

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 August 2015

Public Authority: London Borough of Hammersmith & Fulham
Address: Smartspace 3rd Floor
Hammersmith Town Hall
King Street
London
W6 9JU

Decision (including any steps ordered)

1. The complainant has requested in a 14 part request from London Borough of Hammersmith & Fulham (the "Council") information relating to residents' parking complaints in a particular area.
2. The Commissioner investigated the Council's response in relation to parts 1, 2, 3, 4 and 11 to 14. It applied section 12 of the FOIA to parts 1, 2 and 3 and confirmed that it does not hold any further information to the remaining parts of the request.
3. The Commissioner's decision is that the Council is entitled to rely on section 12 to parts 1, 2 and 3 as a basis for refusing the request. To the remaining parts of the request. The Commissioner's decision is that the Council does not hold any further information falling within the scope of the request. Therefore, the Council has complied with its obligations under section 1 of the FOIA.
4. The Commissioner does not require the Council to take any steps.

Request and response

5. On 14 April 2014 the complainant wrote to the Council and requested information in the following terms:

"1. How many households have complained of experiencing parking difficulties when they return home in the evenings and weekends?"

2. *Over what time period have the complaints been recorded (number of complaints by year);*

3. *Where did the complainants live (by postcode: you should note that postcodes do not identify individual addresses/respondents and are consequently not a data protection issue as you originally suggested).*

If you are saying that these three questions would take a long time to answer because the authorities have not analysed the complaints and would have to do so to provide them information then please say so as it will simply confirm that the claims in the report are bogus.

4. *Please provide that analysis or alternatively confirm that no such analysis was undertaken. Also, what evidence do the authors have that "Changes in leisure and social activities, longer working days and the pressure from commercial visitors have or are causing parking problems" The author (s) must have the evidence to hand justifying this claim?*

5. *So please could I have sight of the operational research on Zone K - if any - that was undertaken to justify proposing an extension of parking controls in the consultation documents.*

6. *Alternatively, please confirm that LBHF has no evidence at all of any need to extend parking control hours.*

7. *How much money does LBHF make each year from parking1 borough-wide and what is the surplus (going back to 2005/2006);*

8. *How much money does LBHF make each year from parking in Zone K2 and what is the surplus (going back to 2005/2006);*

9. *What have LBHF been spending the surplus on since 2005/2006 or prior to that if the information is available;*

10. *How much of the surplus has been directed by LBHF to matters unrelated to transport since 2005/2006?*

11. *What additional surplus does LBHF expect to accrue annually by extending parking control periods (as described in Zone K)?*

12. *What Zone K (or borough-wide) revenue forecasts/projections assuming an extension of parking control hours have been circulated to councillors or senior LBHF staff?*

13. *What written or verbal instructions were the staff responsible for preparing the Zone K review/consultation exercise (including the*

preparation/content of documentation) given by senior LBHF staff or council members;

14. What are the market research qualifications of the author (s) of the questionnaire and supporting literature?"

6. The Council acknowledged the request on 15 May 2014 and responded on 12 June 2014. It confirmed that it does hold the requested information. It disclosed some of it to the complainant but withheld information to part 14 and applied section 40(2) of the FOIA to this part of the request.
7. The complainant requested an internal review on 26 June 2015.
8. Following an internal review the Council wrote to the complainant on 28 July 2014. It maintained its position that the requested information at part 14 is exempt from disclosure and relied on section 40(2) of the FOIA for withholding the information.

Scope of the case

9. The complainant contacted the Commissioner on 10 November 2014 to complain about the way his request for information had been handled. He confirmed the parts of his request he required investigating: 1, 2, 3, 4 and 11 – 14.
10. Following further questions to the Council concerning its response, the Council confirmed its reliance on section 12 of the FOIA in relation to points 1, 2 and 3 of the request.
11. The Council changed its response to part 14 of the request from its application of section 40(2) to 'not held'.
12. The Scope of this case is to consider whether the Council is entitled to refuse parts 1, 2 and 3 of the request under section 12 of the FOIA.
13. The Commissioner will also consider whether the Council holds further information falling within the scope of the request to the remaining parts of the information request, parts 4, 11, 12, 13 and 14.

Reasons for decision

Section 1(1) – information not held

14. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
15. In scenarios where there is a dispute as to whether a public authority holds any recorded information falling within the scope of a request the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
16. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any recorded information falling within the scope of a request (or was held at the time of such a request). Without evidence to suggest that the Council holds further information, this argument cannot carry weight.

The Council's position

17. The Council addressed the Commissioner's questions.
18. In part 4 – the Council argued that the information to this part of the request is not held. It explained that it does not hold any records of "analysis" and that the main measure of parking in the borough are the annual Parking Stress Surveys. The Council provided the complainant with copies of these surveys for his information.
19. The Council stated that for assistance it had disclosed the information that closely resembled the information requested. It added that the only other possible relevant information, are the Controlled Parking Zones (CPZ) parking reviews. The Council said that the complainant was involved with the review undertaken for the CPZ in question – Zone K and that the results are in the public domain.
20. The Council clarified its position and explained how the programme for undertaking the CPZ parking reviews is agreed annually using a publicly accountable process. The basis for undertaking the reviews, the Council argued is not based on "analysis".
21. Following this explanation from the Council, the complainant asked for a further explanation as to why evidence of these changes that are causing parking problems, is not held. He noted the annual Parking

Stress surveys which it provided but not any copies of the household complaints (redacted).

