

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 February 2020

Public Authority: London Borough of Merton
Address: Civic Centre
London Road
Morden
SM4 5DX

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Merton (the London Borough) concerning the Bishopsford Bridge.
2. The Commissioner's decision is that the London Borough failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the London Borough to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA or EIR as appropriate, to the request.
4. The London Borough must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 13 October 2019, the complainant submitted a request for information to the London Borough using an online portal on their website. The London Borough acknowledged receipt of this submission the same day, and assigned it an initial reference number. The acknowledgement email did not quote the request for information.
6. On 12 November 2019, the complainant contacted the London Borough to request an update on the status of their "FOI" request.
7. The same day, the London Borough's Information Governance Team contacted the complainant to confirm that their request was logged and assigned a "due date" of 2 December 2019, as well as a new "FOI" reference number.
8. The complainant contacted the London Borough again on 9 December 2019, having received no response to their request. An explanation for the delay was sought.
9. The London Borough responded on 10 December 2019, apologising for the delays:

"Unfortunately we are currently not in a position to respond as officials are awaiting responses from [redacted] in regards to your request concerning Bishopsford bridge. Until we have received their responses we will unfortunately not be in a position to provide a response.

I will chase this with officials again today and ask that they once again chase both [redacted] and [reacted]."
10. The London Borough had failed to provide the complainant with their substantive response by the date of this notice.

Scope of the case

11. The complainant contacted the Commissioner on 22 December 2019 to complain about the failure, by the London Borough, to respond to the request.
12. In line with her usual practice, the Commissioner contacted the London Borough on 14 January 2020 to highlight the outstanding response. She requested that the London Borough respond to the request within 10 working days, or otherwise confirm that a response had been issued. Her correspondence was neither acknowledged nor responded to.

13. The complainant contacted the Commissioner on 1 February 2020, explaining that they had still not received a response to their request, despite the Commissioner's intervention. The Commissioner therefore considers that a decision notice is appropriate in this instance.
14. The scope of this notice and the following analysis is to consider whether the London Borough has complied with section 10 of the FOIA.

Reasons for decision

15. 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.*

16. 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.*

17. Owing to the submission of the request for information via an online portal, the Commissioner has not had sight of the request itself.
18. However, she notes that the London Borough have, on several occasions, acknowledged the request. They have also assigned the request a particular "FOI" reference number.
19. At no point during the London Borough's correspondence with the complainant have they indicated that the request did not meet the requirements of section 8 of the FOIA.
20. Further, the London Borough has made no representations to the Commissioner regarding the validity (or otherwise) of the request.
21. The Commissioner therefore has no reason to think that the request *did not* fulfil the section 8 criteria of a valid request for recorded information

under the FOIA. She does not think it would be proportionate for her, or the complainant, to retrieve a copy of the request from the London Borough, given that the scope of this case is the timeliness of their response and given the London Borough's lack of engagement with her office in respect of this complaint.

22. She has therefore assessed this case on the basis that the request was a valid request for recorded information under section 8 of the FOIA.
23. 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.*"
24. 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 London Borough has breached section 10 of the FOIA.

Other matters

25. At point 7 above, the Commissioner notes that it is unclear why, having received a request on 13 October 2019, the London Borough would consider its "due date" to be 2 December 2019 – 35 working days following receipt.

Right of appeal

26. 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

27. 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.
28. 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
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Wycliffe House
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Wilmslow
Cheshire
SK9 5AF