

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 June 2013

Public Authority: London Borough of Barnet
Address: North London Business Park
Oakleigh Road South
London
N11 1NP

Decision (including any steps ordered)

1. The complainant has requested a technical construction file ("TCF") in relation to bus lane cameras. The London Borough of Barnet (the "Council") explained at internal review that it did not hold this information for the purposes of the FOIA.
2. The Commissioner's decision is that the Council is correct when it states that it does not hold this information for the purposes of the FOIA.
3. No steps are required.

Request and response

4. On 17 October 2012, the complainant wrote to the Council and requested information in the following terms:

"Thank you for confirming that you hold a Technical Construction File (TCF) in relation to bus lane cameras only. Please provide a copy of this file (preferably in pdf format but any electronic format would be acceptable) redacted to exclude any commercially sensitive information."
5. This followed on from the Council's response to a previous request he had made to it in September for TCFs for other equipment. In that earlier response, the Council had stated "We do not use either of these devices so therefore do not have the requested sections of the

Technical Construction File (TCF). We do however hold a TCF for Static Bus Lane cameras”.

6. The Council responded on 6 November 2012. It denied holding the requested information and stated “It is owned by a third-party company (Zenco, Zengrab - <http://www.zencosys.com/>). This is considered [to] be their intellectual property so it is therefore exempt from disclosure under the FOIA”.
7. The complainant requested an internal review on 12 November 2012. The Council sent him the outcome of its internal review on 19 December 2012. It upheld its original position although it provided clarification about that. Specifically, it said that the question of whether such information was exempt under the FOIA was irrelevant because it maintained its view that it did not hold the information for the purposes of the Act.

Scope of the case

8. The complainant contacted the Commissioner on 23 December 2012 to complain about the way his request for information had been handled. He noted inconsistency in the Council’s response to him and argued that it did hold the information for the purposes of the FOIA.
9. The Commissioner has therefore considered whether the Council holds the requested information for the purposes of the FOIA. Where it does, it is obliged to provide a response to the complainant that accords with the provisions of the FOIA.

Reasons for decision

10. Section 1 of the FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it. Section 10(1) of the FOIA states that this should be supplied within 20 working days.
11. Section 3(2) sets out the two legal principles that establish whether information is held for the purposes of the FOIA:

“For the purposes of this Act, information is held by a public authority if—

- (a) it is held by the authority, otherwise than on behalf of another person, or
(b) it is held by another person on behalf of the authority.”

12. The key question in this case is whether the TCF in question is held by another person on behalf of the Council.

13. In considering this point, the Commissioner has had regard for his own published guidance and other related guidance that he has produced.^{1 2}

14. The guidance “Information held by a public authority” states that:

“Factors that would indicate that the information is held solely on behalf of another person include:

- the authority has no access to, use for, or interest in the information;
- access to the information is controlled by the other person;
- the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or
- the authority is merely providing storage facilities, whether physical or electronic”.

15. As countervailing factors, the guidance also states:

“Factors that would indicate that the information is also held by the public authority include:

- the authority provides clerical and administrative support for the other person, whether legally required to or not;
- the authority controls access to the information;

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http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information_held_by_a_public_authority_for_purposes_of_foia.ashx

2

http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENESS_GUIDANCE_12_INFO_C AUGHT_BY_FOI_ACT.ashx

http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Practical_application/determining_whether_information_is_held_foi_eir.ashx

- the authority itself decides what information is retained, altered or deleted;
 - the authority deals with enquiries about the information; or
 - costs arising from holding the information are included in the authority's overall budget".
16. Local authorities apply for bus lane enforcement powers as part of their application for civil parking enforcement powers.³ The CCTV systems used to enforce bus lane restrictions have to be approved devices, certified as such by the Vehicle Certification Agency (VCA) on behalf of the Secretary of State for Transport (see note 3 chapter 7).
 17. VCA guidance sets out the process of applying for certification. It does not actually say what type of body can apply for this, but at 2.3 it says that "manufacturers or designers seeking civil certification" should contact VCA.⁴
 18. The local authority as a civil enforcement authority has to use a certified system. The process of applying for certification involves producing a TCF. However, if the application for certification is made by the manufacturer (as was the case here), rather than the local authority, it is not apparent to the Commissioner that the local authority has any statutory right or obligation to hold the TCF.
 19. The TCF is a set of documents that the contractor has to compile as part of the application which it has to make to the VCA for certification. The Council has to use a system certified by the VCA, but this does not in itself imply that it has to hold the documents (i.e., the TCF) that supported the application for certification.
 20. The Commissioner obtained a copy of the contract between the Council and its contractor. He considered it in detail and, specifically, looked at whether the contractual arrangements indicated that the contractor was holding the requested TCF on behalf of the Council.
 21. The Commissioner notes that the Council can obtain access to specified contractor documentation but considers it significant that

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/4443/parkingenforcepolicy.pdf (chapter 15)

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<http://webarchive.nationalarchives.gov.uk/20120608000138/http://assets.dft.gov.uk/publications/tma-part-6-certification-of-approved-devices/certapproveddevices.pdf>

that title, copyright and all rights in relation to the contractor's documentation relating to the equipment remains with the contractor. The term "documentation" is specifically defined and does not include a TCF or other form of technical construction file.

22. In light of the above, the Commissioner has concluded that the Council does not hold the requested information for the purposes of the Act. He has had particular regard to the fact that access to the TCF is not controlled by the Council. He has also had regard for the fact that the title, copyright and all rights in relation to relevant documentation remains with the contractor.

Other matters

23. The Commissioner recognises that the complainant's request was prompted by a statement by a representative of the Council to the effect that it had the TCF. It is entirely reasonable that he would take this at face value and assume that the Council held a copy of the TCF for the purposes of the FOIA. The Commissioner is not certain what prompted the representative of the Council to make that statement. However, the Council explained in its letter to the Commissioner dated 26 March 2013 that the statement was simply an error and that it had never held the TCF.

Right of appeal

24. 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

25. 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.
26. 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

Jo Pedder
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