

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 January 2020

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

Decision (including any steps ordered)

1. The complainant requested information about Special Purpose Vehicles (SPVs) relating to housing. The London Borough of Waltham Forest ("the London Borough") eventually stated that it did not hold any information within the scope of the request.
2. The Commissioner's decision is that the London Borough failed to discharge its duty under section 1(1)(a) of the FOIA within 20 working days. It therefore breached section 10 of the FOIA.
3. As the London Borough has now discharged its section 1(1)(a) duty, no further steps are required.

Request and response

4. On 28 May 2019, the complainant wrote to the London Borough and requested information in the following terms:
5. Please will you provide me with the following:-

"[1] Copies of all FOI disclosures sent by the council by requesters relating to 'special purpose vehicles' (SPVs).¹

[2] Does the council have a Special Purpose Vehicle (SPV) for the 'regeneration' of the Marlowe Road Estate? If so, please provide the following details held.

- Registered name*
- Date incorporated*
- What was the agreed function/purpose of the SPV?*
- Who owns shared capital? (Please list all entities and the % of capital held by each)*
- How much VAT has been recovered for each tax year since its inception from the use of the SPV?*
- What was the SPVs Income Surplus for each tax year since its inception?*
- Has the SPV been disclosed to HMRC?*

"I would like the above information to be provided to me in paper format and sent to the following address."

6. The London Borough responded on the same day. It asked the complainant to clarify which service the request related to. The complainant responded, again on the same day, to say that she wished to restrict element [1] of her request to disclosures relating to housing only.
7. The London Borough emailed a letter to the complainant on 25 June 2019. The salient part of the letter stated that:

"Marlowe Road Estate Regeneration is not structured as an SPV, therefore the information you requested in relation to an SPV is not available."

¹ A Special Purpose Vehicle is a subsidiary created by a parent company to isolate financial risk. They can be used to undertake financially risky activity as, because the SPV is a separate legal entity, the parent company will be protected in the event that the SPV fails.

8. The complainant sought an internal review on 15 July 2019. She argued that the Council had only provided a response to element [2] of the request and not to element [1].
9. Following the Commissioner's intervention, the London Borough completed an internal review on 25 October 2019. It now stated that it did not hold any information within the scope of either element of the request.

Scope of the case

10. The complainant first contacted the Commissioner on 30 August 2019 to complain about the way her request for information had been handled. At that point, the London Borough had yet to complete its internal review and the intervention of the Commissioner was necessary.
11. The complainant argued that the London Borough's original response had not addressed both elements of the request. She was also unhappy that the response had been sent to her electronically and argued that this was a breach of section 11 of the FOIA.
12. The Commissioner explained that section 11 of the FOIA only covers the means by which a public authority communicates information, within the scope of a request, to the requestor. As the London Borough did not hold any information, there was none to communicate and its only duty was to inform the complainant, in writing, that it did not hold information.
13. The Commissioner has therefore only considered whether or not the London Borough discharged its duty under section 1(1)(a) of the FOIA.

Reasons for decision

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 carefully considered the wording of the London Borough's response of 25 June 2019. In her view the words "therefore

the information you requested in relation to an SPV is not available" are clearly linked to the finding that the particular regeneration project was not an SPV. However, element [1] of the clarified request clearly sought "all FOI disclosures" related to FOI disclosures around housing SPVs. The fact that the single project cited was not structured as an SPV would, in and of itself, mean that the Council did not operate other SPVs relating to housing.

16. Whilst a public authority is not required to issue a formal refusal notice to deny holding information, it does need to be unambiguous, especially in relation to requests submitted in multiple parts, as to where it does and does not hold information.
17. The Commissioner does not therefore consider that the London Borough's response of 25 June 2019 provided a denial that information within the scope of element [1] of the request was held.
18. Section 10 of the FOIA states that a public authority must comply with its duties under section 1(1)(a) of the FOIA "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
19. The Commissioner considers that the London Borough did not discharge its duty under section 1(1)(a) of the FOIA, to confirm or deny holding information, in respect of element [1] of the request until it completed its internal review on 25 October 2019. It therefore failed to discharge this duty within 20 working days and thus breached section 10 of the FOIA.

Other matters

20. Whilst there is no statutory time limit, within the FOIA, for carrying out internal reviews, the Commissioner's guidance states that these should normally take no longer than 20 working days to complete and should never take longer than 40 working days.
21. The Commissioner notes that the London Borough's internal review was not completed until three months after it was requested – and only after her intervention. She considers this to be poor practice.

Right of appeal

22. 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

23. 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.
24. 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
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Cheshire
SK9 5AF**