Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 April 2019

Public Authority: London Borough of Hillingdon
Address: Civic Centre
Uxbridge
Middlesex
UB8 1UW

Decision (including any steps ordered)

1. The complainant has requested information regarding a specific parking management scheme. London Borough of Hillingdon (the Council) provided the complainant with information falling within the scope of the request.

2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further information to that already disclosed.

3. The Commissioner finds that the Council breached section 10(1) of the Act by not complying with section 1(1)(a) within the statutory timeframe.

Request and response

4. On 29 May 2018, the complainant wrote to the Council and requested information in the following terms:

"Under FOI please supply the following information.

Parking Scheme WOODHOUSE CLOSE HAYES UB3 1NJ HY5 Op time 9AM – 10pm Everyday

How many parking tickets have been issued and how many have been paid since the introduction in February 2017.

How many paid permits have been issued

What was the cost of introducing the scheme

What has been the net financial benefit or moreover deficit to Hillingdon council in the first 12 months since this scheme was introduced."

5. On 29 June 2018, the Council responded to the request in the following terms:

"As I understand it you are seeking to know:

Q1. How many parking tickets have been issued and how many have been paid since the introduction in February 2017.
LBH response: A total of 19 Penalty Charge Notices have been issued in Woodhouse Close between 27th February 2017 and 29th June 2018. Fifteen of these Penalty Charge Notices have been paid.

Q2. How many paid permits have been issued
LBH response: A total of 13 no. residents parking permits have been issued.

Q3. What was the cost of introducing the scheme
LBH response: The cost to implement the signs for the scheme in Woodhouse Close is £350.

Q4. What have been the net financial benefit or moreover deficit to Hillingdon council in the first 12 months since this scheme was introduced.
LBH response: Parking management schemes are introduced to support residents and not with any financial targets in mind. However, in the case of HY5, since the scheme was introduced total income of £1540 has been received from PCNs that have been issued or permits that have been purchased. As the cost of implementing the signs for the scheme was £350, this equates to an overall financial benefit of £1190."

6. On 29 June 2018, the complainant requested an internal review of the handling of his request for information. He disputed the accuracy of the information provided as he considered information was missing from the Council's response.

7. On 7 August 2018, the Council provided the outcome of its internal review. It upheld its position that the complainant had been provided with all information requested.

8. On 21 December 2018, following contact from the Commissioner, the Council provided the following further information:

"The relevant Managers have specified each and every item of expenditure incurred as follows: -

(1) Signage - £350 (as stated in the Council's response). This includes road markings.

(2) Statutory Advertising.

Statutory Notices were published in the Uxbridge and London Gazettes on 9th December 2015 and 8th February 2017. The cost of each Notice was as follows:

9 December 2015

Uxbridge Gazette - £543.20
London Gazette - £209.00

8 February 2017

Uxbridge Gazette - £248.40
London Gazette - £127.60

However, the Notices encompassed 11 different schemes. Therefore, the cost attributed to Woodhouse Close is 1/11 of £1,140.20 = £103.65.

(3) Stationery Costs

Residents Permits - £8.97 (38 x £0.236)
Visitor Vouchers – £29.33 (100 x £0.293)

I can confirm that no additional contractor costs were incurred and that the Council does not make any internal recharges for the time of any of its staff (including Legal Services).

Therefore the total cost to the Council would be £491.55 (£350.00 + £103.65 + £8.97 + £29.33). The Council also received £640 income from paid permits.

The Council confirms that these are the total costs incurred in this Parking Scheme."

Scope of the case

9. The complainant contacted the Commissioner on 7 August 2018 to complain about the way his request for information had been handled.

10. As set out above, during the course of the investigation, the Council disclosed further information falling within the scope of the request.

11. The complainant made various allegations regarding the Council's internal processes and its employees. As previously confirmed to the complainant, the Commissioner will not comment on these matters as they fall outside of her jurisdiction.

12. The Commissioner considers that the scope of her investigation is to determine whether, on the balance of probabilities, the Council holds further information falling within the scope of the request.

