

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 28 February 2011

Public Authority: London Borough of Islington
Address: Islington Town Hall
Upper Street
London
N1 2UD

Summary

The complainant requested various pieces of information over a number of years about Exmouth market. To begin with, the public authority incorrectly dealt with the request outside of the Act. The public authority provided the complainant with the information it held, however the complainant disputes that he has been provided with everything he requested. The Commissioner has investigated the complaint and is satisfied that the public authority has provided all of the information covered by the scope of the request and therefore that it complied with its obligations under section 1(1) of the Act. However, the public authority breached section 10(1) for failing to comply with section 1(1)(a) within 20 working days. The Commissioner requires no remedial steps to be taken in this case.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. As the complainant has made a series of requests and complaints regarding Exmouth Market to the public authority since 2007 there is a

great deal of correspondence between the two which displays the inability of the parties to reach a settlement on the issues.

3. The complainant has made numerous requests to the public authority, the disputed requests date back to 2008. The interrelated nature of the complaints and correspondence has led to confusion as to which of the numerous requests had been answered. The Commissioner was not helped by the complainant being unable to clearly identify which requests had been dealt with. In considering the correspondence received from the complainant the Commissioner has identified the following disputed requests which are listed below:

24 June 2008

"As for the continued expansion of fast food stalls in Exmouth Market can you please forward me a list of all such street trading licence applications that have been granted since March 2007?"

September 2008

- Who is responsible for fire fighting equipment for the stalls in Exmouth Market
- Where should it be kept
- Who is responsible for training in the safe use of fire fighting equipment
- Who is responsible for evacuating the market
- How many gas canisters are allowed at any one time, and where and how should they be stored
- What is the maximum safe number of cooking tents

9 December 2008

"Can you please inform me who is heading the investigation, what are the parameters of the investigation, how long will the investigation take, and when will the results be known"

"Why has full planning consent not been applied for when changing the use of public space? Why has there been no consultation with the local community before changing the use of Exmouth Market?"

"Can I please have the names of all environmental health officers who have inspected Exmouth Markets stalls?"

"Does Islington Council know where this food originates from in the morning and taken back in the evenings, and how many inspections have taken place at these premises?"

22 July 2009

"Will you supply me with details of all the (food) stalls working in the month of April 2007, and for any subsequent day to date when the number of stalls operating exceeds that of April 2007"

"Why has full planning consent not been applied for when changing the use of public space? Why has there been no consultation with the local community before changing the use of Exmouth Market?"

"What percentage discount of the rent and thus rates and refuse collection are these stalls receiving, do any pay a duty of care charge on commercial refuse collection, a legal requirement."

4. Based on the correspondence provided to the Commissioner it is apparent that the Council has dealt with, and provided the relevant information, to all of the above requests as normal course of business rather than under the Freedom of Information Act 2000.

The Investigation

Scope of the case

5. On 8 March 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - The public authority had not provided all of the requested information.
 - The information which was provided was not in the form of official documentation leading him to believe that the public authority was attempting to conceal information.
6. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

7. The Commissioner emailed the public authority on 4 August 2010 to notify it that he had received this complaint; the Commissioner noted that the Council had dealt with the requests as normal course of business and asked the Council to issue the complainant with a

response to the disputed matters in line with the Freedom of Information Act 2000.

8. In a letter dated 1 September 2010 the Council provided the complainant with a comprehensive response which provided the information relevant to all of his disputed requests.
9. The complainant telephoned the Commissioner on 14 September 2010 stating that the response he had received did not provide him with all of the information he had requested. He clarified the outstanding points in a letter to the Commissioner dated 5 September 2010 (received by the Commissioner on 29 September 2010), which are listed in the request section of this Decision Notice. This letter did not request any new information but appeared to be seeking clarification of the information he had been provided as he felt that it was not what he had requested. The Commissioner contacted the public authority to query the points raised by the complainant.
11. In a letter dated 8 November 2010 the Commissioner received detailed explanations, along with further copies of the information supplied to the complainant, from the public authority. The Commissioner provided this clarification to the complainant.
12. On 17 November 2010 the complainant confirmed that he was not happy that the Council had provided him with all of the information he had requested as the Council had not provided him with copies of official documents. He stated that he wished for the case to proceed to Decision Notice.

Analysis

Substantive Procedural Matters

Is relevant recorded information held?

