

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 September 2020

Public Authority: London Borough of Barking & Dagenham

Address: Barking Town Hall
1 Town Square
Barking
London
IG11 7LU

Decision (including any steps ordered)

1. The complainant requested information relating to modifications to bus lane signage on Ripple Road in Barking.
2. The Commissioner's decision is that on the balance of probabilities the public authority does not hold recorded information within the scope of the request.
3. No steps are required.

Request and response

4. On 16 April 2019 the complainant submitted a request to the public authority in the following terms:

"Following on from your response to FOI request dated 18.03.19 assigned your reference as 10066766 via response dated 09.04.19:

Full name: [complainant's name redacted]

Address: [Address redacted]

Description of the information required is as below:

I have been referred to make this request by the LBBB Parking Administration Team in relation to:

- Penalty Charge Notice (PCN) Number: [redacted]
- Vehicle Registration: [redacted]
- Date of Contravention: 15 February 2019

Could you please provide additional clarification detail:

1. Please provide evidence of when the bus lane signage was "last" installed/repared and modified in the Ripple Road Bus Lane or alternately confirm that it has never been repaired/modified since being installed when the TMO became effective.
2. Please also provide details of when the council became aware of signage missing that prompted the action as in point 1.
3. Please provide Camera "video" footage relating to above PCN as stated on PCN "Entitlement to View a Recording or Obtain Images" or provide a copy via post/email?

Please note the definition of "video footage" as "the recording, reproducing, or broadcasting of moving visual images". Unfortunately the link to pictures was sent (not video) as part of your response which was not what was requested previously.

4. Please provide identifying detail of the camera used in the above alleged infringement that evidences compliance with the approval.
5. Please provide reasons why the council will not release the video footage without a FOI request whilst issuing PCN despite the entitlement?"

5. The public authority provided the following response on 15 May 2019:
 1. "The signage was erected when the Traffic Management Order became effective and has been in place since.
 2. We have no reports of signage being missing at this location.
 3. Please find below link (this has been tested and we can confirm the footage is available)
<https://parking.lbbd.gov.uk/bu/pages/OnlineNoticeReview.aspx>
 4. Camera LW0375. The approval for this device can be found at:
<https://www.lbbd.gov.uk/sites/default/files/attachments/Approved-Device-Certificate-for-Bus-Lanes.pdf>
 5. As mentioned in 3. above, this is publicly available information if the registered keeper has the PCN reference. Also, the request for this information through this avenue serves to identify person requesting this information as the registered keeper, therefore avoiding an information breach."
6. Sometime in May 2019, the complainant requested an internal review of the public authority's response above on the grounds that the information provided was inaccurate. On 28 May 2019 the public authority asked the complainant to specify why he considered that the information provided was inaccurate. On 23 June 2019, the complainant responded claiming he had video evidence from his car showing multiple signage missing from the bus lane on Ripple Road, Barking on 15.02.19. He claimed that the missing signage was 'fixed some time thereafter' contradicting the public authority's response to item 1 of his request. He also claimed that the video footage requested in item 3 had not been provided. The complainant did not provide any specific reasons for claiming that the rest of the information provided was inaccurate other than stating there was a conflict of interest because the information had been provided by an internal department.
7. On 22 July 2019 the public authority wrote back to the complainant with details of the outcome of the internal review. It provided the following additional information:

"The signage was erected when the Traffic Management Order became effective and has been in place since. In addition to this although we do not have any written records, we are aware that additional signage was erected opposite Thatched House Public House between June 2017 and March 2018. In accordance with the TSRGD only one sign is required for the bus lane due to its length, and this is at the start of the bus lane, however we introduced a repeater sign but this is not a legal requirement.

We have no reports of signage being missing at this location.

In the original FOI response to you, we provided you with the link in which you could obtain access to the video footage you requested. As advised previously, we do not need to send you the actual footage unless you have experienced any access problems with the link. Exemption Section 21 of the FOI Act (Information accessible via other means), can be used for the purpose of the above request for video footage. The link we provided to you was tested and it proved to be working.

With regards to your request in its entirety, I can advise there is no conflict of interest. In order to provide a fair and accurate response to your review request, the FOI team will ask the relevant teams to further investigate, in this case Parking Enforcement and Parking & Environmental Design. We ask that a senior member of staff carries this out and not the person who provided the original information."

Scope of the case

8. The complainant submitted the following complaint to the ICO on 03 September 2019:

"Multiple FOI requests (ref: 10443966, 11069265 & 10066766) made, however, LBBD have not provided information about when bus lane signage records of implementation /repairs ie when it was repaired/installed/updated despite evidence that it was missing from the bus lane in Ripple Road, Barking on 15.02.19, further continual refusal to provide video or any evidence that the signage was properly in place on the same date. FOI request also failed to address the obvious conflict of interest in provision of this data. Same obstructions also being experienced via an explicit subject access request (reference: 11830457)."

