

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 March 2019

Public Authority: London Borough of Enfield
Address: Thomas Hardy House
39 London Road
Enfield
Middlesex
EN2 6DS

Decision (including any steps ordered)

1. The complainant requested information about waiting times for music lessons.
2. The Commissioner's decision is that the London Borough of Enfield ("the London Borough") does not hold any further information within the scope of the request.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 24 May 2018, the complainant wrote to the London Borough and requested information in the following terms:

"Please can you provide the following information regarding Enfield Music Service's Saturday Music Lessons:

[1] The Average length of time that a child has to wait for a Music Place to learn a Wind Instrument at Enfield Music Service between the period January 2016 to May 2018.

[2] The Number of applicants that have been offered a Music place for a Wind Instrument at Enfield Music Service during the period Jan 2016 to May 2018.

[3] *The Length of the waiting list for Saturday Music Lessons for Wind Instruments as of December 2016, December 2017 and December 2018.*

[4] *The total number of applicants that applied for a Saturday Music Lesson between 2017 and 2018 for a wind instrument who were added to the Waiting List.*

[5] *The Total Number of Teaching Slots for Enfield Music Service for Wind Instruments on Saturday*

[6] *The dates when the last ten Music places were offered for Wind Instruments and the type of instrument."*

5. The London Borough responded on 11 June 2018. It provided information in response to elements [2], [4], [5] and [6] of the request. In relation to the remaining elements, it stated that it did not hold the requested information.
6. Following an internal review the London Borough wrote to the complainant on 19 October 2018. It reiterated that it did not hold information in recorded form which would satisfy elements [1] and [3].

Scope of the case

7. The complainant first contacted the Commissioner on 11 June 2018 to complain about the way his request for information had been handled. At that point, the London Borough had not issued its internal review response and it was necessary for the Commissioner to chase this.
8. Following the internal review, the complainant contacted the Commissioner once again as he felt that the London Borough did hold the information that he requested in relation to elements [1] and [3].
9. The scope of this case is to consider whether further information was held within the scope of elements [1] and [3] of the request.

Reasons for decision

Held/Not Held

10. Section 1(1) of the FOIA states 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.*

The complainant's position

11. The complainant believes that the London Borough should have retained the forms which it asks parents to fill in when requesting a music lesson. His argument is that reviewing these forms should enable the London Borough to calculate the requested information.
12. Finally, the complainant pointed to apparent inconsistencies in the way that the London Borough responded to both this and another request. To take one example, the London Borough stated in its internal review that its waiting list did not record the date on which an application was received – yet the blank copy of its spreadsheet included a field titled “Application Date” and it was able to inform the complainant how long his own child had been waiting.

The London Borough's position

13. The London Borough explained to the Commissioner that the spreadsheet on which it records its waiting list is a dynamic spreadsheet. Children will move onto and off the list as applications are received and tuition places allocated. Whilst at any given moment it could calculate the current average and longest waiting times, the London Borough argued that it could not recreate what the list looked like at a particular point in the past.
14. The London Borough confirmed that, whilst parents would make their applications for tuition on a hard copy form, those forms were destroyed as soon as the data they contained had been transferred to the spreadsheet. Therefore the only information it holds in recorded form is that which is contained in the spreadsheet.
15. Finally, the London Borough confirmed that it held no historical snapshots which might have been created to satisfy particular enquiries.

The Commissioner's view

16. The Commissioner's view is that the London Borough does not hold the requested information as it could not calculate the requested information from the information it held in recorded form.
17. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request,

the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.

18. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
19. The Commissioner was provided with a blank copy of its waiting list spreadsheet, which did not include personal data, but which did include the titles of various data fields.
20. The Commissioner considers that the spreadsheet which the London Borough holds would not allow it to calculate the specific information which the complainant has requested.
21. The spreadsheet shows that the London Borough does record the date at which applications were made. It could therefore calculate the *current* average and longest waiting times.
22. However, the complainant did not request the *current* waiting times: he requested historical data.
23. In order to satisfy the request, the Commissioner considers that the London Borough would need not only the data *currently* held in the spreadsheet, but the *equivalent data* relating to all those children who had moved off the waiting list during the requested period, either because they had been allocated a place or because they had simply withdrawn their application. As the application date would be wiped off at the moment the child left the waiting list, the London Borough would cease to hold this information – and therefore it could not properly calculate the information which the complainant requested.
24. The Commissioner considers that the inconsistencies in the London Borough's position (such as those outlined at paragraph 12) have made this complaint harder to resolve than it should have been. It is clear that such inconsistencies have caused the complainant to mistrust what he has been told by the London Borough and have undermined what should have been a clear and straightforward position.
25. Nevertheless, the Commissioner does not consider that any argument which the London Borough has put forward is inconsistent with the analysis set out above. Nothing that has been provided to the

Commissioner would support a conclusion that the London Borough does hold the specific information which has been requested.

26. The Commissioner therefore concludes that the London Borough does not hold the requested information.

Other matters

27. Whilst there is no statutory deadline within FOIA for internal reviews to be completed, the Commissioner considers that they should normally be completed with 20 working days and within a maximum of 40 working days.
28. The complainant submitted his request for an internal review on 15 June 2018 and provided the Commissioner with evidence suggesting that it had been received. The London Borough did not complete its review until 19 October 2018 and only after the Commissioner's intervention. Whilst the Commissioner cannot record a statutory breach, she considers such delays to be unacceptable.

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,
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

30. 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.
31. 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

Ben Tomes
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