

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 May 2013

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

Decision (including any steps ordered)

1. The complainant requested information from London Borough of Enfield (the Council) relating to invoices presented to the Council by their managing agents Knight Frank. The Council provided some information within the scope of the request, but denied holding the remainder.
2. The Commissioner's decision is that, on the balance of probabilities, the requested information is not held and therefore he requires no further action to be taken. The Commissioner did however find procedural errors in the Council's handling of the request.

Request and response

3. On 22 August 2012, the complainant made the following request for information under FOIA:

"Please provide the following information,

1. *Copies of all invoices presented to the council by Knight Frank in their role as managing agents of the green belt from OCTOBER 2010 to the 21st AUGUST 2012*
2. *Copies of all associated documentation relating to Knight Franks charges which verifys and clarifies all the invoices ie, including timesheets, from October 2010 until 21st AUGUST 2012*

3. *A full and complete list of all the properties which Knight Frank are managing on the councils behalf as managers of the green belt portfolio, from October 2010 until 21st AUGUST 2012*
 4. *Copies of all invoices presented to the council by Knight Frank which is in addition to their role as the councils agents of the green belt including timesheets, OCTOBER 2010 until 21ST AUGUST 2012*
 5. *A complete list of all client accounts held by Knight Frank on the councils behalf including all payments made to these accounts via Knight Frank, from OCTOBER 2010 until 21st August 2012*
 6. *When does the current contract between the council and Knight Frank expire?"*
4. The Council responded on 2 November 2012. It provided the information requested within the scope of parts (1), (3), (5) and (6) of the request. With respect to part (2) the Council said that it does not hold the requested information. With respect to part (4), the Council provided copies of invoices, but confirmed that it does not hold "any further information of the nature requested".
 5. The Council provided an internal review on 26 February 2013 in which it clarified its position. It confirmed that some of the information within parts (1) and (5) of the request had already been provided to the complainant and was therefore exempt by virtue of section 21. With respect to the redactions made to the information provided in response to part (1) of the request, the Council cited sections 31 and 40(2).

Scope of the case

6. The complainant contacted the Commissioner on a number of occasions about this request for information, making his substantive complaint on 27 February 2013 about the way his request for information had been handled.
7. He brought to the Commissioner's attention the Council's failure to provide the requested supporting documentation – documentation that substantiates the invoices it provided.
8. In the complainant's view:

"Enfield Council cannot possibly have paid these invoices without further associated documentation to validate the amounts that Knight Frank have procured from the ratepayers of enfield these invoices require further elaboration than that presently produced by

the council. The facts are that Knight Frank are the councils agents for the management of green belt portfolio and there is little transparency in the invoices without further itemisation to fully explain the amounts requested for payment” (sic).

9. The Commissioner considers the scope of his investigation to be the Council’s response to parts (2) and (4) of the request for information. He has also considered the timeliness with which the Council handled the request.

Reasons for decision

Section 1 General right of access

10. Section 1(1) of FOIA creates a general right of access to information held by public authorities. It provides for any person making a request for information to be informed in writing by the public authority whether it holds the information of the description specified in the request, and, if that is the case, to have that information communicated to him.
11. The requested information relates to invoices presented to the Council by their managing agents Knight Frank: the complainant also requested that the Council provide the relevant documentation which clarifies all the invoices including timesheets which validate the payments made.
12. In relation to part (2) of the request, the Council told the complainant it does not hold any recorded information *“which could help answer this question”*.
13. When requesting an internal review of that response, the complainant said to the Council:

“Any fair minded reader of these invoices would be shocked and concerned that the council would have paid these invoices without a full detailed breakdown to substantiate the totals being requested”.

14. The Council told the complainant in response:

“After consultation with the relevant areas of the council including our finance team and our estate management function, which also includes Knight Frank and after receiving assurances from them that all reasonable searches of both electronic and paper records were conducted, I am satisfied that there are no further information falling within the scope of this part of the request to give you”.

15. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, he must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
16. In progressing his investigation, the Commissioner asked the Council to respond to him, including with respect to:
 - the searches it carried out for information falling within the scope of the request and the search terms used;
 - whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails;
 - whether any recorded information relevant to the scope of the complainant's request had ever been held but had been deleted/destroyed;
 - whether the Council has a business purpose for which the requested information should be held; and
 - whether there are any statutory requirements on the Council to retain the requested information.
17. In the Council's substantive response, it provided information in support of its view that it does not hold the information at issue. This included providing the Commissioner with information about the nature of the searches conducted, including examples of the search terms used to locate relevant electronic records.
18. In this case, whilst appreciating the complainant's frustration, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085) that FOIA:

"does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".
19. Having considered the Council's response, in the circumstances the Commissioner does not consider that there is any evidence that would justify refusing to accept the Council's position that it does not hold the requested information at issue in this case. The Commissioner is

therefore satisfied that, on the balance of probabilities, the information is not held by the Council.

Section 10 Time for compliance

20. The time limit for complying with section 1(1), set out in section 10(1), is twenty working days.
21. In this case, the complainant's request was received by the Council on 22 August 2012 but the Council did not issue its refusal letter until 2 November 2012. Accordingly the Commissioner finds that, in failing to confirm or deny within 20 working days whether it held the requested information, the Council breached the requirements of section 10(1).

Other matters

Internal review

22. While no explicit timescale is laid down by FOIA, the 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. The Commissioner is concerned that in this case, the Council exceeded this time.

Right of appeal

23. 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

24. 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.
25. 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
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