | ● |
| Wandsworth | ● | ● | ● | ● | ● | ● | ● | ● |
| Bromley | ● | ● | ● | ● | ● | ● | ● | ● |
| Hackney | ● | ● | ● | ● | ● | ● | ● | ● |
| Hammersmith & Fulham | ● | ● | ● | ● | ● | ● | ● | ● |
| Havering | ● | ● | ● | ● | ● | ● | ● | ● |
| Hillingdon | ● | ● | ● | ● | ● | ● | ● | ● |
| Islington | ● | ● | ● | ● | ● | ● | ● | ● |
| Kingston | ● | ● | ● | ● | ● | ● | ● | ● |
| Lewisham | ● | ● | ● | ● | ● | ● | ● | ● |
| Southwark | ● | ● | ● | ● | ● | ● | ● | ● |
| Waltham Forest | ● | ● | ● | ● | ● | ● | ● | ● |
| Westminster | ● | ● | ● | ● | ● | ● | ● | ● |

Figure 4: publication of FOI statistics

Column 1: Timeliness statistics: regularly published (green), occasionally (yellow), not published (red)

Column 2: No. of requests received: published (green), not published (red)

Column 3: Outcome of FOI requests (e.g. answered/refused) published (green), not published (red)

Column 4: Timeliness of completing internal reviews: published (green), not published (red)

Column 5: No. of internal reviews carried out: published (green), not published (red)

Column 6: Outcome of internal reviews: published (green), not published (red)

Column 7: No. of complaints to ICO: published (green), not published (red)

Column 8: Outcome of complaints to ICO: published (green), not published (red)

A further problem is that different councils' statistics are compiled on different bases, making direct comparisons difficult. Some consider a request to have been dealt with 'on time' only if answered within 20 working days, others also count those answered within a 'permitted extension', sometimes without making clear that they are doing so.

The statistics for central government bodies are published together in a standardised form that avoids this problem.⁸⁶ So are Scottish public authorities' statistics, which the Scottish Information Commissioner publishes quarterly in a format that allows performance to be compared and underperformers to be readily identified.⁸⁷

Some councils' statistics for the same period appear to change:

- **Barking & Dagenham's** figures supplied to us showed that it had answered **82%** of requests within 20 working days in 2017/18, but a subsequent report on its website said it had answered **93%** in 20 working days during that period.⁸⁸ On querying this the council told us the latter figure was correct.
- **Croydon** supplied figures to us showing that it had answered **69%** of requests in 20 working days in 2017/18. However, an earlier report to Cabinet, published on its website, stated that it answered only **60.8%** of requests within 20 working days in that year.⁸⁹ The council explained such problems may be caused by departments answering requests on time but not notifying the FOI team of this until much later. Belated recognition that these requests had been dealt with on time may improve the reported figure.

In July 2018, the government published a revised statutory code of practice under section 45 of the FOI Act.⁹⁰ This states that all public authorities employing more than 100 full time equivalent staff should as a matter of best practice publish quarterly statistics on their FOI performance. The figures which the code says should be included are shown in *Figure 5*.

Recommendation 4: authorities should publish quarterly statistics on their FOI performance in accordance with the statutory guidance in the July 2018 Freedom of Information code of practice.

They should also publish (a) the actual time taken to respond to requests not answered within 20 working days, (b) the number of internal reviews carried out, the time taken to deal with them and their outcomes and (c) the number of complaints to the IC and tribunal appeals, with their outcomes.

⁸⁶ <https://www.gov.uk/government/collections/government-foi-statistics>

⁸⁷ <http://www.itspublicknowledge.info/ScottishPublicAuthorities/StatisticsCollection.aspx>

⁸⁸ London Borough of Barking & Dagenham, Audit and Standards Committee on 16 January 2019, Information Governance Annual Report, <https://modgov.lbbd.gov.uk/internet/documents/s128117/Report.pdf>.

⁸⁹ London Borough of Croydon, Cabinet meeting on 11 June 2018, Appendix 1 – Corporate Plan 2017-18 performance,

<https://democracy.croydon.gov.uk/documents/s7928/Appendix%201%20-%20Corporate%20plan%20AFC%202017-18%20performance.pdf>.

⁹⁰ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>.

Recommendation 5: authorities should link to their published FOI statistics and performance reports from the FOI page of their website.

Recommendation 6: the IC should follow the example of the Scottish Information Commissioner and obtain and publish a compilation of all authorities' compliance statistics. The use of online tools for the submission of statistics should allow this exercise to be automated.

8.5 Public authorities with over 100 Full Time Equivalent (FTE) employees should, as a matter of best practice, publish details of their performance on handling requests for information under the Act. The information should include:

- The number of requests received during the period;

The number of the received requests that have not yet been processed (you may also wish to show how many of these outstanding requests have extended deadlines or a stopped clock, e.g. because a fee notice has been issued);

The number of the received requests that were processed in full (including numbers for those that were met within the statutory deadline, those where the deadline was extended and those where the processing took longer than the statutory deadline);

The number of requests where the information was granted in full;

The number of requests where the information was refused in full (you may wish to separately identify those where this was because the information was not held);

- The number of requests where the information was granted in part and refused in part;

The number of requests received that have been referred for internal review (this needs only reporting annually).

8.6 It is for individual public authorities to decide whether they wish to publish more detailed information than that set out above (they may, for example, wish to show a breakdown of the exemptions they have used for refusing requests or to show a breakdown of the outcomes for their internal reviews).

Figure 5. Government guidance on the publication of FOI statistics. Extract from the Freedom of Information code of practice, published by the Secretary of State under section 45 of the FOI Act, July 2018.

Assisting requesters

The FOI Act requires public authorities to provide advice and assistance to people who make, or propose to make, requests for information.⁹¹ This is a crucial provision. If the public don't understand how to use the Act, the right of access may be of little benefit.

Contact details

All London councils' websites provide basic guidance on making requests. Typically, this explains what information can be sought, how a request can be made and by when the authority should respond.

But some make it difficult for requesters to contact them for assistance:

- Four councils (**Bromley, Enfield, Haringey** and **Redbridge**) do not publish an email address to which requests for information or advice can be sent. Instead, they provide a web form through which FOI requests can be made.
- More than half the councils (**19/34**) do not provide a telephone number for an FOI contact that requesters can call for assistance.⁹²

The IC's guidance recommends that such details be provided.⁹³ One of the IC's decision notices describes the difficulties faced by a sight impaired requester with no internet access who could not read the response to his request because, contrary to a prior agreement, it had not been set out in large type. In the absence of a contact phone number he had no easy way of contacting the authority to let it know of his difficulties.⁹⁴

A number of councils provide on-line request forms on their websites, but sometimes no other means of contacting their FOI team. **Enfield** encourages requests to be made via a web form but does not provide an FOI contact email or phone number, although its FOI Policy acknowledges '*the legislation does not oblige the requestor to submit the request on-line and the request is acceptable by post by email or fax*'.

While online request forms can be convenient for authorities, they may be less useful for requesters. If the system does not automatically send them a copy of their request they may have no precise record of its wording or date - essential if they need to chase the authority or challenge a refusal.⁹⁵

Appeal rights

The information provided to the public about appeal rights also varies:

- Only 4 out of 34 councils publish their target times for dealing with complaints on their web site.
- A quarter of councils (9/34) do not publish details of how to complain about a refusal on their website (though most provided this information when responding to our FOI requests).

⁹¹ FOI Act section 16. A similar duty is found in regulation 9(1) of the EIR.

⁹² Those not providing a phone number were: Barking & Dagenham, Barnet, Bexley, Brent, Bromley, Camden, Croydon, Enfield, Greater London Authority, Haringey, Harrow, Havering, Hounslow, Islington, Kensington & Chelsea, Kingston, Newham, Redbridge and Waltham Forest.

⁹³ The IC says authorities should proactively publish 'a contact address (including an email address where possible); a telephone number; ideally a named individual to help applicants direct their requests for information or assistance.' 'Duty to provide advice and assistance (section 16)', Version 1.1, 20160623, <https://ico.org.uk/media/for-organisations/documents/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf>.

⁹⁴ Decision Notice FS50654647, Cabinet Office, 23 March 2017.

⁹⁵ See Decision Notice FS50738437 of 18 May 2018, London Borough of Hackney, which refers to a request made in this way, as a result of which 'the complainant does not have an original copy of the request'. See also Decision Notice FS50775818 of 19 September 2018, London Borough of Haringey, which states 'As the request was submitted via an online portal he [the requester] does not have a copy of the precise request which was submitted'.

Requesters who are dissatisfied with an authority's response to their request are normally expected to ask it to reconsider by carrying out an 'internal review', and not complain to the IC until this has been done (unless the complaint is about delays).⁹⁶ The IC rejected over a third (159/429) of all complaints against London councils in 2016-17 because the requester had not followed this process.⁹⁷ It would be helpful if authorities highlighted their internal review procedures on their websites.

Recommendation 7: authorities should ensure that online request forms automatically send the requester an acknowledgement that includes the text of the request and its date of submission.

Recommendation 8: authorities should publish a phone number and email address to which requests for information and assistance can be made.

Recommendation 9: authorities should (a) explain the FOI complaints process on their websites, making it clear that the right of appeal to the IC is normally only available once internal review has been completed (unless the complaint is about a significant delay) and (b) state their target time for completing internal review.

Advice where requests are refused on cost grounds

Requests under the FOI Act can be refused if the estimated costs of responding exceed certain limits.⁹⁸ Where an authority refuses a request on cost grounds it must provide reasonable advice and assistance to help the applicant submit a reformulated request that *can* be answered within the limit, where this is feasible. It should, for example, explain what information *could* be provided within that limit or suggest how the request might be narrowed to reduce the cost. If it is not able to provide any information at all within the limit, it should say so.⁹⁹

The IC's decision notices provide examples of London councils that have satisfied this requirement:

⁹⁶ The IC has made clear that internal review is not necessary where the complaint is about delays. Decision Notice FS50587343 of 30 August 2016 dealt with a case where the requester had asked the Cabinet Office to carry out an internal review of its failure to respond to a request made six weeks earlier. The IC wrote: *'The Commissioner would not recommend complainants do this. She would encourage complainants to first seek informal resolution of the delay with the public authority (as the complainant did here). If this is unsuccessful, they should then report any protracted delays in response directly to her.'*

⁹⁷ Data extracted from ICO complaints and concerns datasets for the period April 2016 to March 2017, available from <https://ico.org.uk/about-the-ico/our-information/complaints-and-concerns-data-sets/>.

⁹⁸ FOI requests to councils and most other authorities can be refused if the estimated cost of establishing whether the information is held and if so locating, retrieving and extracting it would exceed £450. Officials' time is costed at a standard £25/hour, so requests can be refused where these likely would exceed 18 hours. For government departments, Parliament and the Welsh and Northern Ireland assemblies the figure is £600, corresponding to 24 hours. A different approach applies under the EIR: requests can be refused if the costs would make responding 'manifestly unreasonable'.

⁹⁹ ICO 'Requests where the cost of compliance exceeds the appropriate limit', Version: 1.2, 20150909, paragraph 59, https://ico.org.uk/media/1199/costs_of_compliance_exceeds_appropriate_limit.pdf.

- **Hammersmith & Fulham** refused a request about the sale of a council property arguing that one of the necessary searches would require it to examine over 4,500 emails, exceeding the cost limit. The council suggested that if the request was limited to any dedicated file on the sale held by the specific department responsible, it might be located within the cost limit. The IC found that this was reasonable advice and assistance.¹⁰⁰
- In another case **Hammersmith & Fulham** was asked for the number of requests to it for compensation for damage to vehicles and the number where legal action had been taken, with the outcomes in each case. It said that this would involve examining 57,000 enquiries over 10 years, substantially exceeding the cost limit. It advised the requester to narrow his request taking into account that such cases would have been handled by a number of different identified departments. The IC considered the explanation helpful, but said a request revised on these lines would still be liable to exceed the cost limit. The council should have indicated what information *could* be supplied within the limit. The requester later proposed to restrict his request just to cases involving legal action but the council said this too would exceed the cost limit. But it added that if this request was limited to those received during a *single year* it would be able to respond. The IC found this final suggestion constituted reasonable advice and assistance.¹⁰¹
- **Brent** was asked for 12 sets of figures about the handling of all FOI requests between 2005 and 2014. Some could only be obtained by separately examining each of 6,500 FOI replies, which would exceed the cost limit. However, the IC found that the council's response satisfied the duty to advise and assist as *'Where the Council believed that it did not hold information, it provided the complainant with an indication as to what similar information it did hold that could be provided. Where the Council believed that a response to a particular question would be likely to exceed the appropriate limit, it provided an indication of what information it believed could be provided within the appropriate limit.'*¹⁰²

Sometimes councils' advice and assistance has been found to fall short:

- **Lambeth** was asked how many of its employees had declared membership of organisations *'such as the Freemasons'*. The council said the information could be found in Declaration of Interest forms which were not held centrally but kept by line managers in a variety of different files. Locating them and extracting the information for all staff would exceed the cost limit. The council had advised the applicant to reduce the scope of his request without suggesting how. It later told the IC that it could provide the information for *'the top two management tiers'*. The IC did not accept that this was an adequate response, estimating that the council could provide details for some 2,000 employees within the cost limit. It ordered the council to assist the applicant in obtaining *'as much information of interest as is reasonable'*.¹⁰³

¹⁰⁰ Decision Notice FS50519215, London Borough of Hammersmith and Fulham, 31 March 2014.

¹⁰¹ Decision Notice, FS50584989, London Borough of Hammersmith and Fulham 13 January 2016.

¹⁰² Decision Notice FS50542440, London Borough of Brent, 16 December 2014.

¹⁰³ Decision Notice FS50558777, London Borough of Lambeth, 17 March 2015.

