

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 December 2011

Public Authority: London Borough of Bexley
Address: Civic Offices
Broadway
Bexleyheath
Kent
DA6 7LB

Decision (including any steps ordered)

1. The complainant requested information relating to issues with a particular parking area. In relation to the majority of the requests, the London Borough of Bexley ("the council") said that it did not hold the information. It provided the recorded information that it held relating to requests 1 and 3.
2. The Commissioner's decision is that the council did not hold recorded information relating to the remaining requests. However, he found procedural breaches because the council had failed to respond within the statutory 20 working days and because it had failed to state in relation to some of the requests that it did not hold recorded information.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 15 March 2011, the complainant requested information from the council in the following terms:

"The following information is requested under the Freedom of Information Act 2005 [sic].

1. How many PCNs have been issued over the period 1st Sept 2010 to 28th Feb 2011 in the two bays marked for disabled mini buses only, 'To Disable Badge Holders'

- 2. How long has the flood lighting above the disable bays not been working*
 - 3. When was the last maintenance carried out on this flood lighting*
 - 4. The disable bays are covered by CCTV. Please supply footage for the evening of 5th Nov 2010*
 - 5. The specification used for illuminating this disable area by car head lights approaching this off road area*
 - 6. Why do you have signs in these bays one states "Disable Mini Buses Only" and the second states "Disable Badge Holders Only" The second has arrows.*
 - 7. Are the security boxes NACOSS maintained".*
5. The council replied on 19 April 2011. The council said that it could not respond to all of the questions as it did not understand what the complainant was asking. However, in relation to some, it responded. In relation to point 1 of the request, the council relied on section 12(1) although it did not cite this exclusion specifically.
 6. The complainant replied to the council on 19 July 2011. He complained about the council's failure to respond on time. He referred to the problems he thought existed in relation to the parking area concerned. He said that he wanted the council to provide a full response in relation to these matters.
 7. The council replied on 28 July 2011. It apologised for the time it took to reply. However, it said that it could not become involved in parking issues.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. It was clear to the Commissioner that the complainant was dissatisfied that it took the council more than 20 working days to respond to his request. However, beyond that, the precise nature of his complaint was not clear.
9. When the complainant was invited to clarify the complaint, the complainant telephoned the Commissioner to confirm that he was dissatisfied with the council's response to all of the seven points he had made in his request. He wrote to the Commissioner following this conversation and described the nature of his complaint in more detail. The complainant complained that the council had not given "satisfactory answers".

10. The Commissioner explained to the complainant in writing and over the telephone that his role in the matter was limited to considering only the recorded information that was held by a public authority (if any) and whether it should have been provided. Despite this, the complainant made a large amount of comments concerning the background to the matter and frequently did not explicitly state that he wished to dispute that he had been provided with all the recorded information held by the public authority. In most instances, the nature of the complainant's comments indicated that the actual issue is likely to be that he was simply unhappy with the implications of the response provided in the light of the background grievance relating to the car parking. For the avoidance of doubt, the latter issue would fall outside the scope of the Commissioner's role. The Commissioner is not able to consider any issues raised by the complainant concerning his general dissatisfaction with the way in which the council handled his dispute about the parking matter or problems with the specific parking area.
11. For the reasons explained above, the Commissioner did not consider that the complainant had made it entirely clear in many instances whether he wished to pursue issues relevant to the Commissioner's role under the FOIA. However, he was expressing some sense of dissatisfaction with the way the requests had been handled. The Commissioner decided to proceed to investigate the relevant issues that would fall within the scope of his role, that being whether the authority had complied with its section 1(1) and 10(1) obligations under the FOIA.
12. For clarity, the council originally applied section 12(1) to withhold some information. During the Commissioner's investigation, it decided to respond to this part of the request thereby informally resolving that particular issue.

Reasons for decision

Did the authority comply with section 1(1) of the FOIA?

13. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
14. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the

authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".¹

Point 2 and 3 of the request

How long has the flood lighting above the disable bays not been working

When was the last maintenance carried out on this flood lighting

15. In relation to point 2, the council said that it held no recorded information as it had not been aware until the complainant's request that the flood lighting was not working. In relation to point 3, the council said that the lighting in question is checked by the council's contractor on an annual basis in September.
16. The council maintained its position that it did not hold any recorded information relating to point 2, and in relation to point 3 it had provided the recorded information that was held.
17. In relation to point 2, the complainant alleged that an enforcement officer who visits the site regularly during the day should have logged the fault. The Council said that the contracted Civil Enforcement Officer should report any defects that they may observe with the infrastructure but their primary focus will be on the pay and display machines and the internal lighting as the majority of the car parking spaces are under cover. The council said that failure to report the fault would not be a breach of contract as the contract is not specific in terms of the requirements for checking the lighting. The council said that it had contacted the relevant contractor and it had been confirmed following searches that no records were held. It said that the information had never been held because it had never been reported. In view of this, the Commissioner was satisfied, on the balance of probabilities, that the information requested in point 2 was not held.
18. In relation to point 3, the Commissioner considers that there is no reason to doubt that the council had provided the recorded information held regarding the level of maintenance it undertakes. There was no clear evidence in the complainant's correspondence to the Commissioner that he disputed the fact that the maintenance took

¹ This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

place one a year in September, rather the complainant made comments to the effect that he considered this situation was "unacceptable". This is not an issue that can be considered by the Commissioner.

