

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 January 2020

**Public Authority:** London Borough of Lambeth  
**Address:** 1 Brixton Hill  
Brixton  
London  
SW2 1RW

#### **Decision (including any steps ordered)**

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1. The complainant has requested two parts of information from the London Borough of Lambeth ("the Council") regarding its security incident reports and some information surrounding a previous request he had made. The Council provided some information and stated that it held no further information within the scope of the complainant's request.
2. During the Commissioner's investigation, the Council discovered that it did hold more information relating to one part of the request and provided it to the complainant.
3. Therefore, the Commissioner's decision is as follows:
  - The Council has breached section 1 and section 10 of the FOIA as it failed to provide all the information it held, falling within the scope of the request, within 20 working days.
  - In relation to part 3 of the complainant's request, any information that the Council may hold would be his own personal data and thus exempt under section 40(1) of the FOIA.
4. As the Council has now provided this to the complainant, the Commissioner does not require any steps to be taken.

## Request and response

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5. On 23 January 2019, the complainant wrote to the Council and requested information in the following terms:
- "New FOIA request - security incidents / reports, etc.*
- Could you please, as a new FOI request, provide responses to the following:*
- 2. A copy of all reported or recorded security incidents, incident reporting, including descriptions from 1st January 2018 to date.*
- 3. A copy of communications, notes, reports etc. relating to the my request for GDPR readiness reports and the PwC report. Some related questions (which support but should not restrict the answers to question 2.)*
- c. Was the PwC GDPR readiness report ever mentioned in response to my request (in precise name or reference to), name*
- d. Were any of the stakeholders mentioned in the report, or the departments / divisions / teams, etc forwarded my request for GDPR Readiness Report?*
- In practical terms (please do not consider this to be a way to interpret my request restrictively), please inform me who was asked about the request for a GDPR readiness report, their role and all relevant communications or notes, reports surrounding this request"*
6. The Council responded on 20 February 2019. It provided some information within the scope of the request but refused to provide the remainder. It cited section 40 of the FOIA as its basis for doing so.
7. Following an internal review, the Council wrote to the complainant on 26 March 2019. It stated that it had provided all recorded information regarding the matter and that no further information was held.

## Scope of the case

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8. The complainant contacted the Commissioner on 27 March 2019 to complain about the way his request for information had been handled.
9. The complainant's request is split into two parts, part 2 and part 3 (as originally labelled by the complainant).

10. The complainant's request stems from a previous case he had brought to the Commissioner, where the Council provided him with some information for information security reports up to a specific date (1 January 2018). The complainant explains in this case that part 2 of his request is for the same information, but *from* 1 January 2018.
11. The complainant has concerns that the Council has not provided him with all the information it holds within the scope of the request. This is because the complainant is of the opinion that the Council's response to the current request contained less detail than the information provided in the Council's response to the previous request.
12. Part 3 of the complainant's request is for correspondence between the Council surrounding the previous request he made. This information is likely to be his own personal data and could be exempt under section 40(1) of the FOIA. If this is the case, the Commissioner would not need to assess whether the Council holds information within the scope of part 3 of his request.
13. The Commissioner therefore considers the scope of this case is to determine whether the Council handled the request in accordance with the FOIA. Specifically, it will be to investigate whether the Council is correct when it says that it does not hold further information and whether all of the information within the scope of part 3 of the complainant's request would be his own personal information.

## Reasons for decision

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### Section 1 - Information held/not held

14. 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.*
15. The Commissioner has sought to determine whether the Council holds the information which the complainant has asked for in his request of 23 January 2019. 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.

16. 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.
17. As explained previously, the complainant's request is split into two parts, part 2 and part 3 (as originally labelled by the complainant). Therefore the Commissioner will split her analysis into two parts.

#### Part 2 of the request

18. By way of a reminder, part 2 of the request is as follows:

*"2. A copy of all reported or recorded security incidents, incident reporting, including descriptions from 1st January 2018 to date."*

19. The Commissioner has investigated whether the Council holds recorded information relevant to the complainant's request by asking the Council questions about the searches it has made to locate the information which the complainant seeks and questions about the possible deletion/destruction of information which might be relevant to the complainant's request.

20. The Council explained to the Commissioner that it had:

*"...checked the systems where information relating to FOI requests is uploaded and saved to the case. All correspondence is held within the iCasework system. We obtained the requested correspondence which was saved under the reference IR231502. We then redacted the correspondence and provided it to [the complainant]."*

21. The Council also confirmed it has not deleted or destroyed information within the scope of the request.

22. As mentioned previously, the Commissioner understands that the complainant raised concerns about the level of detail provided relating to the security incident reports. This is because the complainant suggested that it was implicit in his request that he was seeking the same categories of information in this request as he had previously been provided with in respect of 2015-2017. Having reviewed the correspondence, the Commissioner considers this to be a reasonable interpretation.

23. The Commissioner questioned the Council as to why it had provided a different level of detail in response to this request.
24. The Council responded to say it considers the level of detail is similar in both reports, but the format is different. The Council stated that it did not hold the more recent information in the same format as the response to the previous request, but it did not explain why the format of each response was different. The Council also advised the Commissioner that it would find out the reason from its I.T. department.
25. Upon contacting the I.T department, the Council discovered that it did hold a copy of the more recent incident reports that had the same amount of detail as that which was provided to the complainant in response to his previous request. It explained that its I.T. department advised the information was extracted in a different format on this occasion. The Council then went on to say it had considered the information it had provided to the complainant on 20 February 2019 to be broadly similar and therefore provided it to the complainant as the I.T team extracted it. Once the Council discovered it did hold more information than it initially provided, it apologised for any inconvenience and provided the extra information to the complainant.
26. The Commissioner is satisfied that the Council has now provided all the information it holds within the scope of part 2 of the request.

### Part 3 of the request

27. As a reminder, part 3 of the complainant's request is as follows:

*"3. A copy of communications, notes, reports etc. relating to the my request for GDPR readiness reports and the PwC report. Some related questions (which support but should not restrict the answers to question 2.)*

*c. Was the PwC GDPR readiness report ever mentioned in response to my request (in precise name or reference to), name*

*d. Were any of the stakeholders mentioned in the report, or the departments / divisions / teams, etc forwarded my request for GDPR Readiness Report?"*

28. The Commissioner has determined it is likely that the Council does hold information relating to part 3 of the request. However, as the request is for information relating to his own previous request, the information could be his own personal data and therefore exempt under section 40.
29. Therefore the Commissioner will now begin to assess if part 3 of the request is personal data.

## Section 40 – Personal information

30. Section 40(1) states that:

*"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."*

*Is the information personal data?*

31. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual".*

32. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

33. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

34. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

35. As shown in the reminder of part 3 to the complainant's request above, part of the request submitted on 23 January 2019 clearly identifies the complainant's own previous request and as explained in point 34, the response would be classed as information used to inform decisions affecting him or has him as its main focus.

36. Any information which did *not* relate to the complainant's previous request would not be within the scope of the complainant's current request. Therefore, any information would consist of the complainant's personal information.

37. As a result of the above analysis, the only information the Council could hold that would satisfy part 3 of the current request would be information about the complainant's previous request.

38. For that reason, if the Council held any of the information that would fall within the scope of part 3 of the request, the Commissioner would find that it would be exempt under section 40(1) of the FOIA.

## **Section 10 – Timeliness**

39. Section 10 of the FOIA states that responses to requests made under the Act must be provided “*promptly and in any event not later than the twentieth working day following the date of receipt.*”
40. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Council has breached section 10 of the FOIA.

## Right of appeal

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41. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**