

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 26 February 2019

Public Authority: London Councils
Address: 59½ Southwark Street
London
SE1 0AL

Decision (including any steps ordered)

1. The complainant has requested copies of London Environment and Traffic Adjudicators' appraisals. London Councils stated that it held the requested information on behalf of the Chief Adjudicator, and therefore did not hold it for the purposes of the FOIA.
2. The Commissioner's decision is that London Councils was correct to state that it does not hold the requested information within the meaning of section 3(2) of the FOIA.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. London Councils provides administrative support to the Environment and Traffic Adjudicators (ETA)¹ and the Road User Charging Adjudicators (RUCA). It is a public authority under Schedule I to the FOIA.
5. On 15 March 2018, the complainant wrote to London Councils and requested (among other things) the following information:
 1. *Please email me the latest appraisals for all adjudicators.*

¹ <https://www.londontribunals.gov.uk/eat>

6. London Councils responded on 12 April 2018, refusing the request in reliance on the exemption at section 40(2) of the FOIA.
7. The complainant requested an internal review, and London Councils sent him holding letters on 11 May 2018 and 8 June 2018.
8. The complainant contacted the Commissioner on 20 June 2018 to complain that London Councils had not yet completed the internal review. The Commissioner wrote to London Councils on 4 July 2018 to remind it of its obligations under the FOIA.
9. Following the Commissioner's intervention London Councils wrote to the complainant on 18 July 2018 to provide him with the outcome of the internal review. At this stage London Councils advised that it was now of the view that it did not in fact hold the requested information for the purposes of the FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 20 July 2018 to complain about the way his request for information had been handled. The complainant argued that London Councils did hold the requested information under the FOIA, and he considered that there was a strong public interest in disclosure.
11. The scope of the case is to determine whether London Councils holds the requested information for the purposes of the FOIA.

Reasons for decision

12. Section 3(2) of the FOIA provides that information is held by a public authority if it is held by that authority, otherwise than on behalf of another person, or if it is held by another person on behalf of the authority.
13. The complainant referred the Commissioner to a previous First-tier Tribunal judgment regarding London Councils. In that case the Tribunal found that general training and guidance information provided to adjudicators was held by London Councils within the meaning of section 3(2) of the FOIA.²

² Williams v Information Commissioner, appeal no EA/2017/0099

14. The Commissioner invited the complainant to explain how he considered that the Tribunal decision applied to the request of 15 March 2018, but he declined to do so. He did however provide the Commissioner with a document entitled "Appraisal Scheme for London Environment and Traffic Adjudicators", dated April 2015. This document indicates that the overall responsibility for the appraisal of adjudicators lies with the Chief Adjudicator.
15. The Commissioner notes that London Tribunals provides a support service to the adjudicators. She also understands (from the Adjudicators' annual report) that adjudicators participate in London Tribunals' appraisals programme.³ This programme is not statutory but is based on the Judicial College appraisal scheme undertaken by judges.
16. The Commissioner asked London Councils to explain how it was satisfied that it did not hold the requested information. London Councils set out to the Commissioner that it provided a support service to the adjudicators, and following the First tier Tribunal decision it accepted that certain information provided to adjudicators by London Councils would fall within the scope of the FOIA. However, London Councils maintained that information relating to the exercise of adjudicators' judicial or quasi-judicial functions would fall outside the scope of the FOIA in order to preserve judicial independence.
17. The Commissioner has carefully considered the Tribunal's approach in the case referred to at paragraph 13 above. The Tribunal decided that *"the critical question is the purpose or purposes for which [London Tribunals] holds the requested information"* (para 22).
18. On this basis London Councils accepted that it held blank appraisal forms for the purposes of the FOIA, in the same way that it held training materials, and it disclosed copies of the blank appraisal forms to the complainant. However, London Councils maintained that it held the completed appraisal forms solely on behalf of the Chief Adjudicator, rather than for its own purposes. The Chief Adjudicators physically hold the completed forms in their judicial capacity, albeit that the accommodation is provided by London Councils. Unlike the training materials in *Williams*, the completed appraisal forms are not

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<https://www.londontribunals.gov.uk/sites/default/files/ETA%20Annual%20Report%202017-2018.pdf>

accessible by London Councils or the London Tribunals administrative support team.

19. London Councils also confirmed that the Chief Adjudicator, rather than London Councils, is the data controller for the personal data processed as part of the appraisal process. The Chief Adjudicator decides what information is collected, generated and retained.
20. The Commissioner is of the opinion that, following the approach set out by the Tribunal, London Councils has properly distinguished the completed appraisal forms from the blank, or template, forms. London Councils does not have any access to or control over the completed forms. For these reasons the Commissioner concludes that the information contained in the completed appraisal forms is not held by London Councils within the meaning of section 3(2) of the FOIA.

Right of appeal

21. 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

22. 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.
23. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF