

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2020

Public Authority: London Borough of Hounslow
Address: Hounslow House
7 Bath Road
Hounslow
Middlesex
TW3 3EB

Decision (including any steps ordered)

1. The complainant has requested CCTV footage of a specific address. The London Borough of Hounslow Council ("the Council") responded that the requested information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, the requested information is unlikely to be held.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. In a request dated 28 June 2019, the complainant requested information in the following terms:

I request you to obtain and forward the data of the CCTV dated 27 June 2019 [...]

The said CCTV camera is right above the back door leading into the back garden of [redacted address] and outside back windows of [redacted addresses]. The data requested is from 0600 a.m. including up to 00.00 hrs. the next day.

5. After receiving no response from the Council, the complainant submitted a complaint to the ICO. The ICO provided a copy of the request to the Council on 21 November 2019.
6. The Council responded on 5 December 2019. It stated that no information was held. This position was maintained in further correspondence on 18 December 2019.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled, and specifically that the Council was incorrect to claim that the information was not held.
8. The Commissioner considers the scope of the case to be the determination of whether the Council is likely to hold the requested information. The Commissioner will also consider whether the Council has breached the time for compliance provided for the FOIA.

Reasons for decision

Section 1 – The duty to provide information

9. 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.

10. 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.
11. 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.
12. In the circumstances of this case, the Council has stated that the information is not held as the CCTV system was not operational for the date specified in the request. The Council has provided the Commissioner with a copy of an email from a Housing Officer confirming this.
13. Having considered the Council's confirmation that the CCTV system was not operational, there is no evidence available to the Commissioner that suggests that the requested information is likely to be held.

Section 10 – Timeliness

14. 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."*
15. In the circumstances of this case, the complainant has informed the Commissioner that the request was sent to the Council by post (Royal Mail), and that a certificate of posting was obtained.
16. Whilst the Commissioner accepts that the complainant holds a certificate of posting, there is no evidence that confirms the request was received by the Council (such as might be provided by recorded post). In the absence of any evidence that confirms the request was received, the Commissioner cannot conclude that this was the case. As such, the Commissioner has not found a breach of section 10.

Right of appeal

17. 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

18. 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.
19. 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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Water Lane
Wilmslow
Cheshire
SK9 5AF