

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 21 March 2018

Public Authority: London Borough of Haringey
Address: 6th Floor, River Park House
225 High Road
Wood Green
London N22 8HQ

Decision (including any steps ordered)

1. The complainant has requested information regarding the Ward Budget scheme operating in the London Borough of Haringey.
2. The Commissioner's decision is that the Council has not handled the request in accordance with the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the information requested in points 3 and 4 of the request.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 13 January 2017 the complainant wrote to the Council and requested information in the following terms:

"1. The date of the meeting between the three Muswell Hill ward councillors when they made the decision on how the £10,000 for 2017 would be allocated.

2. A full list of all applications for funding from Muswell Hill ward budget in 2017 received by Muswell Hill ward councillors.
 - a) The application forms (ie the bids) for the other projects (not the one from Cranley Gardens Residents Association) which had been supported.
 - b) The dates those other successful bids were submitted (ie received by the Muswell Hill Ward Councillors)
 - c) The amount of the £10,000 ward budget for 2017 which they were awarded.
 - d) Other applicants, proposals, and the dates those bids were submitted (ie received by the Muswell Hill Ward Councillors)
3. Any declarations of interest from ward members in relation to 2017 ward budget applications.
4. Any declarations of interest from ward members in relation to 2016 ward budget applications.
5. The date and decision-makers, when it was decided that the £10,000 Muswell Hill ward budget for 2017 should not be awarded to one bidder.
6. The reason for changing from the 2016 ward budget for Muswell Hill which went to one bidder, to the 2017 ward budget, which in the case of Cranley Gardens Residents Association reduced the amount."
6. The Council responded on 16 January 2017. It stated that it did not hold information in respect of points 1, 2, 5 & 6. In response to points 3 & 4 it stated that there had been no declarations of interest. Following an internal review the Council wrote to the complainant on 13 February 2017. It upheld the initial response and stated that:

"Once ward Councillors have decided which applications to support, they then submit an application for the money to be awarded and a senior officer reviews the application to ensure it is consistent with the published criteria. At that point the Council would hold information on its own behalf as we need to record details of the applications that the council has received from the ward Councillors, whether they were approved and the financial details of the monies awarded."

Background

7. The complainant contacted the Commissioner on 4 April 2017 to complain about the way her request for information had been handled. She advised that:

"..the issue that needs to be determined by the Information Commissioner is whether in the discharge of their role in relation to the

ward budgets the ward councillors are acting on behalf of, or part of, the local authority. If the Information Commissioner determines that the councillors are acting on behalf of the local authority it follows that the information I have requested does fall under FOIA and should be provided."

8. The Commissioner contacted the Council and received its submission on 30 August 2017. At this time the Commissioner considered in detail whether the information held by the ward councillors was held on behalf of the Council and therefore subject to the FOIA. She concluded that this was the case and provided her view to the Council on 1 November 2017.
9. On 30 November 2017 the Council confirmed:

"...we accept your decision and will treat ward budget information held by local Councillors as subject to the FOI Act. We will therefore now proceed to consider this request."

It asked the Commissioner to confirm with the complainant that she still wished to receive the information as a fresh round of applications was in progress.

10. Notwithstanding the passage of time, on 5 December 2017 the complainant confirmed that she still required the information and agreed that the Council provide the information as agreed, without a formal decision notice.

Scope of the case

11. The Council provided the complainant with its response on 4 January 2018. The complainant did not request an internal review of this response, which did not address all the points of the original request and provided very little substantive information. Following a telephone conversation with the Commissioner the complainant wrote to the Commissioner on 23 January 2018 explaining various anomalies and inconsistencies in the Council's response in comparison with its earlier response.
12. On 1 February 2018 the Commissioner reverted to the Council for clarification of the response provided to the complainant. The Council stated that it considered its response to the Commissioner of 9 February 2018 to be an internal review which also addressed the Commissioner's queries.

13. The response to points 5 and 6 of the request (paragraph 16) is unhelpful. The Commissioner is surprised by the Council's acknowledgement that the decisions taken regarding the changes in respect of the ward budget for Muswell Hill (points 5 and 6 of the request) had no rationale. She would expect such decisions to be made with some form of reasoning. However, it is not within her remit to consider such a matter.
14. The Commissioner considers the scope of this decision notice to be her consideration of the response provided by the Council on 4 January 2018 in the light of her previous investigation in this complaint. Specifically the Commissioner has considered whether the Council holds information in the scope of the request and whether the exemption at section 12 FOIA applies to points 3 and 4 of the request.

Reasons for decision

Section 1 – General right of access to information held

15. Section 1(1) of the FOIA states:

"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."

16. Having agreed with the Commissioner at an earlier stage of the investigation that the information held by the ward councillors was held on behalf of the Council. The Council advised that:

"We did not check with the ward Councillors at the time as we believed the request was outside the scope of the FOI Act. I think it is very likely that they will not hold all of this information. I would think it unlikely that they would have made formal records of meetings between the three of them. If they have retained the applications from other bidders, we may not release those to [the complainant] as they may contain personal or commercially sensitive information."

17. The Council's response of 4 January 2018 provided a response to points 1 and 2a of the request. The Council stated that the information requested in points 2, 2b and 2d is not held. In respect of points 5 and 6 the Council referred the complainant to its response to point 1 (indicating the date provided there) and added:

"The Cllrs have commented as follows: this was not a conscious decision."

18. The complainant explained to the Commissioner that the procedure for submitting ward budget applications entailed forms being downloaded from the Council's website, completed and emailed to one of three ward councillors for the specified ward. The emailing process would have automatically created a trail of records of whether (and if so when) other applications had been received.
19. The Commissioner asked the Council for its comments on the above process and it responded by advising the Commissioner that it was not surprised that the ward councillors did not create a record of all applicants nor retain details of all the unsuccessful applications received.
20. The Council went on to explain that:

"It might perhaps have been possible to create such a record nearer the time by asking the Councillors to search their email accounts and provide details of all applications received."
21. The complainant pointed out that her request had been made very promptly after the councillors' meeting to decide on the allocation of ward budget and so the information should have been retained at that time.
22. Unfortunately the Council did not contact the ward councillors at the time of the initial request as it had decided that the councillors did not hold the information on behalf of the Council. The passage of time resulted in the information not being retained.
23. However, the Council also pointed out that the information is not required for any other purpose and it would therefore have been creating information to respond to a request. The Commissioner does not require public authorities to create information, it is not an obligation for compliance with the FOIA. In the absence of further evidence the Commissioner accepts that, on the balance of probabilities, the information is no longer held by the ward councillors or the Council.

Section 12 – Cost of compliance

24. Section 12 of FOIA states:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

25. This limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations") at £600 for central government departments and £450 for all other public authorities. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the Council.
28. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
- determining whether it holds the information;
 - locating a document containing the information;
 - retrieving a document containing the information; and
 - extracting the information from a document containing it.

The four activities are sequential, covering the retrieval process of the information by the public authority.

29. The Council's most recent response to point 2 of the request stated that it did not hold a list of applications as the councillors had not created a list. Nevertheless, it did provide copies of two application forms. The complainant observed that the application forms contained declarations of interest.
30. Points 3 and 4 of the request asked for any declarations of interest from ward members in relation to ward budget applications for the first and second years of the Council's ward budget scheme (2016 and 2017). The Council stated in its initial response that it had received no declarations of interest from ward councillors relating to ward budget applications.
31. The Council's explanation of this discrepancy is that the information was not provided due to a 'simple error' of staff not realising that the forms may include declarations of interest. The Commissioner accepts that human error occurs, however, she is surprised that the Council would not have expected that such declarations would appear on the application forms. Particularly as the Council states that this information is not recorded anywhere else. Notwithstanding this she accepts that the only location of the declarations will be on the application forms held.

32. Having drawn its attention to this matter the Council in its response to the Commissioner implicitly seeks to rely on section 12 FOIA to refuse the request in points 3 and 4.
33. The Council provided the Commissioner with the following reasoning:

“We estimate that to obtain the information about declarations of interest for both years would take approximately 14 hours. There were 164 applications for the two years, I have estimated it would take 5 minutes per application to locate and extract the information on declarations of interest from each form.”
34. The Council explained that it had already spent time handling the request and considered that:

“the time/cost limit might well be exceeded if we were to pursue this aspect now. Even if it were not, we would be likely to regard this aspect of her request as unreasonably burdensome.”
35. The Council went on to explain that in such circumstances it would ask the applicant to reconsider whether they wanted the information and would ask for explanations regarding:

“...what use this information could be to her and why it would be in the public interest to disclose it.”
36. The Commissioner would remind the Council that the FOIA is motive and applicant blind, there is no requirement for applicants to explain why they are requesting information or what use they intend to make of the information. The Commissioner understands that it may appear that the complainant's request is of no relevance to the world at large, however, there is no requirement for a request to have relevance to the general public unless an exemption is applied which includes a consideration of the public interest test.
37. The Commissioner understands that the Council has already used resources in the consideration of this request and is keen not to spend further time. However, the Commissioner considers that the Council has failed to provide a satisfactory service to the complainant and she should therefore not be disadvantaged by the Council avoiding providing the limited information it states it holds in response to this request.
38. The Council did not formally cite section 12 in its response to the Commissioner nevertheless, in estimating the time required to provide its response, the Commissioner has concluded that it wishes to rely on section 12.
39. The Commissioner notes that the council did not confirm whether a sampling exercise had been undertaken and whether its estimate had

been based upon the quickest method of gathering the requested information. She is not satisfied that the provision of the information requested at points 3 & 4 of the request would be unreasonably burdensome nor would the time required exceed the cost limit. She therefore requires the Council to provide this requested information.

Other matters

40. During her investigation the complainant explained to the Commissioner that the background to this case is that she has, in the main, requested information which the Council had promised would be available on its website.
41. The Commissioner notes that if the Council had, as a matter of good practice, proactively published the information it had advised it would publish online, as described in the section "Transparency" in its "Guide to Ward Budgets"; the requested information would have been provided without the need for a specific FOIA request.
42. The Council explained to the Commissioner that it had considered whether the request was a vexatious request in accordance with section 14 FOIA. The Commissioner would point out that by responding substantively, not relying on section 14, to refuse the requests then the response provided must be appropriately considered such that it is coordinated and accurate. The inconsistencies in the initial response and the unhelpful subsequent response have created an impression of a lack of transparency and poorly constructed responses. The Commissioner would expect to see a more professional approach from the Council in its future information rights handling.

Right of appeal

43. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

- 44. 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.
- 45. 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

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