- **Hackney** was asked for any internal discussion over a 3 year period about the possibility of using certain parkland as the site for a temporary school. The council refused the request as ‘manifestly unreasonable’ under the EIR, estimating that the search would cost over £6,000. Both the IC and, on appeal, the First-tier Tribunal agreed. However, the tribunal was critical of the council’s failure to assist the requester. The official who handled the request had spoken to his predecessor about it but had not asked where any relevant information might be found. The sample search used to estimate the costs had been inadequate. The council’s searches had found a large number of documents which it said would each have to be read. It had not acknowledged that its document management system had advanced search functions which could have excluded ‘masses of irrelevant material’. The tribunal was left with ‘the clear impression that the approach adopted was that the Council had no obligation to either use the advanced search facility itself to reduce the number of “hits”, to obtain guidance from colleagues, or to give the Appellant sufficient information about the available tools to enable him to consider how the Request might be reduced in scope.’¹⁰⁴

Recommendation 10: where the volume of ‘hits’ turned up by an electronic search is too great to be examined without exceeding the FOI cost limit, authorities should consider whether the search is catching large amounts of irrelevant material. If so, they should consider whether that material can be excluded by adjusting the search terms (e.g. find documents containing the term “ABC” but not the term “XYZ”) and carry out that search if it allows the request to be answered within the cost limit. If that search runs the risk of excluding some relevant documents, the implications should be explained to the applicant who should be given the option of asking for it to be done.¹⁰⁵

FOI disclosure logs

A particularly valuable FOI resource is a ‘disclosure log’ of the FOI requests the authority has received and any information disclosed in response. These help to:

- Ensure **the public generally** benefits from information released to individual requesters.
- **Reduce the authority’s workload** - requesters who find the information online will not need to request it.
- **Encourage informed use of the Act** by illustrating what can be obtained and what is likely to be exempt. This may also help reduce unnecessary appeals.

¹⁰⁴ First-tier Tribunal, (General Regulatory Chamber) Information Rights, *Nick Rosen & Information Commissioner & London Borough of Hackney*, EA/2017/0047, decision of 15 August 2018.

¹⁰⁵ The Information Commissioner and tribunal are increasingly examining whether authorities have taken steps to exclude clearly irrelevant material from their searches. The Upper Tribunal has expressly encouraged them to ‘take a sceptical approach and require the public authority to provide persuasive evidence of how they undertook the [costs] estimate, with follow-up questions if necessary’. *Kirkham v Information Commissioner*, [2018] UKUT 126, paragraph 34.

- Demonstrate that the authority is **acting openly** which the IC says ‘helps build public trust in your organisation’.¹⁰⁶
- **Promote consistency**, and aid corporate memory, by discouraging authorities from withholding information they have previously disclosed.

Figure 6 shows that:

- Some councils publish comprehensive disclosure logs. **Barking & Dagenham**,¹⁰⁷ **Barnet**,¹⁰⁸ **Bexley**,¹⁰⁹ **Camden**,¹¹⁰ **Hackney**,¹¹¹ **Hammersmith & Fulham**,¹¹² **Haringey**,¹¹³ **Lambeth**¹¹⁴ and **Tower Hamlet**¹¹⁵ have disclosure logs which provide (i) all or most of the requests themselves (ii) the letters of response (iii) any disclosed information (iv) are searchable by date and keyword, and (v) are kept up to date.¹¹⁶ Most of these councils use a software package called ‘iCasework’ which provides an option to automatically publish any selected FOI responses on a disclosure log.
- However, almost two thirds of London councils (20/34) **do not publish any of the FOI disclosures they have made** – despite the potential benefits.
- Some have disclosure logs which are not kept up to date. As of December 2018 **Croydon** had not added anything to its disclosure log for 17 months, **Richmond** for two years and nine months and **Newham** for three years and nine months. **Brent**¹¹⁷ and **Redbridge**¹¹⁸ were committed to introducing disclosure logs but had not done so at the time of writing. A **Bromley** working group recommended the introduction of a disclosure log in 2011 to ‘*reduce demand on officer time*’ but that has not been done.¹¹⁹

¹⁰⁶ IC ‘Taking a Positive Approach to Information Rights’, v.1.1, 20121212, https://ico.org.uk/media/for-organisations/documents/1568/information_rights_top_tips.pdf.

¹⁰⁷ <https://www.lbbd.gov.uk/freedom-of-information>.

¹⁰⁸ <https://www.barnet.gov.uk/citizen-home/foi-requests.html>.

¹⁰⁹ <https://www.bexley.gov.uk/foidisclosurelog>.

¹¹⁰ <https://www.camden.gov.uk/ccm/navigation/council-and-democracy/publications-and-finances/freedom-of-information/>.

¹¹¹ <https://foi.infreemation.co.uk/hackney/>.

¹¹² <https://www.apps12.lbhf.gov.uk/cus/servlet/ep.appSearch?public=true&byCaseType=false&byKeyword=true&max=20&drilldown=false&title=Disclosure%20log>.

¹¹³ <https://www.haringey.gov.uk/contact/information-requests/freedom-information/common-information-requests#search>.

¹¹⁴ <https://www.lambeth.gov.uk/elections-and-council/foi/find-answers-to-freedom-of-information-foi-requests>.

¹¹⁵ <http://www.towerhamletsfoi.org.uk/display.asp>.

¹¹⁶ On 15/8/2018, seven of the eight disclosure logs referred to in this paragraph had entries added in the last week. The last entry on Haringey’s disclosure log had been added approximately 10 weeks earlier.

¹¹⁷ Brent’s Corporate Performance Scorecard report from December 2017 states: ‘*Work has proceeded on the setting up of a Disclosure Log and the publishing of certain Business Rates data. These should see a further improvement in time, as there should be less work for some of the services as those seeking information will be referred to where it is already published*’ (Appendix A, pg.24).

¹¹⁸ Redbridge says it plans to expand the list of FOI requests on its DataShare site to include some of the responses. See <https://www.redbridge.gov.uk/have-your-say/freedom-of-information/disclosure-log/>.

¹¹⁹ A Report of the New Technology Working Group of the Executive and Resources Policy Development and Scrutiny Committee in May 2011 stated: ‘*Many public bodies now publish all FOI requests online in a disclosure log. Once information is publicly available an FOI request can be rejected on the basis that the information is already easily available and the person requesting the information can be directed towards the relevant page. The Group felt that this simple process could save officers a significant amount of time.*’

<https://cds.bromley.gov.uk/documents/s8214/ER%20PDS%20190511%20New%20Technology%20Working%20Group%20Report.pdf>.

- A few councils publish lists of the requests they have received without publishing any of the disclosed information. **City of London** and **Redbridge** list what has been asked for and say whether it was disclosed. Although requesters could not download the disclosed information directly, they could ask the council for it. **Merton** and **Wandsworth** have published lists of requests *without* indicating if they had been complied with or not. Anyone asking for previously requested information might wait for an answer only to be told that the previous request had been refused – a waste of the requester’s and council’s time. **Wandsworth’s** list of requests (which it describes a ‘disclosure log’) has not been updated for some time. The council plans to resume publishing it and hopes that this together with a new case management system will help reduce its volume of requests.¹²⁰ That would only be feasible if the council begin publishing the disclosed information itself.