Reasons for decision

Section 1(1): Information held/not held

13. Section 1(1) of the Act 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"

14. In scenarios where there is some dispute between the public authority and a complainant as to whether the information requested is held by the public authority, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of proof, ie on the balance of probabilities, in determining whether the information is held.

The Complainant's position

15. The complainant believes that further information is held as he disputes that the scheme was of financial benefit to the Council.

16. The complainant considers that the following information is missing from the information provided:

- The amount of income from Penalty Charge Notices

- A breakdown of the permits issued by free resident permits and paid for permits
- The number of visitors permits issued
- Legal services costs
- Contractual cost of the additional scheme
- Cost of intent notices in streets
- Cost of maintaining the scheme
- Cost of consultation and meetings

17. The complainant disputes that the Council does not hold the requested information at the level set out above as it would be necessary for budgeting purposes and it is standard practice to charge back to the department requiring internal services.

18. The complainant stated in his submission to the Commissioner: *"the officer is obliged to inform the requester that the information is in fact incomplete and or unavailable and refrain from making any statements relating to the information as that becomes information itself that is subject to section 77[1]."*

19. The complainant also considers that, based on his own calculations, that the figures provided by the Council are incorrect as they do not correlate with one another.

20. The complainant provided the Commissioner with a copy of the decision paper to the Cabinet member for Planning, Transportation and Recycling in which the implementation of the scheme was estimated to cost £2500.

21. The complainant also considers that the Council could have calculated an estimate of the cost to implement the scheme based on its published figures which show an overall 64% cost to income ratio. The

[1] It is a criminal offence under section 77 of the Act to alter, deface, block, erase, destroy or conceal any record held by a public authority, to which the applicant is entitled, with the intention of preventing the disclosure of that record.

complainant considers that based on the disclosed information, the Council must have spent approximately £985.

The Council's position

22. The Council confirm that three departments were involved in searching for the requested information:

    - Highways
    - Transport and Projects
    - Parking Services

23. The Council explained that the Highways officers responsible for the installations works undertook searches of emails and discussed the extent of the works with other officers and the contractor involved in the works. The Council confirmed that the Highways officers had searched using the scheme details in the email system. The costs for the signs and road markings were obtained by checking the invoice submitted from the Highways contractor.

24. The Council explained that the Transport and Projects team undertook searches of the Council's specialist finance system to obtain details of the costs recorded for this scheme. The Council confirmed that this search provided the details of the cost to advertise the 'Notice of Proposal' and 'Notice of Making' in the Uxbridge and London Gazette. The Council confirmed that the Transport and Projects team searched by the dates which covered the adverts publication.

25. The Council explained that the Parking Services team undertook searches of the Council's parking ticket system which produced details of the Penalty Charge Notices that had been issued. The Council confirmed that searches were also undertaken of the parking permit system to obtain details of the parking permits and visitor vouchers that had been issued. The Council confirmed that the Parking Services team searched by the name of the street and the date from when the scheme commenced.

26. The Council confirmed that it had received funding for the scheme from the 2016/17 LIP budget which is an external funding source allocated by Transport for London (TfL). The Council confirmed that each year it submits a "proforma A" to TfL setting out what has been achieved. The Council explained that, internally, officers seek approval for a range of schemes with the relevant Cabinet Member and, subject to their

agreement, the programme is presented to the Leader of the Council in a report seeking to release the funds.

27. The Council explained that the estimate of £2500 was a "*worst case scenario"* and was originally based on the assumption that the scheme could have been advertised independently from other schemes which significantly increased the cost. The Council also explained that the estimated cost was also based on the installation of any related signs and road markings, details of which were not known at the time of writing the report.

28. The Council confirmed that the estimate of £2500 did not include staff time as this is not subject to an internal recharge.

29. The Council explained that the estimated cost of £2500 was given in good faith when the report was written based on the fact that officers were not aware at the time whether the scheme would be progressed independently or whether there would be opportunities to publish the required notice with other schemes in order to reduce the costs.

30. The Council also confirmed that only the actual costs incurred are claimed against the LIP allocation.

31. The Council confirmed that the scheme is enforced by a third party contractor but the additional scheme was accepted by the contractor with no increases in the fees paid by the Council. The Council explained that the Contractor is paid for the deployment of staff resources and, in this case, the enforcement of the scheme was added to an existing patrol with no additional staffing resource deployed.

32. The Council also confirmed that the third party contractor does not receive any portion of the penalty charge notices or permit fees paid.

33. The Council confirmed that none of the staff involved in setting up or maintaining the scheme record time spent working on individual schemes.

34. The Council confirmed that of the 15 Penalty Charge Notices that were paid, 13 were paid at the discount rate of £55.00 and two were paid at the full rate of £110.00.

35. The Council confirmed that there is also a lower tier of fine, which is £60 at the full rate and £30 at the discount rate, which was not used for these penalty notices.

36. The Council confirmed that in the 12 month period following implementation of the scheme, a total of 32 new residents' permits (19 of which were free) and 1 replacement resident's permit was issued.

37. The Council explained that the first residents permit in each household is issued free of charge and all subsequent residents permits in the same household cost £40 per annum. The Council explained that residents can opt to obtain a permit which has a duration of 1 or 2 years and the cost of a replacement residents permit is £5.

38. The Council confirmed that a total of 320 visitor vouchers were issued in the 12 month period following implementation of the scheme. The Council explained that each household in the scheme is provided with 10 free of charge Visitor Vouchers per annum and additional visitors' vouchers cost £5 for 10 vouchers.

39. The Council confirmed that if a resident obtains a free resident permit, then the free visitor vouchers are automatically issued with the permit (either 10 or 20 vouchers are issued depending on whether the residents' permit has a duration of one or two years). The Council confirmed that additional Visitor Vouchers can be purchased on request.

40. The Council confirmed that the costs involved in maintaining the scheme include undertaking maintenance of the signs and line markings, following the Council's safety inspections that are undertaken periodically. The Council confirmed that no maintenance issues had been identified for this scheme.

41. The Council confirmed that it considers the costs of consultation to fall outside the scope of the request as the consultation forms part of the process before a scheme can be introduced. However, the Council confirmed that the cost for advertising the proposals and the 'Notice of Making' have been provided to the complainant.

42. The Council explained that the scheme came about as a result of residents petitioning the Council requesting a residents' only parking scheme and this was considered at a meeting with the Cabinet Member for Planning, Transportation and Recycling. The Council explained that the provision of support for a variety of meetings held in public is an integral part of the Democratic Service Team's role. The Council explained that these meetings will usually cover a number of separate issues and therefore would be impossible to identify costs that are specific to a single issue.

43. The Council confirmed that the notice of intent signs are printed on A4 paper and laminated, and these costs were not available as they are ordered centrally and not by individual teams.

44. The Council confirmed that it operates an in-house team that processes penalty charge notices and therefore no additional fees are incurred related to this processing. The Council also confirmed that the staff in this team undertake various duties and it is not therefore possible to identify the staffing costs related to individual penalty charged notices.

45. The Council explained that if an appeal was submitted to an Independent Adjudicator at London Tribunals, then the Council would incur a cost from London Councils for the appeal. The cost varies as to whether the Council's response to the appeal is made electronically or in hard copy. The Council also explained that if a Penalty Charge Notice was not paid and processed to the point that the debt was registered at the Traffic Enforcement Centre, then a further debt registration fee of £8 per Penalty Charge Notice would be incurred. The Council confirmed that none of the above costs were incurred in relation to the Penalty Charge Notices issued in the named scheme as no formal appeals were submitted and none of the Penalty Charge Notices progressed to the point that the debt was registered.

The Commissioner's position

46. The Commissioner considers that the Council has undertaken reasonable and logical searches to locate information falling within the scope of the request. The Council has identified the systems and departments most likely to hold information within the scope of the request. In the Commissioner's view, the Council has undertaken searches that would be expected to have returned material relating to the request.

47. The Commissioner considers that the searches conducted were adequate and proportionate in view of how such records are held by the public authority.

48. The Commissioner recognises that the complainant is firmly of the view that there must be further records regarding internal charging for staff time, however, the Council has confirmed that it does not undertake this practice and, therefore, no records are held. The Commissioner made clear to the complainant that she will not comment on public authorities' internal practices and will focus only on whether the information is held rather than should be held.

49. The complainant set out that he expected the cost of consultation to be included in the costs provided by the Council. The Commissioner has

considered the wording of the request and she concurs with the Council that the cost of consultation does not fall within the scope of the request.

50. The complainant clearly requests information following the introduction of the scheme:

"What was the cost of introducing the scheme" and *"What has been the net financial benefit or moreover deficit to Hillingdon Council in the first 12 months since the scheme was introduced"*

51. The Commissioner considers that a consultation will, by its very nature, have to occur before a scheme is introduced in order to make the decision on whether or not to introduce the scheme. She therefore considers that any costs associated with consultation would not fall within the scope of the request for costs associated with the introduction of the scheme.

52. The complainant considers that the Council has provided inaccurate figures as they do not add up based on his own calculations. The complainant also considers that the Council should not have provided the held information as complete. He considers that the Council should have informed him that the information was incomplete and set out what information was missing.

53. With regard to this aspect of the complaint, the Commissioner explained to the complainant at the outset of the investigation that she has a limited role in terms of whether information disclosed under the Act is accurate. The right of access under the Act is simply to recorded information. Therefore, if a public authority located the requested information and discloses it, the Commissioner would take the position that the request has been complied with regardless as to whether the recorded information contains any errors or inaccuracies. However, the Commissioner acknowledges that there can be instances where information disclosed by a public authority appears to be inaccurate because the public authority has failed, or has not been able, to locate information falling within the scope of the request.

54. The Commissioner has reviewed the complainant's own calculations and she notes that, in part, they are based on assumptions and averages gained from other schemes. She cannot, therefore, use these calculations as evidence that the Council has put forward misleading information, as the complainant claims.

55. The Commissioner considers that, whilst it may have been helpful, the Council was under no obligation to provide the individual costs when

confirming whether the requested information was held. The complainant requested information in general terms and did not specify that he was seeking a detailed breakdown of the costs. The Commissioner also considers that whether the named costs are missing is open to interpretation. It does not automatically follow that the Council considers staff time of pre-existing officers to represent a cost to the Council, the Council may not, therefore, consider the recorded information to be incomplete.

56. The Commissioner notes that the complainant considers that the Council could have provided him with an estimate based on the 64% cost to income ratio located in online accounts. The Act does not require public authorities to create or obtain information in order fulfil a request for information. The right of access is to information held at the time of the request.

57. For the reasons set out above, the Commissioner considers that, on the balance of probabilities, no further information is held beyond that provided to the complainant.

Procedural Requirements

Section 10(1): Time for compliance

58. Section 10(1) of the Act states:

"Subject to sections (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"

59. The Council received the request on 29 May 2018 and provided its response on 29 June 2018, a period of 23 working days. As the Council did not confirm or deny whether it held information within the scope of the request within twenty working days, it has breached section 10(1) of the Act.

Other matters

60. The complainant requested that the Commissioner also consider this case for breaches of section 77 of the Act, breaches of the Consumer Protection Legislation and referral to the Ministry of Housing, Communities and Local Government regarding inappropriate practices.

61. The Commissioner has reviewed this case under section 77 as requested by the complainant and she is satisfied that there is no case to answer.

62. As set out to the complainant during the course of the investigation, the Commissioner does not have the jurisdiction to consider cases under external legislation or to refer public bodies for investigation.

63. During the course of the investigation, the Commissioner raised concerns regarding the quality of the internal review. The Council provided assurances of the steps it intends to take to improve its internal review process and the Commissioner expects to see improvements in the quality of the internal review in future.

Right of appeal

64. 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

65. 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.

66. 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 .....

Jonathan Slee
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