

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 March 2011

Public Authority: London Borough of Camden
Address: Camden Town Hall
Judd Street
London
WC1H 9JE

Summary

On 16 February 2010 the complainant asked the London Borough of Camden (Camden) for all documents about the change in its procedure and/ or policy for using enhanced CPA status to determine eligibility for a Freedom Pass; also for the first Council policy for providing Freedom Passes to people with mental health problems. The Commissioner decided that Camden had dealt with the information request in accordance with section 1(1) and section 21 of the Act. However, he also decided that the Camden's initial response had breached section 10(1) of the Act in taking more than twenty working days to respond.

The Commissioner's Role

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

2. The London Borough of Camden (Camden), in common with many other London boroughs, offers a free transport concession called the Freedom Pass to eligible residents. The complainant had discussed with Camden, on behalf of himself and other mentally ill residents, his concerns about changes to Camden's eligibility criteria for including mentally ill people within the Freedom Pass scheme. At one time the adopted criterion for eligibility used by Camden had been the enhanced Care Programme

Approach (CPA). Camden subsequently dissociated the enhanced CPA from the award of the Freedom Pass.

The Request

3. On 16 February 2010 the complainant told Camden that mentally ill people living in the borough needed Freedom Passes and he asked for:
"h. all documents (letters, emails, handwritten material, reports) about the change in procedure and/ or policy using Enhanced CPA status as eligibility criteria or eligibility test and the recent changes.

i. Under the FOIA provide me with a copy of the document showing the first Council policy providing Freedom Passes to people with mental health problems."
4. On 2 March 2010 Camden acknowledged the request and promised that the complainant would be contacted in due course.
5. On 31 March 2010 Camden replied saying that for part h. of the request, the mental health discretionary criteria for issuing a Freedom Pass had always been agreed informally between the mental health teams and Camden's passenger accessible transport service. Therefore, apart from a few emails and a presentation, this process had always been one of very informal cooperation in which those applicants who were supported to a significant level were given transport concessions. Camden disclosed the relevant documents as attachments to their emailed reply. As regards part i. of the information request, Camden said that it did not hold the information requested.
6. On 14 May 2010 the complainant asked for an internal review of Camden's response to his request. He said that he accepted Camden's apology for the delay in issuing its refusal notice of 31 March. He said that it was very difficult to believe that only informal arrangements were made when the discretionary transport scheme cost about £2m a year. He said that it was not credible that there would not be a formal agreement in relation to the criteria for awarding passes on which the costs depend. He added that the emails disclosed to him on 31 March 2010 had only been discussional and not determinative. There was no record in what he had seen of a decision being made, or having been made, informally or formally. He said that the emails disclosed by Camden all dated from 2007; no record of more recent changes to the scheme had been included at all. He concluded that it was very difficult to believe that Camden did not hold the information requested because without it Camden would be running the scheme on an unofficial basis.
7. On 1 June 2010 Camden told the complainant the outcome of its review of his complaint. Camden noted that he was disinclined to accept its

explanation that the mental health discretionary criteria for Freedom Passes had always been agreed informally and that only a few emails and a presentation existed as a record; also his doubts that no formal agreement existed. Camden said that its officers had confirmed that there had been no formal committee based process to ratify its decision which is why there were no more documents. Camden said that there had been some telephone conversations between parties to come to a view on the best and most expedient way forward. Camden noted the complainant's comments about the information disclosed being discussional rather than being determinative however the information that had been disclosed was the information that was held. Camden assured the complainant that sufficient steps had been taken by its officers to retrieve the information requested. Camden concluded by saying that it did not hold the information which the complainant presumed it did hold.

8. Also in its 1 June 2010 letter, Camden said that the background policy information the complainant sought was published on relevant websites. Camden provided a link to an external website and also referred the complaint to its own website. As regards the policy documentation information, which it said was available publicly, Camden relied on the section 21 (Information accessible to applicant by other means) exemption from the Act in refusing the request.

The Investigation

Scope of the case

9. On 9 June 2010 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 following points: it was not credible in his view that Camden could spend £2m without making formal decisions of some kind; the information disclosed was discussional not determinative so even informal decision making was not recorded which he found not credible; also no information had been given about further changes to the scheme in 2009. He added that the reliance on the section 21 exemption was bizarre in relation to Camden's policy as the discretionary scheme was quite obviously a local scheme at the discretion of Camden so it had been disingenuous of Camden to refer to central government documents. He added that he sympathised with Camden in that the changes he was enquiring about were highly embarrassing but he did not believe that was a ground for withholding the information from the public.
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

11. On 29 July 2010 Camden provided a detailed submission to the Commissioner. Camden said that due to the nature of the search for information Camden had had to conduct it had not been able to provide a full answer within the 20 day deadline but that a later date for its response had been agreed with the complainant. Camden reiterated the points made by the complainant to it and what it had said in response. Camden added that all the relevant information that it held had been disclosed in its original response. The information that the complainant presumed to exist did not exist and so was not held. Camden added that it had applied the section 21 exemption to the existing policy documentation as this was available to members of the public.
12. On 18 August 2010 the Audit Commission wrote to the complainant about assertions he had made to the Audit Commission that: the identities of officers who had decided how to spend this £2m were unknown; local councillors had not approved the expenditure and had never done so; no record existed of decisions in respect of the way the money had been spent or how much money had been spent; and, that formal decisions had never been taken and records had never been kept in relation to Camden's discretionary Freedom Pass scheme. The Audit Commission told the complainant that it had investigated the matters raised and it was satisfied that: appropriate arrangements to maintain budgetary control were in place within Camden; the overall concessionary fares and accessible transport budget had been approved by members as part of Camden's annual budget setting process; and, appropriate records were maintained for items of expenditure.
13. On 22 December 2010 the Commissioner began his investigation.
14. On 4 February 2011 Camden told the Commissioner that the steps it had taken to identify information within the scope of the information request had included a check of all emails between relevant officers. There had also been checks made of information held in shared drives and public folders to see whether or not there was any relevant information held there but none had been found beyond that which had already been disclosed to the complainant. With regard to the information withheld relying on the section 21 exemption, Camden explained what links had been provided to the complainant to enable him to access the relevant policy information that was in the public domain. Camden added that its Head of Passenger and Accessible Transport unit had confirmed that there had been no formal process, e.g. a committee process to ratify this local decision, in consequence there were no further documents to provide. Camden said that there had been telephone conversations between various parties to come to a view on the best or most expedient way forward but that it held no record of any of these telephone conversations. Camden

provided the Commissioner, for his information, with the 18 August 2010 letter from the Audit Commission and noted that the Audit Commission had concurred with Camden's conclusion that it did not have any formal arrangements in place.

15. On 9 February 2011 Camden confirmed to the Commissioner that no further information was held on what the complainant had described as the 2009 policy changes. Camden reiterated that the only information being withheld in reliance on the section 21 exemption was contained within the information the links for which had been provided to the complainant and copied to the Commissioner.
16. On 14 February 2011 the Commissioner provided the complainant with his preliminary view of the matter and invited him to accept that Camden held no undisclosed information that came within the scope of the information request.
17. Also on 14 February 2011 the complainant told the Commissioner that he wished to formally dispute his preliminary view and the rationale the Commissioner had adopted. He said that the Audit Commission's decision on propriety was irrelevant and using it was perverse. He considered that Camden's assurances to the Commissioner were based on assertions by officers without concrete evidence. He said that the Commissioner's preliminary view had not taken into account his arguments questioning the credibility of Camden's assertions. He added that the Commissioner's preliminary view had not taken into account his complaint that, although some information had been given about the 2007 changes, no information at all had been given on the 2009 changes; he said it was impossible for these changes to have been made without records. He had asked for the oldest extant policy but this was ignored so clearly Camden had withheld some information. He concluded that it seemed irregular for the Commissioner to overlook Camden's late response to his original request.

Analysis

Substantive Procedural Matters

Section 1(1) – General right of access to information held by public authorities

18. Camden told the complainant that it did not hold the requested information. In doing so, it did not refuse the request but complied with its duty under section 1(1)(a) of the Act to deny that the information was held.

19. The Commissioner has seen that, having received the request, Camden made reasonable enquiries of its officers and electronic searches of relevant emails, there have also been checks of shared drives and public folders to see whether or not there was any relevant information held there but none had been found beyond that which had been disclosed to the complainant. The complainant has been sceptical of Camden's position that no formal decisions are recorded based on his assumptions about the process it might have used to arrive at its decisions. Camden has explained to both the complainant and the Commissioner the informal process it used and the letter from the Audit Commission provides additional support for Camden's evidence to the Commissioner on the point. Camden also said that there had been relevant telephone calls but also that it held no record of these. In the light of the assurances received from Camden about the processes used and the information held, the Commissioner is satisfied, on a balance of probabilities, that Camden is correct in saying that no information is held beyond that already disclosed. Accordingly he did not uphold the complaint that further information was held but had not been declared.

Section 10 – Time for compliance with request

20. Section 10(1) of the Act requires a public authority to comply with section 1(1) of the Act, and provide information held, promptly and in any event not later than the twentieth working day following the date of receipt.
21. The Commissioner has seen that it took Camden more than 20 working days to respond to the request in breach of section 10(1) of the Act. The complainant told Camden that he accepted its apology for the delay.

Exemptions

Section 21 – Information accessible to applicant by other means

22. Section 21(1) of the Act exempts information that is reasonably accessible to the applicant by other means.
23. The Commissioner has seen that Camden has provided the complainant with relevant links to all of the relevant policy information it holds and which is also available to the general public by electronic means. Given that availability, he is satisfied therefore that Camden was correct to refuse this part of the request by relying on the section 21 exemption of the Act.

The Decision

24. The Commissioner's decision is that the public authority dealt with the request for information in accordance with sections 1(1) and 21 of the Act.
25. However, the Commissioner has also decided that the Camden's initial response to the request was not dealt with in accordance with the Act in that it took more than 20 working days to respond, a breach of section 10(1) of the Act.

Steps Required

26. The Commissioner requires no steps to be taken.

Right of Appeal

27. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

28. 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.
29. 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 15th day of March 2011

Signed

Andrew White
Group Manager
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 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21

...

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."

...

Information Accessible by other Means

Section 21(1) provides that –

"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."