One of our requests illustrated how a disclosure log might help public authorities. When **Richmond** supplied its FOI statistics to us in 2016 it withheld the precise number of requests refused as vexatious in certain months, maintaining that where these numbers were very low they could help identify the requesters. In certain conditions, disclosing the actual number of individuals in a very small group could, if combined with other available information, point to an individual’s identity - but we could not see how this could occur in this case.¹²¹ We asked Richmond to reconsider and it accepted our argument, disclosing the previously withheld figures. But when we made a follow-up request in 2018 for more recent statistics, it again refused to disclose the equivalent numbers citing the same argument. Authorities need some way of preserving their corporate memory. A disclosure log may help them do so.

Recommendation 11: authorities should publish and keep up to date a disclosure log. This should (i) describe the requests they have received, and (ii) the outcomes and (iii) include any released information.

¹²⁰ Wandsworth Borough Council, Finance and Corporate Overview and Scrutiny Committee on 22nd November 2018, paper no. 18-430.

¹²¹ For example, if the answer to an FOI request about the number of staff dismissed for misconduct during the year is two and it is known that only two people had left during the year, the disclosure would reveal that the two people who had left had been dismissed for misconduct. What makes this ‘personal data’ is that the anonymous statistic (2) can be combined with other information (who had left during the year) which is known to some people, and point to the identity of those involved. In the case of the small number of requests refused as vexatious it was difficult to see what other available information could identify anyone even if combined with the disclosed figure.

| Authority | [1] FOI requests published | [2] Up to date | [3] Responses published | [4] Searchable |
|----------------------|----------------------------|----------------|-------------------------|----------------|
| Barking & Dagenham | ● | ● | ● | ● |
| Barnet | ● | ● | ● | ● |
| Bexley | ● | ● | ● | ● |
| Camden | ● | ● | ● | ● |
| Hackney | ● | ● | ● | ● |
| Hammersmith & Fulham | ● | ● | ● | ● |
| Haringey | ● | ● | ● | ● |
| Lambeth | ● | ● | ● | ● |
| Tower Hamlets | ● | ● | ● | ● |
| GLA | ● | ● | ● | ● |
| Harrow | ● | ● | ● | ● |
| Croydon | ● | ● | ● | ● |
| Newham | ● | ● | ● | ● |
| Richmond | ● | ● | ● | ● |
| City of London | ● | ● | ● | ● |
| Merton | ● | ● | ● | ● |
| Redbridge | ● | ● | ● | ● |
| Wandsworth | ● | ● | ● | ● |
| Brent | ● | ● | ● | ● |
| Bromley | ● | ● | ● | ● |
| Ealing | ● | ● | ● | ● |
| Enfield | ● | ● | ● | ● |
| Greenwich | ● | ● | ● | ● |
| Havering | ● | ● | ● | ● |
| Hillingdon | ● | ● | ● | ● |
| Hounslow | ● | ● | ● | ● |
| Islington | ● | ● | ● | ● |
| Kensington & Chelsea | ● | ● | ● | ● |
| Kingston | ● | ● | ● | ● |
| Lewisham | ● | ● | ● | ● |
| Southwark | ● | ● | ● | ● |
| Sutton | ● | ● | ● | ● |
| Waltham Forest | ● | ● | ● | ● |
| Westminster | ● | ● | ● | ● |

Figure 6: FOI disclosure logs

Column 1: Are the FOI requests themselves published? green = 50% or more published; yellow = less than 50% published (applies to Croydon, GLA & Harrow); or nothing added for more than 12 months as of July 2018 (Croydon, Newham, Redbridge, Richmond & Wandsworth); red = none published.

Column 2: Is the disclosure log up to date? green = updated within last 6 months as of July 2018; yellow = updated within 6-12 months; red = nothing added for more than 12 months (or no disclosure log).

Column 3: Are the responses to requests published? green = 50% or more published; yellow = less than 50% published; red = none published.

Column 4: Is the disclosure log searchable? green = searchable by text and date; yellow = searchable by predefined category only; red = not searchable or no disclosure log.

Internal guidance

The IC expects local authorities to pro-actively publish their policies and internal guidance, which would include those on FOI.¹²² Although most London councils have these only a few appear to publish them.

- **Barnet** publishes a detailed toolkit for staff¹²³ as well as its FOI policy¹²⁴
- **Haringey** publish its FOI/EIR procedures¹²⁵
- Other councils publishing their *policies* include **Barking & Dagenham**,¹²⁶ **Islington**,¹²⁷ and **Westminster**¹²⁸
- **Bexley's** staff guidance was available online at the time we began our research in 2016 but has since been removed.

Our 2016 FOI request to councils asked them for any *unpublished* internal guidance. Nearly all London councils provided at least some, except for:

- **Brent** which told us its guidance had been withdrawn and was being reviewed.
- **Hillingdon** which said its guidance had been produced in 2006 and had not been updated. Our request had asked for 'current' guidance - which would have included any out of date guidance still in use.
- **Westminster** told us it had no discrete guidance as such but provided guidance to staff via online training and other means.
- **Newham** supplied no guidance but told us their FOI staff had all received training.
- **Ealing** supplied no guidance and did not reply to our follow-up question asking them to confirm that none existed.

Positive commitments

In general, London councils' policies and guidance advised staff to adopt a pro-disclosure standpoint. Examples included:

¹²² ICO 'Definition document for principal local authorities', Information Commissioner's Office, Version 3.1, 20130901, https://ico.org.uk/media/1262/definition_document_local_authorities.pdf.

¹²³ London Borough of Barnet, 'FOI toolkit' available from <https://www.barnet.gov.uk/citizen-home/council-and-democracy/policy-and-performance/information-management-policies.html>.

¹²⁴ London Borough of Barnet, 'EIR and FOI policy' available from <https://www.barnet.gov.uk/citizen-home/council-and-democracy/policy-and-performance/information-management-policies.html>.

¹²⁵ London Borough of Haringey, 'Freedom of Information (FOI) and Environmental Information Regulations (EIR) Procedure', https://www.haringey.gov.uk/sites/haringeygovuk/files/foi_eir_procedure-v13.pdf.

¹²⁶ London Borough of Barking & Dagenham, 'Freedom of Information Policy', https://www.lbbd.gov.uk/sites/default/files/attachments/Freedom%20of%20Information%20Policy_0.pdf.

¹²⁷ London Borough of Islington, 'Access to Information Policy', available from <https://www.islington.gov.uk/about-the-council/information-governance/freedom-of-information>.

¹²⁸ 'Freedom of Information Policy for Westminster City Council', version 1.5. http://www3.westminster.gov.uk/docstores/publications_store/WCC%20FOI%20Policy%20Approved%20April%202011.docx.

