

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 March 2012

Public Authority: London Borough of Enfield
Address: Civic Centre
Silver Street
Enfield
EN1 3XY

Decision (including any steps ordered)

1. The complainant requested information about costs and income over a three-year period for the London Borough of Enfield's Education Lettings Service. The public authority responded and withheld some of the information under the exemption for commercial interests. The complainant made further submissions, to which the London Borough of Enfield (the 'Council') responded. It later applied the personal data exemption to the complainant's subsequent request for information about a monetary sum in the information provided.
2. With the exception of disclosing further details about the monetary sum, and the breakdown for individual schools withheld under the exemption for commercial interests, the Information Commissioner finds that the Council had provided all the requested information prior to the Information Commissioner's involvement. It is not required to take any steps.
3. The Information Commissioner has also decided that while the initial response was provided within the statutory 20 working days' time limit, the Council failed to respond to part of the complainant's later request within the required timeframe in breach of section 10(1) of the Freedom of Information Act 2000 (the 'FOIA'). The Council must ensure that this delay is not repeated in the future.

Background

4. The complainant's original request was submitted on 7 March 2011. On receipt of the Council's response, the complainant wrote again to the

Council. It treated this submission as a continuation of his original request because it considered he was seeking clarification in relation to some of the information provided.

5. On 27 April 2011, the complainant wrote further to the Council. It handled this submission as a new request and advised the complainant accordingly.
6. The complainant's view is that he found it necessary to make further submissions due to the Council's incomplete response and that he made only one request on 7 March 2011.
7. Since the original request of 7 March 2011 is inextricably linked to the resultant submissions, the Information Commissioner has considered both in this notice.

Request and response

8. On 7 March 2011, the complainant wrote to the Council and requested information in the following terms:

"...In relation to the Education Lettings service please provide:

Overall income from lettings in total and for each individual school indicating where VAT has been charged – i.e. showing the actual income net of VAT

Details of the deductions applied by Education Lettings (in % and in total) e.g.

- *agency fee (your income)*
- *insurance*

Amounts actually paid to each school following the above deductions

Details of all Education Lettings costs (with breakdown) e.g. salaries with oncosts, office accommodation recharge, IT costs, any other costs etc.

Please could all the above be provided for the past 3 years so that any trends can be identified. Please also explain any variances year on year.

Copies of Lettings Agency Service Level Agreement i.e. the agreement you have with schools? I assume this sets out the

terms and conditions for the schools which buy into the service plus your Lettings Policy and Scale of Charges or similar?

Details of the IT system is used for the management of lettings – is it a purchased system or one Enfield designed...”.

9. The Council responded on 1 April 2011. It provided responses to the majority of the request, but withheld the amounts of income minus deductions paid to individual schools on the grounds of commercial interests (section 43(2) of FOIA). It instead gave the complainant the overall income amounts less deductions.
10. The complainant contacted the Council further on 1 April 2011 to ask how some of the figures provided had been calculated and queried what was included in the employee costs. He asked about the schools income and used 2009-10 by way of example.
11. The Council wrote to the complainant on 20 April 2011 with the requested clarification for 2009-10, confirming that it had treated his submission of 1 April 2011 as a continuation of his original request. It also explained that some of the information was not available for 2007-08, specifically central support costs.
12. On 27 April 2011 the complainant wrote further to the Council querying why the central support information for 2007/08 was unavailable and asking what a particular budgeted monetary sum represented and from where it was funded. He also asked the Council to provide the more detailed breakdown for the schools income for 2007/08 and 2008/09, as had been given to him in its response of 20 April 2011.
13. The Council handled this as a new request and responded on 24 May 2011 with the more detailed breakdown of income for the specified years. It advised that in 2007/08 central support costs were not allocated to individual cost centres but to the department as a whole, which is why it was unable to provide the costs for the Lettings Agency specifically. It explained that it was seeking guidance from its Data Protection team in relation to the complainant's question about the budgeted sum and stated it had treated each of the complainant's additional questions as individual FOIA requests.
14. The complainant requested an internal review on 26 May 2011, with a further submission on 8 June 2011 once the Council had confirmed who would be undertaking the review.
15. The Council provided the internal review result on 22 June 2011. It stated that it had considered the complainant's original request, his subsequent queries and all of the Council's responses, explaining why it

had handled his requests in the way it had and confirming that it had replied as soon as it was practicable and within the statutory timeframe. It also applied the exemption for personal data (section 40(2)) to the complainant's question about the budgeted monetary sum explaining that the figure related to payment(s) to an individual(s) and that the provision of any further detail could potentially lead to the individual(s) being identified.

Scope of the case

16. The complainant contacted the Commissioner to complain about the way his request for information had been handled. His concerns centred on the *"incomplete and inaccurate information"* he had received in response to his request, the length of time it had taken to obtain the information originally requested and the Council's initial refusal to provide the information.
17. Having detailed the scope of his investigation to both the complainant and the Council, the Information Commissioner set out to investigate the Council's application of the exemption contained in section 40(2) to the sum of £53,610, together with a consideration of the time taken to respond in full.
18. The complainant did not disagree with the scope; however, once the Information Commissioner had written to the complainant to confirm his preliminary view that the Council had correctly applied section 40(2), and that there were no delays, the complainant advised that he agreed with the Council's application of the personal data exemption and instead was concerned about the length of time it had taken to respond. As such this notice will only focus on the complainant's concerns about the length of time taken to provide a complete response to his original request, together with a consideration of whether the initial response provided was complete or not.