13. In determining this case, the Commissioner has taken into account the submissions of both the public authority and the complainant. The full wording of all the extracts of the Act included in this notice can be found in the Legal Annex.

Section 1 – general right of access

14. Section 1 of the Act states that any person making a request for information is entitled to be informed in writing whether the

information is held and, if this is the case, to have the information communicated to them.

15. The Commissioner has considered the public authority's handling of the request with regard to the section 1 requirements of the Act. In doing so he has viewed all the information and representations provided to him by the public authority and complainant. The Commissioner has found evidence contained within the case file from both parties that the information requested had been the subject of past requests and correspondence dating from 2007.

Is further information held by the Council?

17. In the Commissioner's view, the normal standard of proof to apply in determining whether a public authority holds any requested information is the civil standard of the balance of probabilities.
18. This is in line with the approach taken by the Information Tribunal in the case of *Bromley & others v the Environment Agency* (EA/2006/0072), in which it stated:

"...we must consider whether the Information Commissioner's decision that the Environment Agency did not hold any information covered by the original request, beyond that already provided, was correct. In the process, we may review any finding of fact on which his decision is based. The standard of proof to be applied in that process is the normal civil standard, namely, the balance of probabilities..."

because

"...there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records"

19. In deciding where the balance lies, the Commissioner will usually consider, among other things, any reasons offered by the public authority to explain why the information is not held.

Explanations offered by the Council

20. The complainant and the Council have been engaged in correspondence on this matter since 2007. The Council has attempted to clarify what information is required by the complainant on several occasions and has offered to meet with him to discuss his requests further. The complainant refused to meet with the Council.

21. The Council has provided the complainant with all of the information he requested. The disputed information requested from the Council has been confirmed by the complainant to the Commissioner, and is stated in paragraph 3 above.

The Commissioner's position

22. From the explanations provided to him by the public authority in response to his detailed enquiries, the Commissioner is of the view that the public authority has carried out searches of the appropriate locations in order to locate and retrieve the relevant information. The Commissioner holds that it is not reasonable to suggest that other information pertaining to the request may be held by the public authority elsewhere. Moreover the Commissioner has viewed all the information provided to him by the public authority within the course of his investigation and he has not found any evidence within the correspondence, to suggest that further information within the scope of the disputed requests exists. Therefore, in the absence of any evidence to the contrary, he is satisfied that the public authority has provided all of the information it holds pertaining to the request.
23. The Commissioner has concluded that, on the balance of probabilities, the Council does not hold further information within the scope of the requests at paragraph 3 above.

Section 10 – time for compliance

24. Section 10 of the Act stipulates that on receipt of a request for information a public authority should respond promptly and no later than 20 working days.
25. The correspondence provided to the Commissioner in this case shows that the public authority responded outside the 20 working day time limit, as the Council failed to deal with these requests under the correct regime.

The Decision

26. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
 - Section 1 – the public authority provided the complainant with all the information pertaining to the request satisfying sections

1(1)(a) and 1(1)(b)

However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the Act:

- Section 10 – the public authority failed to respond within 20 working days and therefore breached section 10(1).

Steps Required

27. The Commissioner requires no steps to be taken.

Other matters

28. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

The introduction to the section 45 code of practice (the “Code”) states:

“All communications in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the Act, and so must be dealt with in accordance with the provisions of the Act. While in many cases such requests will be dealt with in the course of normal business, it is essential that public authorities dealing with correspondence, or which otherwise may be required to provide information, have in place procedures for taking decisions at appropriate levels, and ensure that sufficient staff are familiar with the requirements of the Act and the Codes of Practice issued under its provisions. Staff dealing with correspondence should also take account of any relevant guidance on good practice issued by the Commissioner. Authorities should ensure that proper training is provided in this regard.”

Although the introduction does not form part of the Code itself, the Commissioner would echo its recommendations and expects that, in future, the public authority will recognise and handle requests for information in accordance with the Act.

Right of Appeal

29. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 28th day of February 2011

Signed

**Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled -

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Section 1(2) provides that -

"Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14."

Section 1(3) provides that -

"Where a public authority -

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement, the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."

Section 1(4) provides that -

"The information -

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

Section 1(5) provides that -

"A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b)."

Section 1(6) provides that -

"In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as "the duty to confirm or deny"."

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied, the public authority need not comply with section 1(1)(a) or (b) until

such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

(a) prescribe different days in relation to different cases, and
(b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

(a) the day on which the public authority receives the request for information, or

(b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”