- **Enfield:** *'LBE is committed to openness about the way in which it operates and makes decisions and there will be a presumption in favour of the disclosure of information where ever possible...Handling requests for information is an important front line service and is everyone's responsibility. All employees will be expected to play their part.'*¹²⁹
- **Islington:** *'The objectives of this policy are to: a) Promote greater openness and increased transparency of decision-making; b) Build the trust and confidence of the public and stakeholders; and c) Provide clarity on the way in which the council will meet its duties under access to information legislations, guidance and best practice.'*¹³⁰
- **Lambeth:** *'The default position is to disclose information unless there is a good reason not to. Our role is to challenge, promote disclosure and make sure that exemptions and exceptions are properly and robustly applied. That is not to say that we should automatically take the opposing view. But where an exemption or exception is proposed we need to make sure that it is being applied correctly in terms of the FOI or EIR.'*¹³¹

Inaccuracies

Some councils' guidance was detailed and knowledgeable showing considerable awareness of the IC's guidance and FOI case law.

However, in some instances the guidance, though generally correct, inaccurately described specific provisions in ways that might lead to requests being wrongly refused or unjustified charges being made.

Charges

Under the FOI Act, the only charges that requesters can normally face are for 'disbursements' such as photocopying, printing or postage.

- **Brent** says it charges *'£25 per hour for staff time if it is necessary for a member of staff to accompany somebody who wants to inspect records.'*¹³²

Such a charge would not be lawful. Regulations under the FOI Act expressly prevent any charge for staff time being made.¹³³ The EIR prohibit any charge for allowing a requester to inspect records.¹³⁴

The cost limit

Councils can refuse FOI requests if their estimated costs in answering would exceed £450. Only the cost of establishing whether the information is held and if so locating, retrieving and extracting it can count towards this limit:¹³⁵

¹²⁹ London Borough of Enfield, 'Freedom of Information Policy', version 1.3, 14 October 2013.

¹³⁰ London Borough of Islington, Access to Information Policy, version 4.0, August 2015.

¹³¹ London Borough of Lambeth, 'FOI Caseworker Guidance', version 4.23, updated September 2015.

¹³² <https://www.brent.gov.uk/your-council/transparency-in-brent/data-protection-and-freedom-of-information/freedom-of-information/?tab=fees>.

¹³³ Regulation 6(4) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

¹³⁴ Regulation 8(2)(b) of the EIR.

¹³⁵ Staff time is charged at a standard £25 an hour rate, so the £450 limit equates to 18 hours of staff time. This limit applies to all public authorities other than government departments, Parliament and the devolved assemblies, where the limit is £600 (24 hours staff time). A cost only applies to requests under the FOI Act, not to EIR requests.

- **Westminster** says that in calculating whether the cost limit would be reached it includes *'the time taken...to edit information, e.g. if exemptions apply to part of the information contained in a record.'*¹³⁶
- A template letter produced by **Waltham Forest** also suggests the cost of time spent blocking out exempt information is counted towards the cost limit.¹³⁷

In fact, the time spent editing out ('redacting') exempt information *cannot* be included when calculating whether the Act's cost limit would be reached.¹³⁸ If these councils' guidance was followed, some requests which should be answered would be wrongly refused on cost grounds.

- **Bexley's** guidance to staff says the costs that can be included when calculating whether the cost limit would be reached include the cost of *'printing, copying, scanning and postage of information'*.¹³⁹

These costs do not count towards the cost limit. These are costs which a requester can be asked to *pay*, a different matter.

Time limits

- **Waltham Forest's** procedures stated that: *'All requests received after 5pm on any given working day are logged as received on the next working day.'*¹⁴⁰

In fact, requests must be treated as received on the day they are *actually* received, with the day ending at midnight.¹⁴¹ Day 1 of the 20 working day period is the first working day after the day on which it was received. The council's approach would allow it *21 working days* to reply to requests received outside working hours. Thus, if a request is received at 6 pm on a Monday, the first of the 20 working days should be the Tuesday, but the council would consider it to be Wednesday. Several other London councils adopted a similar approach and added an extra day to the deadline for responding to our FOI request - and no doubt to others' as well.

- **Croydon's** website advises that *'School-related enquiries will be dealt with within 20 working school days'* instead of the usual 20 working days.¹⁴²

FOI requests to a local authority are *not* entitled to this extension, even if they relate to schools. The extension only applies to requests made *to a school itself* and allows extra time to deal with those made during or just before school holidays.¹⁴³

¹³⁶ Westminster City Council, 'FOI Charging Policy - Sept 2008', http://transact.westminster.gov.uk/publications/publications_detail.cfm?ID=3492.

¹³⁷ The letter explains 'Once this information is located, we would have to retrieve/extract the relevant information and in some cases, redact (block out) information which is not relevant, or which is exempt under the FOIA. Our estimate of the total time for compliance with your request is around [insert estimated time required to comply with the request].' London Borough of Waltham Forest, 'Freedom of Information Procedures', updated November 2014, Appendix 14 – Unable to comply with request as aggregation takes it over cost limit.

¹³⁸ This has been confirmed by the High Court in *Chief Constable of South Yorkshire Police & Information Commissioner*, [2011] EWHC 44 (Admin)

¹³⁹ 'Freedom of Information requests Procedures and staff guidance notes', Bexley Council, Version 1 July 2013, page 7.

¹⁴⁰ London Borough of Waltham Forest, 'Freedom of Information Procedures', updated November 2014.

¹⁴¹ The IC's guidance states: 'For the purposes of the Act, a 'working day' will end at midnight regardless of the opening hours of the authority. Therefore, any request which arrives before that time should be regarded as having been received that day.' 'Time for Compliance under the Freedom of Information Act (Section 10)', Version 1.1, 20150720, <https://ico.org.uk/media/1165/time-for-compliance-foia-guidance.pdf>.

¹⁴² The FOI advice on its website states: 'The council has 20 working days from receipt of the request to respond - either by providing the information requested or refusing the request. School-related enquiries will be dealt with within 20 working school days.' <https://www.croydon.gov.uk/democracy/data-protection-freedom-information/foia/foi>.

¹⁴³ The Freedom of Information (Time for Compliance with Request) Regulations 2004.

- **Lambeth's** guidance on the EIR said: '*If needed, you should claim for an extension of time on the grounds that you need more time to consider the public interest test.*'¹⁴⁴

No such provision applies under the EIR. An extension to consider the public interest test is only permitted under the FOI Act.

- **Lambeth's** guidance on an EIR exception for information which an authority does not hold described an entirely unrelated FOI exemption for information intended for future publication.¹⁴⁵

Factual information

- **Bexley**¹⁴⁶ and **Sutton**,¹⁴⁷ both advised staff to only disclose '*factual*' information, with Sutton expressly advising against the release of '*commentary or opinion*'.

In fact, the right of access applies to *any* recorded information including recorded comments and opinions. The correct advice would be to say that there is no obligation to offer comments or opinions in response to an FOI request if these do not *already exist* in recorded form.

Exemptions

An FOI exemption may apply to information which an authority had *already decided* to publish before receiving the request.¹⁴⁸

- **Bexley's** guidance wrongly suggested that information could be withheld if the authority is merely *considering* the possibility of publishing it in future.¹⁴⁹
- **Hackney's** wrongly stated that the exemption applies to '*Information not yet earmarked for publication, but likely to be done at a future date*' (*emphasis added*)¹⁵⁰

If, at the time of a request, an authority is *considering* publishing the information but has not definitely decided to do so, this exemption cannot be used.¹⁵¹

Some of the Act's exemptions only apply if disclosure would 'prejudice' specified interests such as law enforcement or commercial interests.

- **City of London** states that a '*Prejudice Test does not apply*' to the FOI exemption for information likely to 'endanger' health and safety.¹⁵² In fact, the IC's guidance suggests that the terms 'endanger' and 'prejudice' are equivalent (though the tribunal has recently warned against treating them as identical).¹⁵³

¹⁴⁴ London Borough of Lambeth, 'FOI Caseworker Guidance', version 4.23, updated September 2015.

¹⁴⁵ London Borough of Lambeth, 'FOI Caseworker Guidance', version 4.23, updated September 2015.

¹⁴⁶ London Borough of Bexley, 'Freedom of Information requests Procedures and staff guidance notes', Version 1, July 2013.

¹⁴⁷ London Borough of Sutton intranet staff guidance

¹⁴⁸ This is just one element of the exemption (in section 22 of the Act) which also requires that it be *reasonable* for the authority to withhold it until the date of publication and that public interest balance favours withholding it till then.

¹⁴⁹ London Borough of Bexley, 'Freedom of Information requests Procedures and staff guidance notes', Version 1, July 2013.

¹⁵⁰ London Borough of Hackney, 'Guidance on Freedom of Information and Environmental Information Regulations requests', January 2015.

¹⁵¹ ICO 'Information intended for future publication and research information (sections 22 and 22A)', Version 1.1, 20170818,

<https://ico.org.uk/media/1172/information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf>.

¹⁵² City of London guidance on FOI Exemptions.

¹⁵³ ICO, 'Health & Safety (section 38)', 20160527, Version: 1.0. The First-tier Tribunal has cautioned against treating 'endanger' and 'prejudice' as identical, arguing that the distinctive implications of the term 'endanger', particularly in relation to an individual's mental health, should be recognised. EA/2017/0087, Andrew Lownie & Information Commissioner & The National Archives & Foreign and Commonwealth Office, 12 July 2018.

- The EIR contain an exception for ‘internal communications’. **Redbridge** says this would protect, ‘information between the Environment Agency and the Council’.¹⁵⁴

This is incorrect: the provision only applies to communications *within* a public authority not to those *between* authorities.¹⁵⁵

- **Harrow’s** guidance incorrectly advises staff that requests can be refused ‘*Where the wording of the request is identical to a previous request and it is asking for the same information (i.e. information already provided or refused)*’ (emphasis added).¹⁵⁶

This is incorrect. The relevant provision only applies where the information has previously been *supplied* not where a previous request for it has been *refused*.¹⁵⁷

Recommendation 12: authorities should publish their FOI guidance to staff, linking to it from their FOI web page.

Recommendation 13: authorities should ensure that their guidance is accurate and is updated periodically in light of new case law and changes to the Information Commissioner’s guidance.

Special clearance procedures

The FOI Act is frequently described as ‘applicant blind’. Authorities must consider whether requested information can be made *public* not whether it should be disclosed to the particular *applicant*. With limited exceptions, the requester’s identity and purpose is irrelevant.¹⁵⁸

Some London councils require FOI responses on sensitive or complex issues to be signed off by the departmental director or other senior official responsible for the area of work. Many also involve their press office when responding to journalists’ requests:

¹⁵⁴ London Borough of Redbridge, ‘Environmental Information Regulations Policy’, Version 1.0, May 2013, page 7.

¹⁵⁵ The IC’s guidance says: ‘Essentially, an internal communication is a communication that stays within one public authority...Communications between other public authorities (eg between central government and a local authority, or between two local authorities) will not constitute internal communications.’ However, communications between different government departments are treated as internal as a result of regulation 12(8). ‘Internal communications (regulation 12(4)(e))’, Version 3, 20130319, https://ico.org.uk/media/for-organisations/documents/1634/eir_internal_communications.pdf.

¹⁵⁶ London Borough of Harrow, ‘Freedom of Information and Environmental Information Regulations Policy and Procedure’, Final Version 1.0, page 18.

¹⁵⁷ The IC’s guidance on this provision (section 14(2) of the FOI Act) says: ‘Section 14(2) may only be applied when...the authority has previously provided the information to the requester or confirmed that it is not held in response to the earlier FOIA request’. ‘Dealing with repeat requests (section 14(2))’, Version 1.2, 20151119, <https://ico.org.uk/media/for-organisations/documents/1195/dealing-with-repeat-requests.pdf>.

The exemption is subject to the Act’s public interest test and does not apply where a reasonable interval has passed since the previous request was complied with.

¹⁵⁸ One situation where the applicant’s identity may affect the outcome is where the request is potentially vexatious. In this case an authority is entitled to consider whether it forms part of a disproportionately burdensome pattern of requests from the same requester. The applicant’s identity will also be relevant where someone asks for their own personal information as such information is exempt under FOI but potentially available to that person under the Data Protection Act or GDPR. In addition, the FOI Act exemption for information which is reasonably accessible to the applicant takes account of the particular applicant’s actual circumstances.

- Internal guidance used by **Camden**,¹⁵⁹ **Hackney**,¹⁶⁰ **Haringey**,¹⁶¹ **Hammersmith & Fulham**,¹⁶² **Hounslow**,¹⁶³ **Lambeth**,¹⁶⁴ **Merton**¹⁶⁵ and **Tower Hamlets**¹⁶⁶ amongst others said that media requests should be copied to the press office. Some guidance also says that the press office must clear any response before release, though this may be implicit under other councils' procedures too.

Some councils included groups other than journalists in their special clearance procedures.

- **Barnet** specifies that not just press requests but those from '*bloggers and campaigners*' should also be sent to the Communications team, along with any other requests that '*may attract media attention*'.

Significantly, Barnet adds that:

*'The request should be dealt with as a standard request, with information gathered, a response drafted and any exemptions/exceptions applied **exactly the same** as for any other request.'*¹⁶⁷
(original emphasis)

Other councils throw the net over an even wider range of requesters. **Bromley's** draft guidance advised staff to treat requests from a wide variety of requesters as 'sensitive':

- '*A request may be deemed sensitive because of:*

Who it comes from e.g.

- *a journalist/news agency/media or political researcher;*
- *high profile campaign/pressure group like the Tax Payers Alliance, Big Brother Watch, or whatdotheyknow, as well as established local groups;*
- *or an individual known to the Council through frequent and sustained use of our feedback mechanisms including FOI, complaints, public questions at meetings, petitions, the website, etc*
- *The subject matter i.e. it is a hot topic locally/nationally e.g. members' expenses.*

*It is possible any response issued may find its way beyond the applicant into a wider arena and affect public perception. Consequently, responses to sensitive requests must be considered from a reputation management perspective, as well as ensuring we have met our statutory responsibilities.'*¹⁶⁸ (emphasis added)

¹⁵⁹ London Borough of Camden, 'Information in Camden', Version 3.0, 23 March 2015.

¹⁶⁰ London Borough of Hackney, 'Guidance on Freedom of Information and Environmental Information Regulations requests', January 2015.

¹⁶¹ London Borough of Haringey 'Freedom of Information (FOI) and Environmental Information Regulations (EIR) Procedure', version last updated February 2012, page 6.