9. On 15 October 2019, in response to the Commissioner's request for additional supporting correspondence in relation to three of the requests mentioned above, the complainant stated:

"....there was only a single internal review carried out [on 22 July 2019] as all requests were asking for the same data unsuccessfully hence internal reviews were not requested for 10066766 or 11069265."

10. In light of the above, the Commissioner advised the complainant on 14 January 2020 that the scope of her investigation was restricted to the following parts of his request:

1. "...Please provide evidence of when the bus lane signage was "last" installed/repared and modified in the Ripple Road Bus Lane or alternately confirm that it has never been repaired/modified since being installed when the TMO became effective."
 2. "...Please also provide details of when the council became aware of signage missing that prompted the action as in point 1."
 3. "...Please provide Camera "video" footage relating to above PCN as stated on PCN "Entitlement to View a Recording or Obtain Images" or provide a copy via post/email? Please note the definition of "video footage" as "the recording, reproducing, or broadcasting of moving visual images".
 5. "...Please provide reasons why the council will not release the video footage without a FOI request whilst issuing PCN despite the entitlement?"
11. In the same correspondence on 14 January 2020, the Commissioner also informed the complainant that she was satisfied with the public authority's response to items 1, 2, 3 and 5 of his request above.
 12. On 21 January 2020 the complainant expressed his dissatisfaction with the initial outcome of the Commissioner's investigation in respect of items 1 and 2 of his request.
 13. This decision notice is therefore restricted to the public authority's response to items 1 and 2 of the complainant's request. Specifically, whether the public authority was entitled to conclude that it did not hold any recorded information within the scope of items 1 and 2 of the request.

Reasons for decision

Section 1 FOIA - General right of access to information held by public authorities

14. When a public authority claims that the information requested by a complainant is not held, the Commissioner will decide whether this is the case on the balance of probabilities. She will reach a decision based on the adequacy of the public authority's search for the information and/or any other reasons explaining why the information is not held.
15. It is also important to mention that the FOIA only requires the provision of recorded information. Information that is not recorded cannot be said to be held by the public authority for the purposes of responding to a

request under the FOIA. A public authority is not required to create or record information specifically in order to respond to a request for information.

Complainant's submission

16. The complainant says it is simply unbelievable that the bus lane signage on Ripple Road has not been 'installed/repaired or modified' since the Traffic Management Order (TMO) became effective on 14 November 2005.
17. For the same reasons, it is unbelievable that there have been no reports of signage missing at this location. In addition, the complainant claims that his video evidence and also the video footage supplied to him by the public authority clearly shows "End of Bus Lane" signage missing from Ripple Road bus lane on 15 February 2019.

Public authority's submission

18. The public authority's submission is summarised below.
19. The bus lane signage on Ripple Road has been modified since the TMO became effective. The signage was modified to include a sign in the middle as a courtesy to drivers. This is the only modification to the bus lane signage known to have taken place. This information is not recorded. Rather, it is based on the recollection of an officer who has worked at the relevant department for a number of years and recalls the instruction being given to him by a senior officer who stopped working for the public authority in September 2018. As part of an off-boarding process, ex-employee profiles including their emails are deleted after a period of 30 days of leaving the authority. There is no requirement to keep copies of any paperwork in relation to modifications or repairs of signage on bus lanes within the Borough. As such, records are not held centrally but may be held by members of staff through email communication. A search by the Parking and Environmental Design Service did not produce any relevant records.
20. The public authority does not hold a record including video evidence of bus lane signage missing from the bus lane on Ripple Road. The video footage provided to the complainant shows the middle signage on the bus lane on Ripple Road. It does not show the end of the bus lane. The footage also does not identify the start of the bus lane.

Commissioner's considerations

21. The public authority has been able to confirm anecdotally that an additional sign was placed in the middle of the bus lane. This was placed as a courtesy to drivers rather than as a replacement signage. This is likely to have happened anytime between June 2017 and March 2018. The public authority has said that this the only known modification to the bus lane signage on Ripple Road.
22. The Commissioner has to determine whether on the balance of probabilities, the public authority holds records relating to any modification to the bus lane signage on Ripple Road since 14 November 2005. A search conducted by the Parking and Environmental Design Service did not produce any relevant records. The fact that there is no requirement to retain records of modifications or repairs of bus lane signage within the Borough meant there was a very small chance of finding any relevant records.
23. The Commissioner is therefore satisfied that on the balance of probabilities, the public authority does not hold recorded information within the scope of item 1 of the request.
24. An additional sign was placed in the middle of the bus lane as a courtesy to drivers rather than as a replacement for missing signage. In item 2 of his request, the complainant asked for details of when the public authority discovered that signage was missing which led to a replacement or modification. However, the only known modification to the bus lane signage since the TMO became effective was adding a sign in the middle of the bus lane as a courtesy to drivers. Therefore, the only possible finding in respect of item 2 of the request is that the public authority does not hold recorded information matching the request.

Right of appeal

25. 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: grc@justice.gov.uk

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

26. 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.
27. 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

Terna Waya
Senior Case Officer
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