

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 January 2020

Public Authority: London Borough of Waltham Forest

Address: Town Hall
Forest Road
London
E17 4JF

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Waltham Forest (the London Borough) concerning a gas purchasing consortium.
2. The Commissioner's decision is that the London Borough failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner does not require any steps to be taken in response to this notice.

Request and response

4. On 12 August 2019, the complainant wrote to the London Borough and requested information in the following terms:

"According to the Department for Business, Energy and Industrial Strategy (BEIS), the LBWF is currently part of a gas purchasing consortium with 22 other boroughs that gives them "significant purchasing power" for the gas supply at the Marlowe Road Estate.

1) Who are the other boroughs (by name)?

2) When was this consortium set up?

3) How many purchases have been made under this consortium and for how much money? And from whom?

I would like the above information to be provided to me in paper format and sent to the following address as per below:-

[redacted]"

5. The London Borough's position is that a response was issued to this request on 5 September 2019. The complainant's position is that this response was not received.
6. In the course of her investigation, the London Borough stated that their response would be re-sent to the complainant on 14 January 2020. The complainant has confirmed receipt of this.

Scope of the case

7. The complainant contacted the Commissioner on 27 November 2019 to complain about the apparent failure, by the London Borough, to respond to their request. At the same time, a decision notice was requested.
8. The Commissioner contacted the London Borough on 28 November 2019, and again on 9 December 2019, to seek their views as to the status of the complainant's request.
9. On 12 December 2019, the London Borough responded, stating that their response was sent to the complainant on 5 September 2019.
10. In support of this position, the London Borough provided the Commissioner with the time the response was said to have been sent

(13:30:07), as well as a screenshot of the text of their response, as seemed to appear within a case management system.

11. The Commissioner contacted the London Borough to seek further clarification of this position. She highlighted her view that a screenshot of the *content* of a response did not indicate whether or not the response was actually sent to the complainant – which was the relevant question in this case.
12. She asked that the London Borough explain *how* this response was supposed to have been sent to the complainant, and that she be provided with a copy of the relevant email or letter that was sent, to the complainant, in response to the request.

13. In response, the London Borough stated that:

"The response was dispatched by post to [the complainant]. As we were unable to retrieve a copy of the same letter, the content of the response has been transposed onto a further letter today.

A copy is attached, this will be dispatched by recorded delivery to [the complainant] today."

14. The scope of this notice and the following analysis is to consider whether the London Borough has complied with section 10 of the FOIA.

Reasons for decision

15. 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.*

16. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*

(c) *describes the information requested.*

17. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
18. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
19. At no point during the course of her investigation has the Commissioner been provided with a copy of the piece of *correspondence* apparently sent to the complainant on 5 September 2019. Further, as at point 13 above, the London Borough have stated that they are unable to retrieve this correspondence.
20. The Commissioner has therefore been provided with insufficient reason to believe that a response to the complainant's request was in fact sent on 5 September 2019.
21. The Commissioner therefore concludes that, in failing to issue a response to the request within 20 working days, the London Borough breached section 10 of the FOIA.
22. As a response has since been issued to the request, and as the complainant has confirmed receipt of it, the Commissioner considers that there are no appropriate steps to order.

Other matters

23. After being contacted by the Commissioner in respect of this complaint, it took the London Borough 10 working days to respond to a relatively simple question: "*Is a response to [the complainant]'s request still outstanding?*"
24. The Commissioner also notes the London Borough's inability to retrieve a copy of the 5 September 2019 correspondence which they state was sent to the complainant.
25. The Commissioner therefore reminds the London Borough that it is the responsibility of the public authority to be able to demonstrate compliance with the FOIA.

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: 0870 739 5836

Email: grc@justice.gov.uk

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

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

**Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**