¹⁶² London Borough of Hammersmith & Fulham, 'Request for Information – iCasework workflow', Version 1.1.

¹⁶³ London Borough of Hounslow, 'Freedom of Information and Environmental Information Policy', version 2.3, 25 March 2015, page 5.

¹⁶⁴ London Borough of Lambeth, 'FOI Caseworker Guidance', version 4.23, updated September 2015.

¹⁶⁵ Freedom of Information guidance on Merton Council intranet.

¹⁶⁶ London Borough of Tower Hamlets, 'Guidance for Handling Information Requests', version 1.2, April 2015.

¹⁶⁷ London Borough of Barnet, 'Freedom of Information Toolkit', V.2, May 2013, page 18.

¹⁶⁸ London Borough of Bromley, Draft Dealing With Sensitive FOI Requests, 20/01/12.

The council's template for handling sensitive requests suggests that a draft response should be circulated to the relevant chief officer for clearance alerting him or her to the sensitivity by a statement such as:

- 'Could you review and advise if you are agreeable for me to send out the spread sheet to the requester *who I suspect could be a journalist*' (emphasis added).¹⁶⁹

Bromley's reference to 'reputation management' is potentially troubling. Reputation management should not affect FOI decisions. It is possible that the impact of disclosure on a body's reputation could trigger an FOI exemption. For example, revealing unconfirmed suspicions about a supplier's conduct might engage the FOI Act exemption for prejudice to commercial interests (though the final decision would also have to reflect the public interest in disclosure). However, unless disclosure is likely to trigger an exemption, the protection of reputation should not be a factor in FOI decisions.

Harrow's guidance says:

- '*Any controversial requests or requests to do with councillors, political groups, or other requests, which may be politically sensitive, must be sent to the Director of Legal & Governance Services before the request can be progressed.*'¹⁷⁰

Another document supplied by the council advised staff to consider whether:

*'releasing (or withholding) information...could have wider implications...This will be especially important if there is a prospect that the response may draw criticism or cause embarrassment'.*¹⁷¹
(emphasis added)

The possibility of embarrassment or criticism, like concerns about reputation management, should not influence FOI decisions.

Lambeth's guidance advises caseworkers to prime the business area dealing with the request about any special handling circumstances they should be aware of. It also suggests that the caseworker may want to:

- '*Google the requestor to understand who is making the request, why and assess the likely impact to the Council (e.g. political, media, legal, commercial, personal data).*'¹⁷² (emphasis added)

This went further than any other London council in its concern with the requester's identity.

Waltham Forest's guidance refers to 'High Priority' requests, which it says:

- include media requests, those relating to '*controversial issues or campaigns (e.g. a EDL march)*', those that could lead to individuals being identified, those that are '*part of a series of requests*' and those relating '*high level strategies and plans*'. Responses to such requests must be sent to a Management Board member and the Deputy Head of Strategy & Communications for approval at least 5 days before the deadline for a response, with the deadline clearly specified in the subject line.

¹⁶⁹ London Borough of Bromley, FOI 10913, Standard Wording Templates.

¹⁷⁰ London Borough of Harrow, 'Freedom of Information and Environmental Information Regulations Policy and Procedure', Final Version 1.0, page 6

¹⁷¹ 'Guidance on the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 in relation to Planning and Building Control'.

Document supplied by London Borough of Harrow from its intranet guidance for staff use.

¹⁷² London Borough of Lambeth, FOI caseworker guidance v4.23, updated September 2015.

However, it describes the purpose of the exercise in more nuanced terms, which it says is to ensure that:

- *‘Responses are lawful and complete, including obtaining advice where appropriate;*
- *Where appropriate, responses provide additional information that sets “bare” requested information in context and avoids misinterpretation of information;*
- *There is coordination between services where a request covers a number of areas; and*
- *Notifies key services (e.g. Communications) and Management Board or members about the request in case of further requests or publication.’*

Enfield’s policy was the one that most explicitly respected the FOI principles. It stated:

- *‘If a contentious or novel request, which may be the subject of media interest, is received it should be referred immediately to the Press Office Manager...so that they are aware. The responsibility for dealing with the request remains with the service/s that possesses the information.*

*The Press Manager should also have sight of the final response before despatch for comment and advice. **The Press Manager will only be able to provide assistance on the phrasing of the response and cannot advise you on the actual content (ie the raw information). The substance of the response is determined solely by the request itself; the information that is actually held and any exemptions that may apply.*** (emphasis added)¹⁷³

Nothing in the Act prevents authorities providing additional explanation when disclosing information to journalists or anyone else. Equally, authorities are entitled to notify affected departments of disclosures on which they may be asked to comment.

However, some of guidance described here oversteps the mark by focusing on the requester rather than the request. This raises the question of whether the level of disclosure is improperly influenced by the requester’s identity, and whether these special clearance procedures cause extra delay to responses.

In Scotland, the issue has been investigated by the Scottish Information Commissioner (SIC) who has examined the special clearance procedures used in dealing with requests from the media, Members of the Scottish Parliament and political researchers.

The SIC reported in June 2018 that:

‘There was evidence that, in 2015/16...media requesters were significantly less likely to receive information, compared to other requesters.’

‘in 2016/17 the number of original decisions in journalists’ cases which were overturned or partially upheld on review was considerably higher than the norm’

*‘The proportion of late responses and failures to respond was considerably higher for journalists, particularly in 2015/16 and 2016/17.’*¹⁷⁴

The report attributed the extra delays faced by journalists to *‘the additional layer of clearance’* used in handling media requests which it concluded was *‘inconsistent with the applicant-blind principle of FOI legislation’*. It recommended that the Scottish Government:

¹⁷³ London Borough of Enfield, Freedom of Information Policy, 14.10.2013.

¹⁷⁴ Scottish Information Commissioner, Intervention Report - Scottish Government, 13 June 2018.

'ends its practice of treating journalists, MSPs and political researchers differently when processing requests for information because of who or what they are'

The report also found that these problems had greatly reduced by 2017/18, probably as a result of earlier SIC reports on the issue. However, the number of refusals overturned by the Scottish Government at internal review, was still somewhat higher for journalists than for others, suggesting that their requests were still more likely to be incorrectly refused t the outset than those of other requesters.

Anyone receiving information under FOI is entitled to publicise it and the means of doing so are now so widely accessible, that there is no reason for authorities to differentiate between journalists or campaigners and anyone else. The outcome should be the same whether the requester is a tireless activist or a reserved recluse. Decisions should depend on the likely effect of disclosure to the public not the requester's perceived readiness to publicise the material.

This study does not reveal whether special clearance procedures for media or others have led to the unjustified withholding of information. However, the focus of some guidance on the requester's identity raises this possibility.

Most of the above guidance stresses that any input from those asked to clear a draft disclosure must be given very quickly so that the statutory response period is not exceeded.

However, an official from Lewisham council which had been late in responding to our request told us that they were *'waiting for clearance from a manager'*. A response wasn't received for a further 7 weeks, an indication that such clearance procedures may be part of the delay problem described in this report.