Point 4 of the request

The disable bays are covered by CCTV. Please supply footage for the evening of 5th Nov 2010

19. The council originally responded that CCTV footage is only available in the event of a request from the police to assist with investigations. It said that it could not confirm that the information was held as a result.
20. As it was not clear from the council's initial response whether the footage was held, the Commissioner asked for the council's clarification. The council said that it could not be certain whether the information had ever been held as the camera in question is a "roaming" camera. It clarified that any footage would, in fact, have been destroyed prior to the request. It explained that in accordance with control room procedures, CCTV footage is only stored for a short period of time. It said that it had contacted relevant officers in the CCTV control room to confirm this.
21. Although the council should have been clear about the fact that it did not hold the information in its initial response, the Commissioner was ultimately satisfied that this was the case because the information had been destroyed prior to the request.

Point 5 of the request

The specification used for illuminating this disable area by car head lights approaching this off road area

22. When the council initially responded to this request, it said that it did not understand what the complainant meant. It invited the complainant to provide appropriate clarification. Unfortunately, the complainant did not provide clarification to the council.
23. When the Commissioner asked the complainant if he was able to provide clarification, the complainant said that the council had said that at night road markings and signage would be illuminated by the headlights of any approaching vehicle. The complainant said that after many FOI requests, the council had failed to provide the "regulation" it is using.
24. When the council responded to the Commissioner, it said that it was still unclear about what information the complainant was actually

seeking, however, it considered that the following comments might be appropriate:

"The signs and markings in use off street are based around the on street regulations as set down in the Traffic Signs Regulation and General Directions (TSRGD) 2002. Although not legally bound to follow such directions in non highway locations, the council uses such regulations to benchmark its approach off street. The signs and markings contain reflective material which is incorporated to assist motorists".

25. During a telephone conversation, the council clarified that it did not in fact hold this information in a recorded form. It said that this had been confirmed with an appropriate member of staff. It said that it had provided an explanation in order to try to assist the complainant. The council said that it could have held relevant information about the specification of the signs when the signs were ordered but if this information was ever held, it would have been destroyed in accordance with the council's records management policy because it would not serve any continuing business purpose once the signs had been put up.
26. Based on the above, the Commissioner accepts that at the time of the request, the council did not hold any recorded information relating to this request. When the Commissioner contacted the complainant to ask whether he was satisfied with the council's subsequent response, the Commissioner also noted that there was no clear evidence in the complainant's response that he considered that the council held recorded information which it had failed to provide to him. The complainant made comments to the effect that the council had failed to provide clear signage. This is not a matter that can be considered by the Commissioner.

Point 6 of the request

Why do you have signs in these bays one states "Disable Mini Buses Only" and the second states "Disable Badge Holders Only" The second has arrows.

27. When the council responded to this request initially, it said the following:

"The two signs indicate that only disabled badge holders may park in the bays and then only if they are using minibuses being used to transport disabled persons. The reason that the two bays in question are specifically for the use of disabled minibuses transporting disabled persons is that the height barrier prevents vehicles of a certain height from using the other disabled bays on the outside of the car park and obviously such vehicles cannot use the disabled bays available on the inside of the car park. Accordingly, the availability of parking is very limited for vehicles of the size of a minibus".

28. When the Commissioner asked the council for clarification on whether it held any recorded information relating to this point of the request, the council, unfortunately, provided another explanation of the situation as follows:

"In terms of FOI, the answer is yes, we have signs that conform with figure 661A of the TSRGD and separate bespoke signs to highlight the fact that only minibuses may be parked at the located (as the two disabled parking bays in question are positioned before the height barrier which prevents minibus type vehicles from gaining access to the majority of the car park, whereas numerous disabled parking bays can be found both outside and under cover after the height barrier".

29. During a telephone conversation, the council clarified that in fact it did not hold any recorded information relating to this request. It said that it had provided explanations which it considered would be helpful in order to assist the complainant but the detail given in those explanations was not recorded. The council indicated that a relevant staff member had confirmed that no recorded information was held because there is no business purpose behind recording this information. It confirmed that it did not consider that it had ever held this information, although it had tried to provide explanations to assist the complainant.
30. The Commissioner was satisfied, based on the above, that this information was not held by the council. When the Commissioner contacted the complainant to ask whether he was satisfied with the council's subsequent response, the Commissioner also noted that there was no clear evidence in the complainant's response that he considered that the council held recorded information which it had failed to provide to him. The complainant made comments to the effect that the council had failed to provide clear signage. This is not a matter that can be considered by the Commissioner.

Point 7 of the request

Are the security boxes NACOSS maintained".

31. In its initial response to the complainant, the council said that it did not understand what information was being asked for. It invited the complainant to clarify. Unfortunately, the complainant did not provide clarification.

32. The Commissioner conducted an internet search and found relevant information about NACOSS² which stands for National Approvals Council for Security Systems. He provided this information to the council and asked it to reconsider its response to the request.
33. The council confirmed that to the best of its knowledge there are no security boxes or intruder alarms at the location, therefore, it wished to clarify that its position was that no information was held. The Commissioner did not consider that there was any reason to consider further differing accounts provided by the complainant and the council on the subject of whether there are security boxes or alarms at the location. This is because the complainant wrote to the Commissioner and said that he knows that the alarms could not be NACOSS maintained as the company concerned went out of business 20 years ago. As the complainant therefore confirmed his acceptance that the council would not hold information showing that any security boxes were NACOSS maintained, the Commissioner does not consider that the matter warrants any further investigation as there is no dispute between the parties over the fact that this information was not held.

Procedural Issues

34. Section 10(1) of the FOIA provides that a public authority must respond to requests for information within 20 working days. The council took longer to respond to the request on this occasion.
35. Section 1(1)(a) provides that a public authority should state within 20 working days whether it holds recorded information of the description specified in the request. The Commissioner considers that the council failed to do this in respect of some of the requests and it therefore breached this section of the FOIA.

² http://www.audiblevisualecurity.co.uk/nacoss_birmingham

Right of appeal

36. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

37. 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.
38. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF