

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 August 2012

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

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Islington (the council) relating to aerial works and matters pertaining to them, dating back 6 years. The council disclosed part of the requested information and withheld part of it under section 12 of the FOIA.
2. The Commissioner's decision is that the council has correctly applied section 12. However, the Commissioner finds that the public authority failed to comply with section 17(5) of the FOIA in that it did not cite its reliance on section 12(1) within 20 working days of receipt of the request.
3. The Commissioner does not require any steps to be taken.

Request and response

4. Although there had been several communications between the complainant and the council prior to this, the request in its entirety was logged by the council on 16 August 2011. The complainant confirmed the request as follows:

1) Dates and details of all aerial works going back 6 years. If this cannot be provided need full explanation as to why this information is not available.

2) Stanley

a) Specification

b) Copy of contract with Stanley. Please explain how the cost of this

contract is agreed, previously been informed that this is a fixed price, how long is this fixed for? What are the terms and conditions of this contract?

c) Copies of invoices paid to Stanley going back as far as records allow.

3) Digital aerial installation programme

a) Specification

b) Copy of tender of winning bid

c) Copy of contract

d) Copy of invoices.

5. The council had responded (undated) by stating that it had located 190 invoices, apparently in relation to point 2(c), and had attached a sample of 20. It offered to provide the remainder but asked if the complainant wanted these documents or would like to query elements of the samples provided.
6. The complainant asked for an internal review on 5 October 2011. In this request for a review he confirmed that he wanted all the outstanding invoices.

Scope of the case

7. The complainant initially contacted the Commissioner on 21 September 2011 to complain about the way his request for information had been handled. The complainant provided his arguments to the Commissioner on several occasions stating that he wished to prove that the amount leaseholders were charged bore no resemblance to the actual figures. On 7 October 2011, he added that some information had been provided to him since he had informed the council about his complaint to the Commissioner.
8. On 7 November 2011, the Commissioner asked the council to provide an internal review response to the complainant.
9. The council provided a partial response on 25 November 2011 by means of a spreadsheet setting out the invoices for the 2009/10 communal aerial charges. Another 27 invoices were promised in due course. The complainant argued that the council should have held 6 years of information; that the council had stated that it held nothing under 2(a) and 2(b). Under point 2(c) the complainant argued that one "cheap" year had been provided and that the 27 promised invoices had not materialised. In response to point 3 he said that the council had provided nothing.

10. The Commissioner wrote to the council on 27 February 2012, initially asking questions regarding what was held/not held by the council in relation to this request. The focus of this case subsequently shifted to the council's application of section 12 to point 2(c) of the requested information.
11. On 23 March 2012, the council responded to the Commissioner with detailed arguments as to why it had withheld some of the requested information. The council provided a covering letter on 23 March 2012 which appears to be the first time that section 12 was cited. The council explained to the Commissioner how it had previously provided most of the requested information to the complainant by means of its responses to other freedom of information requests he had made. The exception was point 2(c) to which it had applied section 12, though it had provided him with as much of the requested information as was possible within the appropriate fees limit.
12. On 12 April 2012, the Commissioner asked the council for further argument in relation to its application of section 12 to point 2(c) of the requested information. The Commissioner also noted that the council had offered to disclose the requested information at 3(a), 3(b) and 3(c) but had not done so because of confusion with other requests. The information under 3(a), 3(b) and 3(c) was subsequently provided to the complainant on 16 April 2012. The council explained that the copy of the contract included the requested specification which did not exist separately. It further explained that the copy contract also included the requested tender submission.

Section 12

13. Section 12(1) provides that a public authority will not need to comply with section 1(1) if the cost of doing so would exceed the appropriate limit as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations).
14. For public authorities like the council, this limit is set at £450. It is calculated using a flat rate of £25 per hour and so equates to 18 hours work. A public authority can only take certain activities into account when assessing whether compliance with a request would exceed the cost limit. These factors are:
 - (a) determining whether it holds the information;
 - (b) locating the information, or a document which may contain the information;

- (c) retrieving the information, or a document which may contain the information; and
- (d) extracting the information from a document containing it.
15. The council provided a breakdown of its calculations under section 12. It provided no evidence under any of the above headings with regard to the cost of determining, locating or retrieving information.
 16. The council provided evidence solely under (d), regarding the cost of extracting the requested information. The council explained that invoices are contained in its electronic financial system, known as 'Contempus'. However, invoices prior to 2009/10 are archived off-site. The council further explained that Stanley provided more than just aerial works and that the Contempus system does not allow invoices to be pulled out in relation to TV aerial works alone. This means that a manual search has to be conducted. When a search is done on the term 'Stanley' each line entry needs to be opened, the attachment downloaded to determine if the invoice relates to TV aerial or swipe systems that are located at various buildings. The correct invoice can then be printed. This process has to be repeated until each invoice has been printed. The council states that there are approximately 420 records on Contempus that would need to be reviewed for the correct invoices to be identified. The council further explained that the invoices archived off site are boxed according to date, not supplier. Once the boxes had been retrieved, each box would need to be reviewed to identify the Stanley invoices. These would then have to be sifted to identify which invoices related to TV aerials. The council estimated that a full response to point 2(c) of the request would take 35 hours at a cost of £875.
 17. The council stated that it had already provided the complainant with 156 invoices which accounted for the financial years 2009/10 and 2010/11. The complainant has received all the relevant invoices that are held on the Contempus system. This process took approximately 2.5 days to complete. The remaining part of the 35 hour estimate represents the time the council assesses it would take to provide the requested information from the archive files. Therefore to fully comply with the request for 6 years would exceed the reasonable limits as set out in the fees regulations.
 18. As the council has searched up to the appropriate fees limit and supplied that amount of information to the complainant, it is not obliged to respond further.
 19. In practice, as soon as a public authority becomes aware that it intends to rely on section 12, it makes sense for it to stop searching for the

requested information and inform the complainant. This avoids any further and unnecessary work for the public authority as it does not need to provide any information at all if section 12 is engaged.

Section 16(1)

20. Section 16(1) imposes an obligation on a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
21. The Commissioner is satisfied that the way in which the requested information is held precludes the ability to provide everything he requested. The complainant had made it clear on 5 December 2011 that he required copies of all payments to Stanley for a minimum of the previous 6 years. In addition, all of the information held electronically has been provided. Given that it is the paper based records that have engaged the cost limit, there is little the council could do to refine matters further.
22. In light of the above, the Commissioner considers that the council complied with its obligations under section 16(1).

Section 17(5)

23. Section 17(5) of the FOIA states that a public authority relying on a claim that section 12 or 14 applies must give the applicant a notice stating that fact within 20 working days of receipt of the request.
24. The Commissioner could find no evidence that the council had cited section 12 until it responded to him on 23 March 2012. Therefore the Commissioner finds that the council failed to comply with section 17(5) of the FOIA.

Other matters

25. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*,

published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that, in this case, an internal review in any formal sense does not appear to have been carried out, despite the publication of his guidance on the matter.

Right of appeal

26. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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