Recommendation 14: authorities should ensure that their request handling procedures do not lead to less favourable treatment of journalists or requesters likely to publicise disclosures, either in terms of the content or promptness of the response.

Recommendations

1. Authorities should report publicly every quarter on the number of requests not answered within the required time scale, setting out the causes of the delay and the steps being taken to address them.
2. The IC should make clear that authorities which fail to respond to or even acknowledge her emails asking them to deal promptly with an overdue request (as some London councils have done) will make themselves prime candidates for further enforcement action.
3. The IC should reinstate its lapsed 2010 enforcement policy, including the monitoring of underperforming authorities, to ensure that authorities answer at least 90% of requests on time. It should demonstrate a readiness to issue Enforcement Notices where persistent delays continue.
4. Authorities should publish quarterly statistics on their FOI performance in accordance with the statutory guidance in the July 2018 Freedom of Information code of practice.
They should also publish (a) the actual time taken to respond to requests not answered within 20 working days, (b) the number of internal reviews carried out, the time taken to deal with them and their outcomes and (c) the number of complaints to the IC and tribunal appeals, with their outcomes.
5. Authorities should link to their published FOI statistics and performance reports from the FOI page of their website.
6. The IC should follow the example of the Scottish Information Commissioner and obtain and publish a compilation of all authorities' compliance statistics. The use of online tools for the submission of statistics should allow this exercise to be automated.
7. Authorities should ensure that online request forms automatically send the requester an acknowledgement that includes the text of the request and its date of submission.
8. Authorities should publish a phone number and email address to which requests for information and assistance can be made.
9. Authorities should (a) explain the FOI complaints process on their websites, making it clear that the right of appeal to the IC is normally only available once internal review has been completed (unless the complaint is about a significant delay) and (b) state their target time for completing internal review.
10. Where the volume of 'hits' turned up by an electronic search is too great to be examined without exceeding the FOI cost limit, authorities should consider whether the search is catching large amounts of irrelevant material. If so, they should consider whether that material can be excluded by adjusting the search terms (e.g. find documents containing the term "ABC" but not the term "XYZ") and carry out that search if it allows the request to be answered within the cost limit. If that search runs the risk of excluding some relevant documents, the implications should be explained to the applicant who should be given the option of asking for it to be done.
11. Authorities should publish and keep up to date a disclosure log. This should (i) describe the requests they have received, and (ii) the outcomes and (iii) include any released information.
12. Authorities should publish their FOI guidance to staff, linking to it from their FOI web page.
13. Authorities should ensure that their guidance is accurate and is updated periodically in light of new case law and changes to the Information Commissioner's guidance.
14. Authorities should ensure that their request handling procedures do not lead to less favourable treatment of journalists or requesters likely to publicise disclosures, either in terms of the content or promptness of the response.

Appendices

Appendix 1. Number of FOI requests received by London councils

| Local Authority | 2017/18 or 2017* | 2016/17 or 2016* |
|--------------------------|------------------|------------------|
| Barking & Dagenham | 1594 | 1478 |
| Barnet | 1731 | 2097 |
| Bexley | 1528 | 1567 |
| Brent | 1814 | 1702 |
| Bromley | 1598 | 1528 |
| Camden | 1889 | 2028 |
| City of London | 1403 | 1354 |
| Croydon* | 1783 | 1704 |
| Ealing* | 1878 | 1719 |
| Enfield | 1318 | |
| Greater London Authority | 934 | 819 |
| Greenwich* | 1904 | |
| Hackney | 1954 | 1844 |
| Hammersmith & Fulham | 1648 | 1627 |
| Haringey | 1352 | 1471 |
| Harrow | 1404 | 1507 |
| Havering* | 1877 | 1764 |
| Hillingdon | 1685 | 1598 |
| Hounslow* | 2166 | 1900 |
| Islington | 1973 | 1917 |
| Kensington & Chelsea* | 1999 | 1598 |
| Kingston | 1538 | 1579 |
| Lambeth | 2362 | 2206 |
| Lewisham | 1554 | 1567 |
| Merton | 1795 | 1633 |
| Newham | 1858 | 1943 |
| Redbridge | 1682 | 1608 |
| Richmond | 1895 | 1634 |
| Southwark | 2269 | 1927 |
| Sutton | 1635 | 1448 |
| Tower Hamlets | 2319 | 2191 |
| Waltham Forest | 2156 | |
| Wandsworth | 1888 | 1810 |
| Westminster | 1872 | 1883 |
| Total | 60255 | 52651 |

Appendix 2. Compliance with FOI time limits

| Local Authority | 2017/18 or 2017* | 2016/17 or 2016* |
|--------------------------|------------------|------------------|
| Barking & Dagenham | 93% | 48% |
| Barnet | 96% | 97% |
| Bexley | 82% | 78% |
| Brent | 91% | 96% |
| Bromley | 64% | 70% |
| Camden | 85% | 92% |
| City of London | 97% | 99% |
| Croydon | 69% | 76% |
| Ealing* | 89% | 92% |
| Enfield | 66% | 66% |
| Greater London Authority | 90% | 92% |
| Greenwich* | 90% | |
| Hackney | 66% | 67% |
| Hammersmith & Fulham | 89% | 94% |
| Haringey | 83% | 87% |
| Harrow | 68% | 84% |
| Havering* | 83% | 90% |
| Hillingdon | 88% | 97% |
| Hounslow* | 60% | 42% |
| Islington | 80% | 73% |
| Kensington & Chelsea* | 75% | 79% |
| Kingston | 82% | |
| Lambeth | 87% | 76% |
| Lewisham | 61% | 73% |
| Merton | | 84% |
| Newham | 84% | 89% |
| Redbridge | 92% | 97% |
| Richmond | 93% | 97% |
| Southwark | 75% | 87% |
| Sutton | 89% | 88% |
| Tower Hamlets | 96% | 88% |
| Waltham Forest | 71% | |
| Wandsworth | 74% | 80% |
| Westminster | 74% | 81% |

Appendix 3. Response times to 2016 CFI request for FOI statistics, performance reports and internal guidance

| Local Authority | Working days to respond |
|--------------------------|-------------------------|
| Barking & Dagenham | 55 |
| Barnet | 18 |
| Bexley | 7 |
| Brent | 16 |
| Bromley | 17 |
| Camden | 4 |
| City of London | 14 |
| Croydon | 20 |
| Ealing | 20 |
| Enfield | 98 |
| Greater London Authority | 2 |
| Greenwich | 215 |
| Hackney | 20 |
| Hammersmith & Fulham | 22 |
| Haringey | 1 |
| Harrow | 3 |
| Havering | 19 |
| Hillingdon | 19 |
| Hounslow | 21 |
| Islington | 10 |
| Kensington & Chelsea | 14 |
| Kingston | 220 |
| Lambeth | 6 |
| Lewisham | 21 |
| Merton | 4 |
| Newham | 25 |
| Redbridge | 2 |
| Richmond | 10 |
| Southwark | 12 |
| Sutton | 9 |
| Tower Hamlets | 20 |
| Waltham Forest | 16 |
| Wandsworth | 77 |
| Westminster | 19 |

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