

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 October 2012

Public Authority: London Borough of Lambeth
Address: Lambeth Town Hall
Brixton Hill
London
SW2 1RW

Decision (including any steps ordered)

1. The complainant requested information about a ballot vote on the proposed transfer of a housing estate. London Borough of Lambeth ('the Council') initially stated that the information was held by a third party and compliance with the request would exceed the appropriate limit under section 12 of the FOIA. At the internal review stage, the Council reviewed its position and provided the requested information. The Commissioner's decision is that the Council breached section 10 of the FOIA in failing to provide the requested information within the statutory time for compliance. The Commissioner requires no steps to be taken.

Request and response

2. On or around 22 November 2011, the complainant wrote to the Council and requested information in the following terms:

"...full disclosure of each estate ballot vote on the proposed transfer of LATMOS to WATMOS breakdown of each estates Yes and No votes"
3. The Council responded on 19 December 2011. It stated the information was not held by the Council as it was held by the third party contractor who was responsible for conducting the ballot. The Council also stated that it was relying on section 12 of the FOIA as the basis for refusing the request.
4. On 22 January 2012 the complainant requested an internal review of the Council's handling of the request.

5. On 1 March 2012 the complainant contacted the Commissioner to complain about the delay in receiving the outcome of the Council's internal review.
6. Following correspondence from the Commissioner the Council provided the outcome of its internal review on 2 April 2012. The Council did not uphold its original response to the request, withdrew reliance on section 12 of the FOIA and provided the information requested.

Scope of the case

7. The complainant initially contacted the Commissioner to complain about the delay in the Council completing its internal review of the handling of his request.
8. Following provision of the requested information on 2 April 2012, the Commissioner wrote to the complainant asking him to confirm whether there were any outstanding issues relating to his complaint.
9. The complainant responded stating that he was unhappy with the delays he had experienced in obtaining the requested information. He also suggested that the Council had deliberately withheld the information requested until after the decision to transfer the estate was signed by the relevant Minister on 31 March 2012.
10. The Commissioner considers this complaint to relate to the delays on the part of the Council in providing the requested information and conducting an internal review and whether the Council has committed an offence under section 77 of the FOIA. The Commissioner has addressed some of these points in the Other Matters section of this notice.

Reasons for decision

Section 10(1) – time for compliance

11. Section 10(1) of the FOIA requires that a public authority complies with section 1(1) promptly and in any event not later than 20 working days following the date that a request was received. Section 1(1) states that a public authority should confirm whether it holds relevant recorded information and, if so, to communicate that information to the applicant.
12. In this case at the internal review stage, the Council confirmed that the information was held for the purposes of the FOIA and withdrew its reliance on section 12. It disclosed the information in question, but this

was outside the statutory time limit for compliance with requests. The Commissioner has therefore found that the Council breached the requirements of section 10(1) of FOIA.

Other matters

Section 77

13. As indicated in paragraph 9 above, the complainant suggested to the Commissioner that the Council deliberately delayed providing the requested information until after a decision had been finalised about the transfer of the estates in question.
14. Section 77 of the FOIA states that a criminal offence is committed if any person alters, defaces, blocks, erases, destroys or conceals any information with the intention of preventing the applicant from receiving any of the information he is entitled to receive. In order to secure a conviction in criminal proceedings, each element of an offence must be proven to the criminal standard, that being 'beyond reasonable doubt', as opposed to the lesser civil standard of 'balance of probabilities'. If this standard of proof is not met, any prosecution will fail. In order to uphold a section 77 offence the Commissioner has to prove that there was a clear intention to prevent disclosure on the part of the public authority.
15. In this case, the Council originally stated it did not hold the information requested, as it was held by the third party responsible for conducting the ballot. The Council also stated it was relying on section 12 of the FOIA as the basis for refusing the request. In its internal review the Council stated that the contractor in question had indicated that "it would take a little less than 18 hours, therefore the Council instructed and paid ERS to undertake the work provided".
16. The Commissioner has considered all the circumstances of this case. Whilst he has found that the Council mishandled the complainant's request from the outset, the Commissioner considers there is insufficient evidence to suggest it was the Council's intention to deliberately block disclosure of the information requested. Therefore the Commissioner has not undertaken a criminal investigation in this case.

Internal Review

17. Whilst there is no explicit timescale laid down by the FOIA for completion of internal reviews, the Commissioner considers that they should be completed as promptly as possible. The Commissioner believes 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.

18. The Commissioner is concerned that in this case, it took 50 working days for an internal review to be completed. The Commissioner does not believe that any exceptional circumstances existed to justify that delay, and he therefore wishes to register his view that the Council fell short of the standards of good practice by failing to complete its internal review within a reasonable timescale. He would like to take this opportunity to remind the Council of the expected standards in this regard and recommends that it aims to complete its future reviews within the Commissioner's standard timescale of 20 working days.

Right of appeal

19. 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

20. 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.
21. 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
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