

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 13 September 2007

**Public Authority:** London Borough of Redbridge  
**Address:** PO BOX No. 2  
Town Hall  
128-142 High Road  
Ilford  
Essex  
IG1 1DD

### Summary

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The complainant requested from the London Borough of Redbridge ("the Council") confirmation of the dates of ingoing and outgoing correspondence taken directly from what he referred to as "the Leisure Department Correspondence Database" ("the database"). The complainant's belief in the existence of the database was based on telephone conversations between himself and officers in the Leisure Department which the complainant recorded. Although the Council dealt with the request as a general enquiry, it did communicate to the complainant that the database did not exist and therefore satisfied its obligations under section 1 of the Freedom of Information Act 2000 ("the Act"). The Council maintained this position during the course of the investigation and, despite the complainant's recordings of telephone conversations, the Information Commissioner ("the Commissioner") is satisfied that the database does not exist and therefore the information requested is not held.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Act. This Notice sets out his decision.

### Background

2. The complainant expressed concerns to the Council's Leisure Department about the protection of wildlife in a park. During the course of the complainant's correspondence with the Council, the complainant disputed the dates when certain items of correspondence had been sent to him. Since then, the complainant has pursued this complaint with the Council but it appears that his complaints in this regard were not upheld. In an attempt to contradict what he had been told about the dates of correspondence, the complainant contacted the

Leisure Department by telephone and stated that members of council staff referred to the database when responding to his enquiries.

## The Request

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3. Further to ongoing correspondence with the Council, the complainant wrote to the Council on 15 November 2005 in which he referred to his complaint against a council officer concerning the date a particular item of correspondence had been sent. The complainant asked whether the Council had found a copy of the disputed letter in the Leisure Department's database of incoming and outgoing correspondence. The Council responded on 13 December 2005 and stated, regarding the officer involved that:

"He insists that he wrote you such a letter and his Microsoft Word Computer back-up file indicates that a letter was prepared on 2 October 2003. If this did not get to you, it may be that the postal system was to blame".

4. The complainant responded on 21 December 2005 and stated that the Council had not responded to his enquiry about whether the letter had been found on the database.

5. The Council replied on 21 December 2005 that it felt it had responded to the enquiry and stated that:

"Your question refers to databases that do not exist in the way in which you imagine. The record that does exist is the one to which I have referred".

6. The complainant responded on 19 January 2006 and pointed out that although he had referred to the database in previous correspondence, its existence had never been denied until now. The complainant provided a description of his understanding of how the Council records correspondence as follows:

"The Leisure Department Correspondence Database records – in chronological order – all letters received according to the name of the correspondent and the date of receipt; and all replies sent, according to the date of the reply and, in some cases, the identity of the officer replying".

7. Following this exchange, the complainant requested a response to "two further questions" on 31 January 2006 in the following terms:

"(1) Is it not correct that, according to the Leisure Department Correspondence Database, the complete correspondence between that department and me during the period 27 August 2003 – 16 February 2004 was as follows:

Letters received	Replies sent
	27 August 2003
10 September 2003	9 October 2003

11 February 2004

16 February 2004

“(2) Is it not correct that the first ever letter from [name of council officer] to me that appears on the database is the one dated 16 February 2004?”

8. The Council responded on 17 February 2006 and dealt with the request as a general enquiry. It stated regarding the first element of the request that it understood that the council officer involved had also written to the complainant on 2 October 2003. Regarding the second element of the request, the Council stated that the letter on 16 February 2004 would appear to be the first item of correspondence received by the complainant from the council officer.
9. In the meantime, the complainant continued to send emails and letters to the Council asking for a response to his request on 31 January 2006. The Council sent another copy of its response which prompted the complainant to write again on 20 March 2006 to reiterate his request. On this occasion, the complainant referred to his request for “two items of information” and specifically stated that he wished the request to be handled under the Act.
10. The Council responded on 21 March 2006 and stated that it had answered the complainant’s questions in its reply on 17 February 2006.
11. The complainant expressed dissatisfaction with the response on 22 March 2006 and complained that the Council had not provided the information. He complained specifically that the response had not referred to the database and that in regards to the second element of the request, he had asked for confirmation that the letter had been sent and not whether he had received it.
12. The Council responded on 15 May 2006 and stated that it had nothing to add to its previous advice about the existence of the database and, referring to the complainant’s on-going complaint, stated that it appeared from the record that does exist that the correspondence on 2 October 2003 which was in dispute had been sent to the complainant.

### **Validity of the complaint**

13. The Commissioner would usually expect a complainant to have gone through the public authority’s internal review procedure before approaching his office with a complaint under section 50 of the Act. In this case, however, the Council did not initially acknowledge that a valid request had been made under the Act and in view of this, it was appropriate for the Commissioner to consider the complaint.

### **The Investigation**

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#### **Scope of the case**

14. On 22 May 2006, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant

specifically asked the Commissioner to consider the Council's position that the information is not held.

## Chronology

15. The Commissioner wrote to the Council on 7 March 2007 and asked for clarification of how it dealt with the request. He asked for copies of relevant correspondence. If the Council maintained that the database did not exist, the Commissioner asked it to respond to a number of questions in order to help the Commissioner to gain a clearer understanding of how the Council keeps records of correspondence. The Commissioner also wrote to the complainant at this time to set out his understanding of the complaint.
16. The complainant responded to the Commissioner on 2 April 2007 and confirmed that he was only interested in records of correspondence taken directly from the database as he considered this to be the only "complete" record. He asked the Commissioner to consider as evidence tape recordings of his telephone conversations with council officers.
17. The Commissioner wrote to the complainant on 5 April 2007 to acknowledge receipt of his recent letter. He advised the complainant that it would not be necessary to listen to the tape recordings as the complainant had already provided a detailed transcript of his conversation in his original letter of complaint to the Commissioner.
18. The Council emailed a response to the Commissioner on 4 April 2007. The Council stated in the way of background information that the complainant had been a very regular correspondent with the Council since 1994 and it provided an appendix setting out all of its correspondence with the complainant. The Council stated that it felt it had answered both of the complainant's questions in full but the complainant would not accept the answers provided. It explained that although the complainant contends that the database does exist, no such database exists. The Council further explained that individual officers hold records of their correspondence with the public and it is from these records that the Council had put together the appendix it had provided to the Commissioner. It stated that correspondence from the complainant was held in hardcopy form but an electronic copy is retained of all replies and emails. The Council also stated that it was its policy to respond to all enquiries for information within the terms of the Act but that it did not believe that the complainant had asked for recorded information on this occasion.
19. The Commissioner wrote to the Council on 4 April 2007 and asked for its help in understanding what documents were of relevance to the specific complaint from the appendix it had provided. The Commissioner asked the Council to provide relevant documents and background information. He also advised the Council that he did consider that a valid request had been made under the Act and that if the Council had not understood what was required, the Act makes provision under section 16 for it to seek further help from the complainant in this regard. The Commissioner also advised the Council that the complainant appeared to have had telephone conversations with council officers who referred to a

database of correspondence within the Leisure Department. The Commissioner asked for more details about how the Council records correspondence and he also asked whether the Council was able to offer any explanation for why council officers appeared to have advised the complainant over the telephone of the existence of a database.

20. The Council responded to the Commissioner's further enquiries on 2 May 2007. It supplied copies of correspondence which it considered relevant. It stated that it could not offer an explanation for what was said to the complainant without consulting the individual members of staff with whom the complainant had spoken but the complainant had not wanted to provide these names in order to protect the officers involved. The Council did not provide any further details about how it holds correspondence.
21. The Commissioner contacted the Council by telephone on 5 May 2007 to discuss the response. The Council again explained that there was no central database and that individual officers hold records of their own correspondence. Letters sent in by hardcopy are stored in hardcopy and that an officer may record the letters in some way, such as on a spreadsheet for example, but this is essentially up to the individual officer. The Council explained that the officer will hold records of outgoing letters which are sent electronically as well as copies of all email traffic. The Council stated that other council sites have broadly similar methods of handling correspondence. As regards the complainant's telephone conversations, the Council stated that it was possible that one of the officers within the Leisure Department may have referred to their own records of correspondence as a database. The Council also acknowledged that its failure to attempt to explain its processes more completely to the complainant had perhaps added to the confusion in this case.
22. The Commissioner sent a letter to the Council on 16 May 2007 to seek further clarification and to confirm the details discussed during the telephone conversation on 5 May 2007.
23. The Commissioner received a telephone call from the Council on 24 May 2007 advising him of a database known as a "Performance Indicator Database". The Council asked for more time to investigate and wrote to the Commissioner on 7 June 2007 to clarify. The Council reiterated that there is no central system or database which records all correspondence within the Leisure Department but that there is a central system used by the Culture, Sport and Community Service Learning Area (of which the Leisure Department is part). The Council explained that this database records only the date of the initial letter, subject matter, and date of response and the information is used as a performance indicator where the correspondence meets "the set local government recording criteria". Correspondence which does not meet the criteria is not recorded on the Performance Indicator Database but is held by the individual officer. In relation to this correspondence, the Council has explained that correspondence is saved in different places depending on the team. If files or documents are created electronically, they are generally stored in shared areas accessible by the teams in the Leisure Department and, if an issue is particularly complex, it may be stored in its own folder. In addition, the Chief Officer has a separate folder where

his or her own correspondence is stored. The Council added that it has no corporate document management system in place which may have been referred to as a database.

