

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 May 2023

Public Authority: London Borough of Waltham Forest
Address: Waltham Forest Town Hall
Forest Road
Walthamstow
E17 4JF

Decision (including any steps ordered)

1. The complainant has requested from the London Borough of Waltham Forest Council ('the council'), information about work carried out by a company of solicitors on behalf of it. The council initially said that it was withholding the information under section 41 and 43 of FOIA. It disclosed some information at internal review stage. During the course of the Commissioner's investigation, however, it became clear that it does not hold the remainder of the requested information.
2. The Commissioner's decision is that the council was correct to state that it does not hold any further information falling within the scope of the complainant's request for information.
3. The Commissioner does not require further steps.

Request and response

4. On 15 December 2022, the complainant wrote to the council and requested information in the following terms:

“I understand that LBWF is employing Clyde and Co LLP to support [name redacted by ICO] in his investigation of LBWF’s asbestos management. Please will you send me a copy of (a) the tender document that was used for this contract; and (b) a copy of the contract itself. Please will you also state the value of the contract.”
5. The council responded on 6 March 2023. It applied section 41 (information held in confidence) and section 43 (commercial interests) of FOIA to withhold the information from disclosure.
6. Following an internal review, the council wrote to the complainant on 6 February 2023. It disclosed a document entitled ‘Terms of Business’ but maintained its reliance upon section 43 to “fees/rates/charges and any other financial terms of agreement”.

Scope of the case

7. The complainant contacted the Commissioner on 14 March 2023 to complain about the way their request for information had been handled.
8. The complainant considers that the council has not properly responded to his request for information. He argued that it has not disclosed a copy of the contract, nor did it disclose the value of the contract with Clyde and Co. He said that he did not request a copy of the fees/rates/charges which the council applied section 43 to, and that it did not provide its arguments for the exemption applying to this information.
9. During the Commissioner’s investigation, the council amended its response to the request. It argues that:
 - It does not hold a copy of the tender document. Under its policies, no tendering competition is required for the procurement of legal services such as this.
 - There is no contract. The terms of business document, which it disclosed in response to the request for review, is the business agreement between the council and Clyde and Co under which the parties work.

- The council does not hold a contract value. There is no contract. The agreement between them is in terms of hours worked, and it has not yet received an invoice from Clyde and Co relating to the work in question.
10. The Commissioner considers that the scope of his investigation is to consider whether the council was correct to respond to the complainant's request in the way that it did.

Reasons for decision

Section 1 – General right of access to information

11. Section 1(1) requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
12. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).
14. The council argues that it does not hold a copy of a tender document, a contract, or the value of the contract.
- (i) The tender document*
15. The council argues that no tender is required for agreements such as that between the council and Clyde and Co. It provided the Commissioner with a copy of its contractual procurement rules (the 'CPR'). Paragraph 1.16 of this document states that the CPR do not apply to the instruction of barristers and solicitors.
16. The Commissioner is therefore satisfied that the council does not hold a copy of any tender document as, under its own procurement rules, there was no requirement for it to procure legal services via a tendering competition.

(ii) A copy of the contract

17. The complainant argues that the terms and conditions document is not a contract and therefore the council has not complied with his request.
18. The council clarified that there is no contract between it and Clyde and Co. It said the agreement between the parties is the terms and conditions document, and that this was disclosed to the complainant in response to his request for review.
19. The Commissioner has seen no evidence to dispute the council's assertions regarding this. The complainant did not complain about the redactions made within this document, and so the Commissioner has not considered these redactions further in this decision notice.
20. The Commissioner is therefore satisfied that the terms and agreement document is the agreement under which the parties work together.

(iii) the value of the contract

21. The council said that the price for the work carried out was unknown at that stage. It said that this is because charges are based on the hourly rates of the lawyers and the time expended on work done. It clarified that it had not received any invoices from Clyde and Co regarding the work it had carried out at the time that it responded to the request, and so it did not hold information as regards the specific cost for the work carried out.
22. The Commissioner has seen no evidence to dispute the council's assertions regarding this.

The Commissioner's conclusion

23. The Commissioner has considered the council's arguments, in conjunction with the request.
24. In general, where there is a dispute between the parties as to whether information is held or not, the Commissioner will ask the public authority a series of questions regarding the searches which it carried out in order to determine whether any relevant information is held by it falling within the scope of the request. However, where an authority is able to explain why it does not hold information falling within the scope of the request, then the need for such searches can become redundant.

25. This is the case in this instance. The council has been able to clearly explain why it does not, and would not, hold information falling within the scope of the complainant's request for information.
26. Whilst the complainant believes that relevant information will be held by the council, it has confirmed to the Commissioner that there was no tendering competition, that the agreement between the parties is the terms and conditions document which it has already disclosed, and that it had not received an invoice for the work carried out by Clyde and Co for the work it has carried out at the time that it responded to the request for information.
27. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
28. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

Section 43 – commercial interests

29. As regards the council's application of section 43 to withhold information, it applied section 43 to withhold the information on the rates, fees or charges which had been agreed between the parties.
30. However, the complainant was clear in his complaint to the Commissioner that his request was not for rates, fees, or charges. It was for the overall value of the contract.
31. The Commissioner has therefore not found it necessary to consider the application of section 43 further within this decision notice as the information which section 43 was applied to was not the information requested by the complainant.

Right of appeal

32. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.

34. 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

**Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**