

PROTECT

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2017

Public Authority: London Borough of Greenwich
Address: 3rd Floor
The Woolwich Centre
35 Wellington Street
Woolwich
London SE18 6HQ

Decision (including any steps ordered)

1. The complainant has requested information relating to members of local authorities who were also members of other organisations which may lead to a conflict of interest.
2. The Commissioner's decision is that the London Borough of Greenwich (the council) does not hold the information requested and has complied with its obligations under section 1 (right of access to information) of the FOIA.
3. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

4. On 3 February 2017 the complainant requested the following information:

"5) Under the Council's Code of Conduct for Local Government Employees, there is a duty to declare in writing to the Chief Officer any membership of masonic lodges. Please therefore confirm in writing if any of the above named people have registered their membership of such organisations including the Freemasons, Toastmasters and Liverymen and their respective lodges to the Chief Officer"

5. The council responded on 2 March 2017 and stated it had checked all the Declarations of Interest and no such interests had been declared.

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6. The complainant requested an internal review on 3 March 2017 and asked that the council seek written confirmation from the individuals he had named.
7. Following an internal review the council wrote to the complainant on 31 March 2017. It stated that it had no duty to request the information from the named individuals.
8. The council further clarified that:

"It is a mandatory requirement that all staff at PO8 grade or above are required to complete a declaration of interest form. In addition to this, any other staff within RBG (including agency staff, contractors or consultants) with significant influence over procurement decisions (or staff with enforcement responsibilities), or who otherwise believe their private interests may conflict with the role and responsibilities of their employment are also required to complete a declaration of interest.

The people named in your request either submitted a declaration with nil interest declared or did not meet RBG's criteria detailed above which would require them to complete a declaration of interest form."

9. In further correspondence with the complainant the council explained that in addition to the mandatory requirement above, any other staff (including agency staff, contractors or consultants) with significant influence over procurement decisions (or staff with enforcement responsibilities), or who otherwise believe their private interests may conflict with the role and responsibilities of their employment are also required to complete a declaration of interest.

Scope of the case

10. The complainant contacted the Commissioner on 10 April 2017 to complain about how his request for information had been handled.
11. The complainant stated:

"The FOI request was over the disclosure of Members of the local authority declaring interests which might compromise their duties as public servants, this included;

1) If any members of the council are, or have ever been members of the Freemasons, Toastmasters, Liverymen or any other pagan cult/craft and the address of their respective meeting place or lodge.

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2) What are the governance procedures and processes in place to enforce that their members declare this conflict of interest information.

3) What governance procedures are in place to ensure that once a person has been appointed within the local authority in any position, that any conflict of interest information is then declared after their appointment, and how is this information governed and managed?

4) The methods of governance that are used to confirm how this information is controlled before and after their appointment.

5) Why email replies are being sent from Greenwich Council with different names and email addresses (ie. [redacted] email address used to send a reply, but the response was from [redacted] or another person, but not their own individual email addresses) thus lacking accountability of the person responding to the FOI request."

12. The Commissioner advised the complainant that parts 2 – 5 above were not part of his original request and therefore were not in scope of this decision notice. She further advised that the Commissioner has no authority to tell the council who should sign off FOI responses, nor whether that should correspond with the email address used. Finally, the Commissioner explained that the council were correct when it stated they were under no obligation to seek written confirmation from the named individuals.
13. The Commissioner therefore considers the scope of this case to be to determine if the council has complied with its duties under section 1 of the FOIA.

Reasons for decision

14. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
15. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – in accordance with a number of First Tier Tribunal decisions – applies the civil standard of the balance of probabilities.

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16. The Commissioner will consider the scope, quality and thoroughness of the searches performed, and whether the searches were appropriate and adequate. She will consider any other explanations provided by the public authority for why the information is not held. The Commissioner will also consider the arguments or evidence provided by the complainant as to why they consider the requested information must be held.
17. The council explained that Declaration of Interests are retained for a period of 6 years, in accordance with its retention policy which follows the General Disposal Guidelines for Local Authorities.
18. The council further explained that it operates an annual declaration of interest exercise amongst all Directorates. It is the responsibility of each Director to ensure that the exercise is undertaken within their Directorate. For the three financial years 2014/15, 2015/16 and 2016/17 the results of the exercise have been collated by the Assistant Director of Finance (Governance & Audit). All of the returns received are scanned and a pdf copy is retained electronically.
19. Had any of the individuals named in the original request completed a return within the last three years the electronic copies maintained by the Assistant Director of Finance would have identified those returns were they to exist.
20. The Commissioner asked the council if searches included electronic data, and whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.
21. The council stated that only electronic data within the folders held on Financial Governance shared drive holding the pdf copies of the individual returns would have been examined.
22. It went on to say that each individual return holds the name of the member of staff in the pdf title. There is also a covering spreadsheet detailing a summary of the returns broken down into individual Directorates. All spreadsheets and documents were examined.
23. The council confirmed that if the information was held, it would be held in both paper (hard copy) and electronic (pdf) format by the Assistant Director of Finance (Governance & Audit).
24. It further confirmed that it had checked the Declaration of Interest forms returned for each of the requested years and no officers named in the original request declared membership of said organisations.

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25. Section 1 of the FOIA only allows access to information held at the time the request is made, and a public authority is not obliged to create information in order to respond to a request.
26. Having considered the council's response the Commissioner considers that it has performed adequate searches and that, on the balance of probabilities, the requested information is not held by the council.

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Right of appeal

27. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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

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