Reasons for decision

19. The original request was made on 7 March 2011 and was responded to within 20 working days by the Council on 1 April 2011. The Council provided a breakdown of direct costs for the years 2007/08, 2008/09 and 2009/10 as part of its initial response, split into costs for 'employee related costs' and 'other operating costs'.
20. The complainant then wrote to the Council again on the same day querying how some of the income figures had been arrived at. He also

asked for confirmation of whether the 'employee costs' figures included all on costs and for other costs such as accommodation to be listed. On 20 April 2011 the Council responded with the further clarification, including more detailed income figures for 2009/10, stating it was treating the complainant's questions as a continuation of his original request. This response was again provided within 20 working days.

21. During his investigation, the Information Commissioner has ascertained that the Council considered it had provided all the requested information to the complainant (with the exception of that it originally exempted on the basis of commercial interests) in its original response of 1 April 2011. The complainant's position is that he found it necessary to contact the Council again for what he considered to be 'the complete and accurate information'.
22. The complainant wrote to the Council on 27 April 2011 stating that he had only received the more detailed income breakdown for 2009/10. He asked for a breakdown of the income figures for the years 2007/08 and 2008/09. At this point he also asked what the sum of £53,610 under 'Earmarked resources' represented and how it was funded.
23. The Council treated this as a new request, to which it responded within 20 working days on 24 May 2011. It provided the breakdown for the specified years and advised the complainant it was seeking clarification from its data protection team as to whether it could release any information about the monetary sum. On 22 June 2011, the Council confirmed as part of its internal review result that the monetary sum related to a payment(s) made to an individual(s), and to provide any further explanation could potentially lead to the individual(s) being identified. It therefore applied the exemption for personal data (section 40(2) of FOIA) to this part of the request.
24. On 1 December 2011, as part of his preliminary view, the Information Commissioner informed the complainant that in the absence of any definitive evidence, it was difficult to conclude that the Council had intentionally failed to provide him with all the requested information at the outset, particularly as it provided the complainant with the breakdown requested in its response of 1 April 2011.
25. In reply, the complainant argued that he had not been provided with all the information by 1 April 2011 because he had then had cause to write to the Council on 1 April 2011 for clarification, and again on 27 April 2011 for the more detailed breakdown of the income figures for 2007/08 and 2008/09.
26. The Information Commissioner has further reviewed the points the complainant raised on 1 April 2011 on receipt of the Council's response

to his request. The complainant had asked for details of Education Lettings service income minus deductions, with details of the percentage and totals of the agency fee and insurance, which were provided. It was on receipt of the figures that the complainant had cause to question how some of the figures had been arrived at.

27. The Information Commissioner notes that the complainant specified he wanted *"overall income [for the Education Lettings service] from lettings in total and for each individual school indicating where VAT has been charged – i.e. showing the actual income net of VAT."* The Council exempted the individual schools' income on the basis of commercial interests but gave the complainant the overall income net of VAT. The Information Commissioner is satisfied that the Council provided the information as requested, but notes that the complainant's email of 1 April 2011 clarified that he wanted the VAT deductions, citing 2009/10 by way of example.
28. The Council's response of 20 April 2011 provided a more detailed breakdown of the income figures including VAT for 2009-10. On 27 April 2011 the complainant asked for the detailed breakdown for 2007/08 and 2008/09, which he considered had been requested in his original request of 7 March 2011.
29. On a fresh consideration of the correspondence in this case, the Information Commissioner's view is that the Council was entitled to handle this as a new request. He considers that requesting the detailed income breakdown for 2007/08 and 2008/09 was as a consequence of the complainant's clarification that he had wanted the VAT deductions providing, as opposed to this being part of the complainant's original request. Whilst the Information Commissioner agrees it would have been helpful to the complainant if the Council had included the detail for the other two years in its reply of 20 April 2001, he does not consider it was required to do so, because it was not part of his original request of 7 March 2011.
30. The complainant told the Information Commissioner he had requested further details about the monetary sum on 27 April 2011, and although the Council had acknowledged this request and stated that it was seeking advice from its data protection teams on 24 May 2011, it had not actually responded substantively until 22 June 2011. The Information Commissioner's preliminary view has changed in relation to this aspect, and he accepts that the substantive response to this part of the complainant's request was provided outside the statutory timescale of 20 working days.
31. The Information Commissioner's decision is that the request of 7 March 2011 was handled properly and within the statutory timeframes. He

considers that the Council was entitled to handle the subsequent clarification from the complainant as a continuation of the original request.

32. The Information Commissioner has also decided that the Council was entitled to handle the subsequent contact from the complainant on 27 April 2011 as a new request; however, as detailed above, the Council failed to respond to part of this request until 22 June 2011, which is outside the 20 working days time limit.
33. The internal review is not a statutory requirement under the FOIA and is therefore considered in the *'Other matters'* section of this notice.

Other matters

34. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, the Information Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Information Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
35. In this case, the complainant requested an internal review on 26 May 2011, to which the Council responded on 22 June 2011. The review reconsidered the original request, subsequent queries and the Council's previous responses.
36. The Information Commissioner is satisfied that the internal review was conducted within the recommended timescale.

Right of appeal

37. 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

38. 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.
39. 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

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