

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 June 2011

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

Summary

The complainant made a request for information to the London Borough of Brent (the Council). He had previously requested the same information to be sent to the 'What Do They Know' (WDTK) website where he has a personal account. The Council refused to respond to the complainant's request on the WDTK website (the first request) and therefore he asked that the information he had requested be sent to his personal email address (the second request). In the meantime the complainant pursued his complaint about his WDTK request separately. The Council refused to respond to his second request stating that they would take no further action whilst his complaint regarding the first request was ongoing. The Commissioner finds that the second request was a valid request under section 8 of the Act and should have been responded to. In not responding, the Council breached sections 1(1)(a), 1(1)(b) and 10(1) of the Act.

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. This case relates to two other complaints made by the complainant against the Council regarding the website 'What Do They Know' (WDTK)¹. In these requests, the complainant had requested that any information which was to be disclosed to him should be sent electronically to his account on WDTK. The Council refused to do this in both cases, stating that disclosing the information on WDTK would necessarily cause copyright issues. It did however state, in both cases, that it would disclose the information to a personal email address of the complainant.
3. The complainant made complaints about the Council's response to him regarding both requests. Both complaints became the subject of Decision Notices issued by the Commissioner. The Commissioner determined, in both of the previous cases that disclosing information to a complainant's WDTK account was a valid method of disclosure: The WDKT website provides a valid address to respond to, identifies the requestor and is in writing. As such it should have been considered a valid request.
4. The Commissioner explained that whether copyright law is infringed by such disclosure is a separate issue to whether or not a request under the Freedom of Information Act is valid. In line with this decision, the Commissioner found the Council in breach of section 1(1)(b) and 10(1) of the Act and ordered the requested information to be disclosed to WDTK. The information was disclosed to the complainant via WDTK following the two Decision Notices.
5. The request considered in this notice is a request for the same information as discussed in the two previous Decision Notices. The complainant requested that the information should be sent to his personal email address because the Council would not recognise his request made on WDTK. He asked the Council to make its response to his personal address before the Council's eventual disclosure of the requested information on WDTK.
6. The decision is based on the complainant's dealings with the Council, which he provided to the Commissioner when he considered both of the complainant's previous requests. The Commissioner determined that it was not necessary to undertake any further investigation in respect of this new complaint before making his decision.

¹ Information Commissioner's Office Decision Notices FS50313965 and FS50296350

The Request

7. The complainant made the following request on 13 May 2010:

'I have appealed to the Information Commissioner and I still expect the information I requested to be sent to this email address if he rules in my favour, but in the meantime please send a copy to [email address] - I note that you have stated that you are "ready to supply the information requested" and I therefore expect to receive it immediately.'

8. On 2 June 2010 the Council responded to the complainant. It stated that as he had now appealed the Council's decision not to provide information to WDTK, they would not be taking any further action with this request until his other complaints had been resolved. The complainant requested an internal review of the Council's stance on 13 June 2010. The Council did not respond to this request.

The Investigation

Scope of the case

9. On 14 August 2010 the complainant contacted the Commissioner to complain that his request for information had not been handled. He explained that he had eventually been supplied with the requested information, following the two Decision Notices mentioned above and therefore did not need any steps to be ordered for disclosure. The scope of the Commissioner's investigation was therefore solely to determine whether or not the complainant's request was a valid one under section 8 of the Act and should have been responded to.

Analysis

Substantive Procedural Matters

10. Section 8 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.”

11. The Commissioner therefore considers a valid request to be one, made in writing, which provides the name of the requester, provides an address to respond to and describes the information requested. He also considers a request submitted by email to be a request in writing.
12. The complainant submitted his request in writing via email. He named himself in the request, described the information he was requesting and provided an address for the Council to respond to. The Commissioner therefore considers the request to be valid under section 8 of the Act. It should have been responded to by the Council.
13. In not responding to the complainant’s request, the Council breached section 1(1)(a) of the Act as it did not confirm whether or not it held the requested information. As the complainant was not provided with the information (although he did later receive this from his other complaints regarding WDTK) the Council breached section 1(1)(b) of the Act. In not responding to the request within 20 working days (or at all) the Council also breached section 10(1) of the Act.

The Decision

14. The Commissioner’s decision is that the public authority did not deal with the request for information in accordance with the Act. It did not respond to the complainant, did not provide him with the requested information and because of this did not do so within the prescribed 20 working days. The Council therefore breached sections 1(1)(a), 1(1)(b) and 10(1) of the Act.

Steps Required

15. The Commissioner requires no steps to be taken.

Right of Appeal

16. 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.

Website: www.informationtribunal.gov.uk

17. 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.
18. 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 29th day of June 2011

Signed

**Gerrard Tracey
Principal Policy Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

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.”

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 –

- (d) is in writing,
- (e) states the name of the applicant and an address for correspondence, and
- (f) 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 –

- (d) is transmitted by electronic means,
- (e) is received in legible form, and 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.”