24. The Commissioner contacted the Council by telephone on 15 May 2007 to discuss the response. The Council explained to the Commissioner that "local government criteria" is used for the purposes of deciding what to record on the database which is used to indicate the Council's overall performance in responding to specific enquiries. It explained that routine enquiries such as for copies of leaflets etc would not be recorded on this database and that of correspondence which did meet the criteria, only the initial enquiry would go on and any follow up correspondence would not be recorded. The Council advised that not many of the complainant's letters were on the Performance Indicator Database as they had been deemed follow-up correspondence.
25. The Commissioner completed an informal assessment of the complaint on 13 June 2007 and supplied a copy to the complainant. This set out the Commissioner's findings in the investigation and that, despite the complainant's telephone conversation reports, it did not appear that the database existed and the information was therefore not held for the purposes of the Act.
26. The complainant responded on 4 July 2007 and stated that he did not accept the Commissioner's assessment that the information was not held because of the telephone conversations he had had with staff in the Leisure Department. He stated this was evidence that the information was held and provided a further transcript of one of the conversations in which the complainant reported that a council officer specifically referred to the database by name.

## Analysis

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### Procedural matters

27. It is apparent that the Council did not recognise that a valid request under the Act had been made on 31 January 2006 and consequently, it did not provide a response which was compliant with its obligations on 17 February 2006. Although the Council has explained to the Commissioner that it did not consider that the complainant had asked for recorded information, it is clear that had the database existed, the request would have related to recorded information held by the Council. Even following the complainant's further letter on 20 March 2006 which stated that the request was being made under the Act, the Council continued to treat the request as if it was a general enquiry and provided an inadequate response.
28. The Council's further response on 15 May 2006 referred the complainant back to earlier correspondence on 26 January 2006 which stated that the database does not exist and also made reference to "such records that do exist" which was presumably a reference to [name of council officer]'s back-up file on Microsoft Word.

29. Although the Council's response on 15 May 2006 was not ideal and was not consciously in line with the Act, it is the Commissioner's view that it did communicate to the complainant that the information was not held. This may be reasonably inferred from the Council's statement that the database does not exist. The Commissioner considers, however, that it would have been helpful if the Council had explained to the complainant what its procedures were for recording correspondence. It is also clear that the Council did not communicate that the information was not held in response to the request within the 20 working days prescribed by the Act.
30. The complainant has alleged that the Council does hold the information he requested on 31 January 2006. This belief is based on telephone conversations the complainant appears to have had with staff within the Leisure Department. The complainant has reported that in these conversations, council officers consulted an electronic system which was referred to in at least one of these conversations as the "Leisure Department Correspondence Database". The complainant has advised the Commissioner that he made tape recordings of these conversations and that is evidence that the database does exist.
31. Although the Council is unable to account for what appears to have been said to the complainant during telephone conversations, it has provided an account of how it holds records of correspondence. During the investigation, the Commissioner found no evidence that would support the complainant's contention that a database does exist within the Leisure Department which records all the incoming and outgoing correspondence of the Leisure Department on a single database known as the "Leisure Department Correspondence Database" or any similar central system. It certainly appears that the telephone conversations between the complainant and the Leisure Department may have been misleading in this respect, but the Council has since formally clarified its position.

## The Decision

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32. The Commissioner's decision is that the public authority complied with section 1 of the Act when it responded to the complainant on 15 May 2006 because the Council's statement that the database does not exist communicated to the complainant that the information was not held by the Council. In addition, the Commissioner is satisfied that the information requested is not held by the Council. However, it is clear that the Council did not provide a response stating that the information is not held within the 20 working day deadline prescribed by the Act and as such, the Commissioner's decision is that the Council breached section 10 of the Act.

## Steps Required

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33. The Commissioner requires no steps to be taken.

## Right of Appeal

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34. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 13<sup>th</sup> day of September 2007**

**Signed .....**

**Jane Durkin  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## Legal Annex

**Section 1(1)** provides 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.”

**Section 10(1)** provides that –

“Subject to subsections (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.”