

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2019

Public Authority: London Borough of Waltham Forest
Address: Town Hall
Forest Road
London
E17 4JF

Decision (including any steps ordered)

1. The complainant has requested photos within a particular report. The London Borough of Waltham Forest ("the London Borough") refused the request as "repeated" because it had already supplied the whole report.
2. The Commissioner's decision is that the London Borough was entitled to rely on section 14(2) of the FOIA to refuse the request. However it failed to inform the complainant that it was relying on section 14(2) and thus breached section 17(5) of the FOIA.
3. The Commissioner does not require any further steps.

Request and response

4. On 26 June 2019, the complainant wrote to the London Borough and requested information in the following terms:

"The 'action photos' contained in the Fire Risk Assessment (FRA) conducted by Ridge and Partners LLP for Northwood Tower for the period 29/06/2018 - 29/06/2019. They can be found on page 32 - 58.

"I would like the above information to be provided to me in electronic form and sent to the email address as per below."

5. The London Borough completed an internal review and informed the complainant of the outcome on 6 September 2019. It refused the

request as “repeated” because it had already supplied the whole report to the complainant as part of a previous FOI request.

Scope of the case

6. The complainant first contacted the Commissioner on 25 July 2019 to complain about the way her request had been handled. At that point, she had not received a formal response from the London Borough.
7. The Commissioner was unable to resolve the delayed response informally within a reasonable timeframe and was therefore compelled to issue decision notice FS50861020,¹ finding a breach of section 10 of the FOIA.
8. The London Borough responded to say that it had in fact already issued a response to the request and decided to carry out an internal review of the way the request was handled instead.
9. Given her findings in decision notice FS50861020, the Commissioner will not revisit the issue of timeliness again here, except to note that, despite having numerous opportunities to do so, the London Borough did not furnish her with a copy of the initial response it says it had provided to the complainant.
10. The complainant contacted the Commissioner again on 13 September 2019 to complain that she had not been supplied with copies of the images in the format she requested them and therefore the request could not be a “repeated” request.
11. The Commissioner therefore considers that the scope of her investigation is to determine whether the London Borough has already provided the complainant with the information she requested on 26 June 2019.

Reasons for decision

12. Section 1(1) of the FOIA states that:
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¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615795/fs50861020-1.pdf>

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.*

13. Section 14(2) of the FOIA states that:

"Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request."

14. The complainant appears to accept that she has been provided with a PDF version of the whole report. However, in correspondence with the Commissioner on 13 September 2019, she argued that:

"The accompanying 'action pictures' appear [in the report] in Black and White and cannot be published in their current form; hence my request to secure the originals (colour PDF format). It is in the public interest that the data is released, promptly."

15. The London Borough set out, in its response of 6 September 2019, that, as the original request only sought the photos in electronic format, by providing the report containing the photos, it had already complied with the request.

The Commissioner's view

16. The Commissioner considers that there is a material difference between the information the complainant sought in her request of 26 June 2019 and the explanation of the request which she provided to the Commissioner on 13 September 2019.

17. The explanation quoted above quite clearly seeks information in a different format to that already provided, in that it specifies that the complainant wants the photos in colour as opposed to black and white. Had the complainant requested colour copies of the photos in her correspondence of 26 June 2019, the Commissioner considers it unlikely that the London Borough could have refused the request as repeated.

18. However, the plain wording of the request only sought *"the action photos...in electronic form."* As the London Borough has already provided the photos as part of the overall report – and has done so in

PDF (ie. electronic) format, the Commissioner considers that the London Borough complied with the previous request and therefore is entitled to rely on section 14(2) of the FOIA to refuse the current request.

19. It is of course open to the complainant to make a fresh request for the information she wishes to access.

Refusal Notice

20. Section 17(5) of the FOIA states that:

A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

21. Whilst the London Borough's 6 September 2019 response noted that it considered the request to be "repeated," it did not cite section 14(2). The London Borough has not supplied the Commissioner with any correspondence which shows the complainant being informed that her request was being refused because of this exemption.
22. The Commissioner therefore finds that the London Borough breached section 17(5) of the FOIA in handling this request.

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: 0870 739 5836

Email: grc@justice.gov.uk

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

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

Phillip Angell
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