

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 2 March 2020

Public Authority: London Borough of Bromley
Address: Bromley Civic Centre
Stockwell Close
Bromley
London
Kent
BR1 3UH

Decision (including any steps ordered)

1. The complainant has requested information relating to Penalty Charge Notices (PCNs). London Borough of Bromley (the Council) originally withheld this information under section 36 but disclosed the information during the course of the Commissioner's investigation.
2. The Commissioner's decision is that the Council has therefore breached section 10 of the Act as it failed to provide the information within the statutory timeframe.
3. As the information has been disclosed, the Commissioner does not require the Council to take any steps.

Request and response

4. On 31 January 2019, the complainant wrote to the Council and requested information in the following terms:

*"**Query 1:** I would like to request a copy of all policy and guidance documents that are available to council officers who are tasked with considering the question of whether a Penalty Charge Notice should be cancelled. For the avoidance of doubt, this request covers any policy that is published or otherwise publicly available, plus any internal council guidance or policy that is only available internally to council staff (such*

as any internal policy that outlines in what circumstances the council may exercise its discretionary powers to cancel a PCN).

Query 2: *Please could you also disclose the training material that is used to train the council officers who make decisions regarding the cancellation of PCNs. This should cover only training material that is directly relevant to their role in deciding whether a council PCN should be cancelled, any other training material (such as generic council training, health and safety, GDPR or training related to other roles or functions) is not within the scope of this request.*

Again for the avoidance of doubt, both queries above cover policies and training material available to council officers who deal with informal representations, formal representations and appeals to the tribunal.”

5. The Council confirmed that it was withholding the information in scope of query 1 under section 36¹ of the Act and that it considered the balance of the public interest lay in maintaining the exemption.
6. With regards to query 2, the Council provided a list of three City & Guilds qualifications.
7. On 23 February 2019, the complainant wrote to the Council and requested confirmation of who the qualified person was that provided the reasonable opinion.

¹ (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(a) would, or would be likely to, prejudice—

- (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
- (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
- (iii) the work of the Cabinet of the Welsh Assembly Government.

(b) would, or would be likely to, inhibit—

- (i) the free and frank provision of advice, or
- (ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

8. On 26 April 2019, the complainant wrote again to the Council and confirmed that he had not received a response. He requested confirmation of the authority of the qualified person to provide the reasonable opinion.
9. On 20 May 2019, the complainant requested an internal review in the absence of a response from the Council. The complainant disputed that the Council had the authority to apply section 36 as the officer who provided the original response was unlikely to be authorised by a Minister of the Crown. The complainant also raised concerns that the Council appeared to have applied a blanket approach to the information and had not considered whether the information could be provided in a redacted form. The complainant also disputed that the specified prejudice would occur as the Council would be in possession of the required evidence to proceed with enforcement. The complainant did not dispute the response to "Query 2".
10. On 22 July 2019, the complainant wrote to the Council to request the outcome of the internal review into the handling of his request for information.
11. On 23 July 2019, the Council responded and stated that an internal review had been undertaken and a response would be provided by the end of the week.
12. On 31 July 2019, the complainant wrote to the Council to confirm that he still had not received the outcome of his internal review and requested confirmation of when it would be provided.
13. On 31 July 2019, the Council responded and explained that the internal review had taken place but the conclusion of the panel was that clarification was needed from the service area regarding the reasoning for the response. The Council confirmed that having received this clarification, the responsible officer was not fully satisfied and required further liaison with the service area. It confirmed that it aimed to issue a substantive response within the next five working days.
14. On 13 August 2019, the complainant requested a further update as he had still not received the outcome of the internal review.
15. On 22 August 2019, the complainant contacted the Commissioner to complain about the length of time the Council were taking to provide the internal review.
16. The Commissioner wrote to the Council on 11 September 2019 and asked it to provide the outcome of the internal review within 10 working days.

17. The Council provided the outcome of the internal review on 30 September 2019. It provided a link to information which was publicly available. It confirmed that it was relying on section 36(2)(c) to withhold the requested information. It also confirmed that the Qualified Person was the Monitoring Officer who is also the Director of Corporate Services.
18. The Council set out its consideration of the public interest test and confirmed that it believed the public interest lay in maintaining the exemption.

Scope of the case

19. The complainant contacted the Commissioner on 30 September 2019 to complain about the way his request for information had been handled. Following confirmation of this complaint, the Council revisited the request.
20. On 24 October 2019, the Council wrote to the complainant and confirmed that it was withdrawing its reliance on section 36 to withhold the information. The Council provided the complainant with the information requested in "Query 1".
21. The complainant confirmed on 4 November 2019 that the disclosed information satisfied his request for information but he still wished to receive a decision notice regarding the handling of the request for information.
22. The Commissioner therefore considers the scope of this case is to determine whether the Council breached section 10 in relation to this request.

Reasons for decision

23. Section 1(1) of the Act 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.

24. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.

25. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the Act.
26. Section 10 of the Act 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."*
27. As the Council confirmed that it was incorrect to apply section 36(2)(c) and subsequently disclosed the information, 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 Act.

Other matters

28. The complainant raised concerns regarding the named Qualified Person's authority to provide the reasonable opinion. The Commissioner has previously considered an application of section 36 by this public authority². Whilst she did not uphold the Council's reliance on section 36, she was satisfied that the Monitoring Officer is the appropriate qualified Person for the purposes of section 36.
29. The complainant also raised concerns that he had not been provided with the Qualified Person's opinion or the signed document providing this opinion. Whilst the Commissioner acknowledges that this may aid a requester in understanding why information has been withheld, public authorities are not obliged to provide copies of the qualified person's opinion. Section 17(1) states that when withholding information, a public authority must provide a refusal notice which states that the information is being withheld, which exemption the public authority is relying on and, why the exemption applies. The Commissioner cannot

² FS50602866

therefore find the public authority in breach for not providing the specific opinion of the Qualified Person.

30. Under the Act there is no statutory timeframe in which an internal review must be conducted. The Commissioner has issued guidance which states that ideally an internal review should be completed within 20 working days and in no circumstances should this exceed 40 working days. In this case, the Council took over four months to complete its internal review. The Commissioner also notes that the Council did not respond to the complainant's request for information regarding the identity of the Qualified Person.
31. The Commissioner is disappointed that the Council took such an excessive amount of time to complete its internal review. The Commissioner has logged this failure and will take it (and any further failings that are noted during the investigation of section 50 complaints under the Act) into account when considering whether additional regulatory action is required in order to improve the Council's handling of requests for information.

Right of appeal

32. 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

33. 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.
34. 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

Victoria Parkinson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF