

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 2 December 2010**

**Public Authority:** London Borough of Brent  
**Address:** Brent Town Hall  
Forty Lane  
Wembley  
Middlesex  
HA9 9HD

### Summary

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The complainant made a request for information to the London Borough of Brent via his account on the [www.whatdotheyknow.com](http://www.whatdotheyknow.com) website. He requested that its response be provided in electronic form. The public authority expressed its willingness to provide the information to the complainant by way of an alternative email address, but claimed that it would not be reasonably practical for it to provide the information to the email address generated by the website, as to do so would raise copyright issues. The Commissioner has investigated and considers that the public authority should provide the requested information to the complainant to the *whatdotheyknow.com* email address that was used to make the request. The public authority has agreed with the Commissioner's view and has now provided its response to that address.

The Commissioner has concluded that the public authority breached sections 1(1)(b) and 10(1) of the Freedom of Information Act 2000 in dealing with this request.

### 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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

## Background

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2. The complainant made a request to the London Borough of Brent (the 'Council') on 17 December 2009 for responses to requests to be made via the *whatdotheyknow.com* website, from September 2009, where the Council had refused to send the requested information to this website and had instead requested an alternative disclosure address. This request is the subject of a Decision Notice reference *FS50296350* and is the request which the complainant references as detailed below.

## The Request

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3. On 24 March 2010 the complainant wrote to the Council and requested the following information under the Act:

*"With reference to my previous request dated 17th December 2009 for FOI responses (<http://www.whatdotheyknow.com/request/wh...>), regarding your refusal to send FOI responses to @whatdotheyknow addresses:*

*Please could you send me a copy of any responses to such requests that have been prepared but have not been sent to the original request address. This should start from the first request not covered by my request of 17th December, but not include that request itself.*

*This would include both responses where you sent the response to an alternate address and responses that were not sent because the requestor has not supplied an alternate address or for other reasons.*

*If this request would breach the costs limit, then I request that you instead provide as many responses as you can within the costs limit, working forward from the start date. If you are also unable to do this for any reason, then as advice and assistance please tell me what date range you would be able to provide within the costs limit.*

*To be clear, the email address this request is coming from is my "address for correspondence" and I want the answer to be sent to it in electronic form."*

4. On 24 April 2010 the complainant wrote to the Council requesting it to respond given that it had not responded within the statutory twenty working days time limit.
5. The Council acknowledged the complainant's correspondence and advised it would conduct an internal review.
6. On 6 May 2010 the Council provided the complainant with the result of its internal review. It referred to the complainant's previous request (reference *FS50296350*) reiterating that it was prepared to send the requested information to an alternative disclosure address. The Council restated it had concerns about sending the information requested to the email address provided because it was aware that doing so would automatically result in the information being published on the *whatdotheyknow.com* website. The Council advised that publication of this information in this way may constitute an unauthorised re-use (under the Re-use of Public Sector Information Regulations 2005) and may infringe copyright. It requested an alternative disclosure address from the complainant.

## The Investigation

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### Scope of the case

7. On 23 May 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant stated he would not consider his request to have been properly handled until the Council had provided the requested information to his *whatdotheyknow.com* email address. He advised he had given the Council an alternative email address for an interim disclosure but had not yet been provided with the information.

### Chronology

8. A Decision Notice was issued in respect of the House of Commons case available at the following link:

[http://www.ico.gov.uk/upload/documents/decisionnotices/2010/fs\\_50276715.pdf](http://www.ico.gov.uk/upload/documents/decisionnotices/2010/fs_50276715.pdf)

The Commissioner ordered the House of Commons to provide its response to that request via the complainant's *whatdotheyknow.com* email account. In light of this decision, on 29 June 2010 the Commissioner wrote to the Council to ask it to reconsider its response

- to the complainant and provide the requested information to him via the *whatdotheyknow.com* website. The Commissioner pointed out that whilst the Council had complied with section 1(1)(a) of the Act in confirming it held the requested information, at this point it had not complied with section 1(1)(b) as it had not made the information available to him in the form requested and to the address provided. In addition, the Council had not complied with section 10(1) of the Act.
9. On 13 July 2010 the Council wrote to the Commissioner confirming it would provide the requested information to the *whatdotheyknow.com* website. The Council advised it had not yet compiled the responses to the request and would do so within 20 working days.
  10. On 11 August 2010 the Council wrote to the Commissioner as requested confirming it had provided the responses to the request to the complainant's *whatdotheyknow.com* email address in a zipped and password protected file format. The Council stated that it had advised the complainant that the password for the zipped file was "*available on request.*"
  11. On 16 August 2010 the Commissioner spoke to the Council to advise that, in his view, the password for the zipped files should also be provided via the *whatdotheyknow.com* email address. The Council confirmed it was in the process of seeking legal advice as to the value of appealing a Decision Notice to the Information Tribunal on the issue of refusing to provide the password for the files it had recently provided.
  12. On 23 August 2010 the Commissioner both wrote and spoke to the Council to request an update once the Council had received its legal advice, to which the Council agreed.
  13. On 31 August 2010 the Commissioner's Enforcement Department wrote to Brent Council in relation to this complaint and a number of other similar complaints in which the Council had refused to provide the requested information via *whatdotheyknow.com*. The Enforcement letter asked the Council to respond to all these requests by 14 September 2010 and stated that further enforcement action would be considered if the Council refused to comply.
  14. On 9 September 2010 the Council wrote to the Commissioner confirming it would now provide responses and passwords to those requests made via *whatdotheyknow.com* for which applicants had asked for the response to be issued via this website.

15. On 20 September 2010 the complainant wrote to the Commissioner to confirm he had now received a response from the Council via *whatdotheyknow.com* but that he needed some time to cross reference the information sent with the original requests on *whatdotheyknow.com*, with a view to ensuring that all the relevant information had been provided.
16. Having received confirmation from the Council that it would comply with his Enforcement Department and provide responses to all the outstanding requests for information to the *whatdotheyknow.com* website by 11 October 2010, the Commissioner asked the complainant to confirm to him that he had received all the requested information and whether he would consider withdrawing his complaint.
17. On 10 October 2010 the complainant wrote to the Commissioner confirming he wished to proceed to a Decision Notice in respect of this complaint. He also advised the Commissioner that he believed some of the requested information to be missing from the Council's response and provided one example.
18. A chain of correspondence followed between the complainant and the Commissioner in which the complainant identified a number of requests falling within the remit of his request for which he considered the Council had not provided a response via *whatdotheyknow.com*.
19. On 25 October 2010 the Commissioner both spoke and wrote to the Council with the details of the requests for which responses appeared to be missing, seeking clarification. The Council responded to the Commissioner on the same day clarifying where some of its responses could be located on *whatdotheyknow.com* together with an explanation as to how the remainder had been dealt with.
20. The Commissioner wrote to the complainant on 26 October 2010 to advise him of the Council's update.
21. On 31 October 2010 the complainant wrote to the Commissioner to advise there was still one response missing from the information the Council had provided to him.
22. On 1 November 2010 there was an exchange of correspondence in which the Commissioner requested the Council provide the outstanding response to the complainant, which the Council duly did.

## Analysis

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### Substantive Procedural Matters

#### *Section 8: Request for information*

23. The Commissioner has considered whether the complainant's request constitutes a valid request for the purposes of section 8 of the Act.

Section 8(1) provides that:

*"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."*
24. The [www.whatdotheyknow.com](http://www.whatdotheyknow.com) website<sup>1</sup> works by the user setting up an account and making a freedom of information request from the website. The website then sends the request by email to the public authority. The website automatically generates an email address, for example *5555@whatdotheyknow.com*, which is unique to that request. When a public authority sends a response to that email address, the website automatically processes that response and publishes it to the website.
25. The Commissioner considers that, for the purposes of section 8(1)(b), the email address that was generated from the website and used for sending the request constitutes 'an address for correspondence'. Further, the complainant specified that he wished the Council to provide its response to this specific email address.
26. The Council initially refused to respond to the *whatdotheyknow.com* address, as responding to the address results in automatic publication and therefore a breach of copyright. The Commissioner does not believe that issues relating to how an email address is connected to a publishing mechanism are relevant in terms of considering whether a valid address has been stated for correspondence.

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<sup>1</sup> Background about the website is available at:  
<http://www.whatdotheyknow.com/help/about>

27. The Commissioner notes that section 50(1) of the Copyright, Designs and Patents Act 1988 provides that -

*"Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe copyright."*

28. The Commissioner finds that responding to a valid address, in compliance with the Freedom of Information Act, is not a breach of copyright. The subsequent publication of the information by the website automatically can still be addressed separately by the Council as a copyright issue, outside of the jurisdiction of the Act.
29. The Commissioner therefore finds that the Council was obliged to respond to the *whatdotheyknow.com* address specified. The Council complied with the Commissioner's view during the investigation and provided both the response and the password to access its response, which was in a zipped file format, to the complainant's *whatdotheyknow.com* email address.

## **Procedural Requirements**

### *Section 1: General right of access*

30. The Commissioner has considered whether the Council has complied with section 1 in respect of this request.

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."*

31. The complainant requested the information on 17 December 2009. The Council confirmed that it held the requested information on 18 December 2009. It therefore complied with section 1(1)(a) in relation to the requested information. The Council provided the complainant with the requested information in the form requested and to the address provided which was confirmed in an email dated 11 August 2010. It subsequently provided the password to access the zipped files

to the *whatdotheyknow.com* address. However, by not providing the requested information to the email address specified by the complainant by the completion of the internal review or the time for statutory compliance, the Council breached section 1(1)(b) of the Act.

*Section 10: Time for compliance*

32. The Commissioner has considered whether the Council has complied with section 10(1).

Section 10(1) provides that –

*"Subject to subsections (2) and (3), a public authority must comply with section 1 promptly and in any event not later than the twentieth working day following the date of receipt."*

33. The complainant made his request for information on 17 December 2010 and was not provided with the requested information in the form requested and to the address provided until September 2010. The Council has therefore breached section 10(1) of the Act.

## **The Decision**

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34. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act, in that it has breached sections 1(1)(b) and 10(1) of the Act.

## **Steps Required**

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35. The Commissioner requires no steps to be taken.

## **Other matters**

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36. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
37. The Commissioner notes that, in this instance, the Council refused to provide information via *whatdotheyknow.com* and asked the complainant to supply an alternative email address for provision of



information. In explaining the reasons for this approach, the Council stated:

*"The making of a Freedom of Information request cannot invalidate the council's rights to control further use of its own information or abrogate any duty it may owe to third party copyright holders. The concern is that disclosing information in the manner requested would make the council complicit in any such breach. Responding to an email address that automatically publishes responses does not make it possible for the council to exercise any controls referred to under the new regulations governing the re-use of public sector information, which came into force in July 2005 (Statutory Instrument 1515)."*

38. In addition to the request which is the subject of this complaint, the Commissioner is aware of a number of other requests submitted via *whatdotheyknow.com* which the Council has handled in a similar manner.
39. The Commissioner considers that refusing to provide responses to requests via *whatdotheyknow.com* in this manner is neither within the spirit nor the letter of the Act and he has advised the Council that, in future, where a request specifies a valid address for correspondence, a response should be provided to that address.

## Right of Appeal

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40. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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

**Dated the 2<sup>nd</sup> day of December 2010**

**Signed .....**

**Steve Wood  
Head of Policy Delivery  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### General Right of Access

**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 1(2)** provides that –

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

**Section 1(3)** provides that –

“Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and
- (b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

**Section 1(4)** provides that –

“The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or

deletion that would have been made regardless of the receipt of the request."

**Section 1(5)** provides that –

"A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b)."

**Section 1(6)** provides that –

"In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as "the duty to confirm or deny"."

### **Request for Information**

**Section 8(1)** provides that –

"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."

**Section 8(2)** provides that –

"For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request –

- (a) is transmitted by electronic means,
- (b) is received in legible form, and
- (c) is capable of being used for subsequent reference."

### **Time for Compliance**

**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."

**Section 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

**Section 10(3)** provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

**Section 10(4)** provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

**Section 10(5)** provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

**Section 10(6)** provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”