

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 2019

Public Authority: London Borough of Haringey
Address: Enterprise Centre
639 High Road
London
N17 8AA

Decision (including any steps ordered)

1. The complainant requested information about a parking permit scheme. The London Borough of Haringey ("the London Borough") disclosed some information, but stated that the remainder of the requested information was not held.
2. The Commissioner's decision is that the London Borough of Haringey ("the London Borough") holds no further information within the scope of the request.
3. The Commissioner does not require any further steps.

Request and response

4. On 12 December 2018, the complainant wrote to the London Borough and requested information in the following terms:

"Please provide me with the following information:

1. *When did Haringey Council start charging residents who currently hold an annual parking permit pay to park a courtesy car whilst their registered car is absent from the borough?*
2. *Prior to the decision being made to introduce this charge, was any work undertaken to assess what charges are made in the same situation in other London boroughs? If so please provide a full copy of the report detailing the outcome of that work, including their findings.*

3. *Prior to the decision being made to introduce this charge, was any work undertaken to assess the impact of this charge on lower income residents in the borough? If so please provide a full copy of the report detailing the outcome of that work, including their findings.*
4. *Please detail which traffic management orders (TMOs) and/or any other authority under which these charges are made. Please supply a copy of any TMO or other authority which you cite in your response."*
5. The London Borough responded on 7 January 2019. It provided some information in respect of element 4, but stated that it could find no recorded information which would answer element 1 and held no recorded information that would provide answers to elements 2 or 3 either. It stated that the information might have been documented in a Committee or Cabinet Report and indicated where these could be found.
6. The complainant wrote back to the London Borough on the same day to complain that he had been unable to locate any relevant papers older than 2012. He then added to his request in the following terms:

"So please supply me with any Committee or Cabinet Reports or minutes regarding any review of residents' parking charges for the ten years from 2012 to 2002."
7. The London Borough interpreted this correspondence as a request for an internal review of the request of 11 December 2018 and carried out an internal review whilst also addressing the new request in a letter dated 5 February 2019. The London Borough stated that it held no further information within the scope of either request.

Scope of the case

8. The complainant contacted the Commissioner on 5 February 2019 to complain about the way his request for information had been handled.
9. The scope of this case is to consider whether further information was held within the scope of the request.

Reasons for decision

Held/Not Held

10. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

The complainant's position

11. The complainant provided the following in his covering letter to the Commissioner:

"I've been advised that what was written by the Council in their review about records being kept for only six years may not be correct. All I want to do is to check that and get the accurate info about records retention."

The London Borough's position

12. The Commissioner asked the London Borough a series of questions to determine whether further information was held and for it to provide any general explanations or arguments as to why it should not be expected to hold further information.
13. The London Borough informed the Commissioner that the decision involved pre-dated the current members of the relevant team and was likely to have been made at the time the first Controlled Parking Zones were introduced – some twenty years previously. It noted that it no longer had a business need for such information and that, in relation to meetings of the Council, it only kept such documents for six years to reflect the timescales during which a civil lawsuit could be brought under the Limitation Act 1980.
14. The London Borough continued:

"We met with the Information and Governance officer for our Environment & Neighbourhood Directorate to discuss with her who we should approach to ensure that a thorough search for the information had indeed been carried out previously and for a further search to be made.....since receiving your letter we approached all relevant officers who may have held the information. These are the Head of Operations, the Traffic Order Officer, the Project Officer and the Parking Scheme Officer and requested that they search their emails to see if they had anything that may cover the request. We also asked that any shared folders be searched and if there was anybody else in the organisation that may have this information."

"Traffic Order records go back to 2009 but do not include background information for parking charges, just instructions for any changes. No information was found that would be within the scope of the request."

15. Finally, the London Borough confirmed that it carried out a search of paper and electronic files to check whether any relevant information could be located – without success.
16. The London Borough accepted that, at the point at which it suggested that the complainant might wish to search old committee reports, it had not made any steps to establish whether relevant information was or was not contained within those reports. During the investigation, the matter of the London Borough having referred in its response of 7 January 2019 to the possibility of information being available in "a Committee or Cabinet Report" was raised with it. In response to this, the London Borough stated that advising the complainant of this was an error and that the requested information was not available in that location. The Commissioner comments further on this in the "Other matters" section below.

The Commissioner's view

17. The Commissioner's view is that the London Borough does not hold the requested information.
18. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
19. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
20. In this particular case, the Commissioner considers it unlikely that the London Borough would still hold information about a decision taken around two decades ago. She accepts that the London Borough would have been unlikely to have had a business need to retain such information and is unaware of any legislation which would require this information to be retained.

21. As a practical necessity and in the interests of good records management, the Commissioner recognises that public authorities cannot and should not retain all the information they hold indefinitely.
22. The complainant is clearly keen to understand the rationale behind a decision which the London Borough has taken – but that does not amount to a reason as to why the information should be held.
23. Whilst the London Borough introduced an element of confusion by advising the complainant both that the requested information was not held, but then specifying a location where it may be found, as covered above at paragraph 16 this point was addressed during the Commissioner's investigation. The Commissioner accepts the assurance from the London Borough that the requested information is not held in "a Committee or Cabinet Report".
24. The Commissioner therefore concludes that the London Borough holds no further information within the scope of the request.

Other matters

25. The London Borough should be aware that it is not sufficient to respond to an information request by indicating, to a requestor, where information which it holds "might" be available.
26. If a public authority is aware that information which has been requested is available elsewhere, it may point a requestor in that direction and refuse that part of the request by relying on section 21 of the FOIA. However, if it wishes to take this course of action it must be reasonably certain that the information can be found there. If a public authority merely considers there to be a possibility that information might be available in a particular place, it should either take steps to establish whether the information can in fact be found there or, if it believes that establishing whether the information is in fact held would exceed the cost limit alone, consider citing section 12(2) of the FOIA to refuse the request.
27. The Commissioner accepts in this particular case that the London Borough may have been trying to be helpful – but the wording it used appears to have confused the complainant as to the existence of information.

Right of appeal

28. 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@justice.gov.uk

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

29. 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.
30. 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

**Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
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Cheshire
SK9 5AF**