

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 July 2024

Public Authority: London Borough of Havering
Address: Town Hall
Main Road
Romford
RM1 3BB

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Havering (LBH) relating to the dates of any discussions, exchange of correspondence and or meetings in respect of the Rom Valley Ice rink Site which took place between January 2010 to 1 May 2013. London Borough of Havering (LBH) refused to comply with the request on the basis of section 14(2) (repeated request) of the FOIA.
2. The Commissioner's decision is that LBH is not entitled to rely upon section 14(2) of FOIA to refuse to comply with the request. He has also determined that LBH is in breach of section 17(5) of FOIA, by failing to issue a refusal notice within 20 working days of the request.
3. The Commissioner requires LBH to take the following step to ensure compliance with the legislation.
 - Issue a fresh response to the request that does not rely on section 14(2) of FOIA.
4. LBH must take this step within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner

making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 20 April 2023, the complainant wrote to the public authority and requested information in the following terms:

"On what dates did any discussion, exchange of correspondence and or meeting in respect of Car Parking Provision on the Rom valley Ice rink Site take place between January 2010 to 1 May 2013, f

For each meeting, discussion or exchange of correspondence, please provide a copy of any record or an explanation as to why there no record was kept.

This request applies to all records (including electronic) held by the Council which show that Councillors and or Council Officers considered the long term Car Parking needs of visitors and staff to the Queens Hospital and includes emails (and deleted emails/records) from Councillors and Officers on their own accounts which relate to Council business

A search of the Council website reveals very few records (hence the request) , However if compliance with the request appears to require an unreasonable amount of time and or effort. Please confine the scope of the request to that which the Information Commissioner would consider reasonable , given the public interest in the lack of Car Parking provision for the Hospital and the amount of money the Council, receives from Car parking

If any record which ought to be disclosed contains commercially sensitive or privileged information please redact where necessary."

6. The public authority responded on 20 June 2023. It refused to comply with the request stating:

"We have decided that Section 14(2) of the Act applies to your current request for information because this is substantially similar to previous requests.

In addition we inform you that any further requests for information that you make for the same information will be dealt with in the same way, if we consider Section 14(2) applies.”

Reasons for decision

Section 14(2) – repeated requests

7. This reasoning covers whether LBH was entitled to rely on section 14(2) of the FOIA to refuse to comply with the request.

8. 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.”

9. Section 14(2)¹ of FOIA states that:

“Where a public authority has **previously complied** with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.” [Commissioner’s emphasis]

This means that you may only apply section 14(2) when all three of the following criteria have been fulfilled:

- the request is identical or substantially similar to a previous request from the same requester;
- you have previously provided the information to the requester or confirmed that you do not hold it in response to an earlier FOIA request; and

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/dealing-with-repeat-requests/>

- a reasonable interval has not elapsed between the new request and your compliance with the previous request.”
10. A request will be identical if both its wording and its scope precisely matches that of a previous request.

The complainant's view

11. The complainant considers LBH to hold information within the scope of their request. In their complaint to the Commissioner, the complainant stated that this is a long-standing matter and that on 8 February 2023, the First Tier Tribunal in case EJ/2021/0006 “Had decided that I am entitled to the information and that I should make another request for that information”.
12. Additionally, the complainant considers that LBH did not provide a complete and full disclosure to both the tribunal and the Commissioner, and that it is deliberately withholding information.

The Public Authorities position

13. The position of LBH is that it considers this to be a repeat request which is identical, or substantially similar to a previous request submitted to LBH via [whatdotheyknow](#)² on 11 January 2017. This request was also brought to the Commissioner and a Decision Notice was issued with reference FS50669077³.
14. In support of its position to the Commissioner, LBH specifically referenced the history in dealing with requests from the complainant and considered that they had complied with the request historically and made full disclosure via the associated legal proceedings stating:

“As part of these proceedings and the court directions, LB Havering were ordered to provide disclosure. he LB Havering provided it's full disclosure to the Complainant.

² [Car Parking Provision for Queens Hospital - a Freedom of Information request to London Borough of Havering - WhatDoTheyKnow](#)

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2172727/fs50669077.pdf>

Whilst we appreciate that court disclosure is not the same as a request under the Freedom of Information Act, the issue here is that everything that we held on file has already been disclosed to the Complainant. If what the Complainant is requesting was not in the original disclosure and trial bundle and previous information responses, then we are afraid the Council does not hold any of these records."

LBH also stated that in accordance with its record keeping and retention policies which requires it to retain information for 6 years that it is "likely to mean that at some stage this information will now have been destroyed in accordance with our policy."

15. This previous request stated:

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For each meeting, discussion or exchange of correspondence, please provide a copy of any record or an explanation as to why there no record was kept.

This request applies to all records (including electronic) held by the Council which show that Councillors and or Council Officers considered the long term Car Parking needs of visitors and staff to the Queens Hospital and includes emails (and deleted emails/records) from Councillors and Officers on their own accounts which relate to Council business

A search of the Council website reveals very few records (hence the request) , However if compliance with the request appears to require an unreasonable amount of time and or effort. Please confine the scope of the request to that which the Information Commissioner would consider reasonable , given the public interest in the lack of Car Parking provision for the Hospital and the amount of money the Council, receives from Car parking

If any record which ought to be disclosed contains commercially sensitive or privileged information please redact where necessary".

16. In its responses to the claimant on 20 June 2023 LBH stated that:

"It does appear that your request relates to information that has already been disclosed to you as part of previous legal proceedings and previous requests.

The London Borough of Havering has complied with its full duty of disclosure and has nothing further to disclose.

You will appreciate within legal proceedings there are many documents, duplicate copies of files and also copies of authorities, which would explain why there are so many papers."

The Commissioner's view

17. The Commissioner's guidance says:

"you can only apply section 14(2) to a request where you have either;

- already provided the information to the same requester in response to their previous FOIA request; or
- previously confirmed that you do not hold the information in response to an earlier FOIA request from the same requester.

If neither of the above criteria applies, then the request is not repeated and must process be processed in the usual manner."

18. Although LBH did not provide the Commissioner with further details and specifics of the court cases to which they refer, he notes that this Decision Notice was subject to an appeal with reference EA/2017/0278⁴ with a decision issued on 28 September 2018 and First Tier Tribunal with reference EJ/2021/0006⁵. The latter was heard on 15 December 2021 however, a decision wasn't issued until one and half years later on 8 February 2023.

19. The Commissioner has compared the two requests to see whether they are the same or substantially similar in wording or scope and

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2172727/fs50669077.pdf>

⁵ [3e277dc9-9bb0-ee11-b85a-0022483ec3f4 FTT Decision - Jinks.pdf \(sharepoint.com\)](https://www.sharepoint.com/:document?d=3e277dc9-9bb0-ee11-b85a-0022483ec3f4)

is satisfied that they are identical, however, the complainant on the original complaint to LBH via the What do they know website is shown as the 'Gatehouse Trust' and is also the appellant shown on the appeal EA/2017/0278, however, this is not the same complainant for this case.

20. In its representations to the Commissioner, LBH has not provided further explanation as to why they consider the request to be the same or similar to previous requests received from the same complainant.
21. The complainant in this case is an individual who has extensive knowledge of the circumstances and all the legal proceedings having represented the Gatehouse Trust at the appeal and appears to be associated to them in some capacity. However, the Commissioner cannot be assured that the complainant for both requests is one and the same or that the current request has been made on behalf of the GateHouse Trust.
22. As LBH has failed to provide supporting evidence, despite been invited to do so, as to why they consider that the requests are identical and from the same requestor, the Commissioner considers that neither criterion in section 14(2) has been met. He has not gone on to consider whether there is a reasonable interval between the requests.
23. Therefore, the Commissioner is satisfied that section 14(2) is not engaged and LBH is not entitled to rely on section 14(2) of FOIA to refuse the request.
24. The Commissioner requires the LBH to provide the complainant with a fresh response to their request which does not rely on section 14(2) of the FOIA.

Procedural matters

Section 17 – refusal notice

25. Under section 1(1) of FOIA a public authority must (a) confirm to an applicant whether it holds information they've requested and (b) communicate the information to the applicant if it's held and isn't exempt information.
26. Section 17 of the FOIA concerns the refusal of the request and section 17(5) states that:

27. "A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."
28. In this case, the complainant submitted their request on 20 April 2023, but LBH didn't issue a refusal notice until 20 June 2023 and therefore LBH also breached 17(5) of FOIA.

Other matters

29. The Commissioner would like to remind LBH that, whilst internal reviews are not a legal requirement under FOIA, they are still considered to be good practice to do so and, where an authority chooses to offer one, the section 45 Code of Practice sets out, in general terms, the procedure that should be followed.
30. The Commissioner expects that an internal review should be conducted within 20 working days, but absolutely should be completed by 40 working days.
31. In this case the LBH has failed to provide an internal review and the Commissioner reminds the LBH of the Code of Practice⁶ and urges it to respond in a timely manner.
32. Additionally, he has published a section 14 (Vexatious) tool kit for public authorities to provide indicators of where improvements could be made to support application of this exemption.⁷

⁶ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-45-code-of-practice-request-handling/>

⁷ <https://ico.org.uk/for-organisations/foi/foi-self-assessment-toolkit/>

<https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-45-code-of-practice-request-handling/>

33. In its responses to the complainant for this request, LBH has also stated that it no longer holds the information but has not provided any supporting evidence to support this statement and instead relied on s14(2) of FOI. It is not the Commissioner's role at this point to determine if appropriate searches have been made to locate information and determine whether information is held or not held.
34. Additionally, the Commissioner reminds LBH of the importance of considering the correct legislation before responding to any requests and ensuring that they are satisfied that the information, if held, would not be environmental. Therefore, when issuing a fresh response to the Complainant, LBH must consider whether FOIA was the correct Legislation or whether the EIR would be the most appropriate legislation for the request.

Right of appeal

35. 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

36. 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.

37. 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

Michael Lea
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