22. The Council argued that the complainant had not requested copies of the 14 documents (containing complaints) at the time of the original request, therefore this was not provided to him.
23. In part 11 – the Council argued that this information is not held as no such forecasts have been made. It added that estimates of any additional surplus potentially accrued by extending parking control periods, had not been made at the time the request was received by the Council. Therefore, the Council reiterated that the information was not held as no such forecasts had been made after the request was submitted.
24. In part 12 – the Council responded to this request as part 11 above. It explained that the forecasts had not been made so it could not be circulated to councillors or senior officers.
25. In part 13 – the Council explained that the consultation document was reviewed by the Cabinet Member for Transportation and Technical Services before it was printed. The Council added that no other information was provided, such as whether this review generated any instructions to staff.
26. In part 14 – in its original response the Council withheld the information. The Council considered it exempt from disclosure under section 40(2) of the FOIA as it was of the view this was personal data. It later stated that it had asked the relevant department whether it held information relating to part 14 of the request. The Council explained that the individual concerned was not employed by the Council but they had been contracted via a specialist recruitment agency.
27. The Council clarified that the individual's qualifications are reviewed by the agency at the time of application and that the Council then contact the agency for qualified staff. It added that the Council do not review the individual's qualifications as this would have been completed by the agency. Therefore, the Council argued that the requested information about qualifications is not held by the Council or held on its behalf.

The complainant's position

28. The complainant has disputed the Council's position that it does not hold further information that falls within the scope of the outstanding elements of his request. He said that the Council had referred to 14 complaints received from complainants resident in Somerset and parts of London rather than the complaints from Zone K complainants which he considered the Council alleged to have received in the consultation

documentation. The complainant is of the view that the Council had referred to this instead of providing him with the information requested.

The Commissioner's position

29. The Commissioner has considered the Council's submissions to the requests and he notes that the Council has reviewed the requests a number of times and has sought advice from the relevant department. The Commissioner is convinced by the Council's resulting explanations and he accepts that it does not hold the information requested at the specific parts of the request.
30. He also agrees with the Council's argument that because the complainant had not requested copies of the 14 documents (containing complaints) at the time of the original request, the information was not provided to him.
31. The Commissioner is satisfied with the Council's submissions regarding its searches for the information requested. On the balance of probabilities, the Commissioner has decided that the evidence submitted by the Council suggests that it does not hold further information falling within the scope of the request (or was held at the time of the request).

Section 12 – the cost of compliance

32. Section 12(1) of FOIA allows a public authority to refuse to comply with a request for information if the estimated cost of doing so exceeds the appropriate cost limit. With respect to the Council this limit is £450, representing 18 hours work at a charge of £25 per hour. The only activities that a public authority can take into account are set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Fees Regulations') and are the following:
 - determining whether it holds the information;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
33. To determine whether the Council applied section 12 of the FOIA correctly to parts 1, 2 and 3 of the request, the Commissioner has considered the responses provided by the Council during the investigation.
34. In part 3 – the Council explained in its response that contact from the residents who complained about the parking had been received by email

and addresses had not been recorded. However, the Council disclosed the first part of the postcode of the ones which had been provided. It originally referred the full postcodes as being identifiable data therefore the Council provided the breakdown of the postcodes *"in a way to avoid identification once in the public domain."*

35. Following further questions to the Council about its response to this part of the request, it clarified that the information was partially provided for recent years (since May 2008) as this was easy to access. The Council said that to disclose the information for the full period of time would exceed the appropriate cost limit therefore section 12 of the FOIA would apply.
36. The Commissioner asked the Council to provide further evidence relating to post codes concerning part 3 of the request. The Council was asked to explain where the post codes were from which were provided to the complainant. Also, how the Council was able to disclose these post codes within the appropriate cost limit when it could not supply the number of household complaints.
37. The Council responded and explained that the original information provided which included these postcodes, was taken from the information the Council holds electronically that covered the previous 3 years. It stated that to fully comply with the request, would require searching archives as the information prior to this time is not available digitally. Therefore this would exceed the cost limits and is the reason why the Council applied section 12 to part 3 of the request.
38. The Council further explained why the information available was only partial and that the original information request covered a period greater than 3 years. The Council said that it could have clarified this in the original request to avoid confusion.
39. The Council argued that in determining and locating the information which included correspondence that may contain the information requested, it would require individually reviewing 1973 archived boxes.
40. The Council explained that the 1973 archived boxes contains a mixture of paper files, documents and CDs which would require retrieval from the Council's offsite records storage service. It clarified that in order to extract the requested information, the contents would need to be individually reviewed because the boxes are not all dated, labelled or indexed.
41. The Council added that the archived boxes are not stored "on-site" but are stored "offsite" using the Council's Offsite Records Storage Service (ORSS) which it said is provided by an external contractor, "Box-it". The

Council said that pre-arranged deliveries of boxes are individually charged and a same day delivery or a "scan on demand" service is charged at a higher rate.

42. The Council argued that amongst the archived boxes there is not a single box containing correspondence or complaints relating to this request. Therefore, it would take approximately 30-60 minutes to review each box to determine, locate, retrieve and extract the relevant information in response to the request. This, the Council said is the estimated time from the delivery of the boxes to the Council from its ORSS provider, Box-it.
43. The Council stated that the calculation is based on a previous sample exercise of two boxes. It estimated that it would take between 986.5 and 1973 hours to complete the task following delivery from the ORSS. Therefore, the Council argued that the estimated cost of complying with the request exceeds section 12 of the FOIA.
44. The Council clarified its retention schedule and that it specified complaint information should only be retained for between 3-15 years but that this depends on the nature of the complaint.

The Commissioner's position

45. Based on the Council's sample exercise, the Commissioner accepts that the estimated time that it would take the Council to comply with the request for information would exceed the appropriate cost limit.
46. Therefore, the Commissioner is satisfied that the Council correctly applied section 12(1) of the FOIA to refuse to comply with parts 1, 2 and 3 of the request.

Right of appeal

47. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

48. 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.
49. 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

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