

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 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 a variety of information from the London Borough of Waltham Forest (the London Borough), which related to a 2017 request that the London Borough previously responded to.
2. The Commissioner's decision is that, in respect of questions 2, 3 and 6 of the complainant's request, the London Borough failed to respond 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, to questions 2, 3, and 6 of the complainant's 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 25 November 2019, the complainant wrote to the London Borough and requested information in the following terms:

"I am writing to make an open government request for all the information to which I am entitled under the Freedom of Information Act 2000 (FOIA).

Please will you provide me with the following:-

1) In Q3 of your disclosure logged under case reference number: FOIX344691, you claimed not to know "who the new retailers and community users will be other than the Post Office and Coop store."

It is my understanding that this assertion was false. And that representation was made by the relevant parties and agreed by the LBWF. Can you revisit this question, please?

2) In Q7 of your disclosure logged under case reference number: FOIX344691, you stated "not all new build social rented properties will have separate bathrooms and kitchens." What is the exact number?

3) In Q9 of your disclosure logged under case reference number: FOIX344691, you stated "the anticipated car parking pilot scheme did not go ahead." Can you explain the reasons the pilot did not go ahead?

4) In Q11 of your disclosure logged under case reference number: FOIX344691, you claimed "no compulsory purchase Order (CPO) has been made."

It is my understanding that this assertion was false. Can you revisit this question, please?

5) In Q12 of your disclosure logged under case reference number: FOIX344691, you claimed... "33 residents applied for parking permits."

6) In Q14 of your disclosure logged under case reference number: FOIX344691, you claimed... "Any surplus homes will be allocated to people on Waltham Forest Council's Housing Register."

To date, how many homes have been allocated to people on Waltham Forest Council's Housing Register?

I would like the above information to be provided to me in paper format and sent to the following address as per below:-

[redacted]"

6. On the evidence presented to the Commissioner, it does not appear as though the London Borough acknowledged the request, nor that it had provided a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 6 January 2020 to complain about the failure, by the London Borough, to respond to the request. A copy of the London Borough's response to the 2017 request had previously been provided to the Commissioner.
8. In line with her usual practice, the Commissioner contacted the London Borough on 13 January 2020 to highlight the outstanding response. She requested that the London Borough respond to the request within 10 working days. Her correspondence received automatic acknowledgement but was not substantively responded to.
9. The complainant contacted the Commissioner on 30 January 2020, confirming that they had still not received a response to their request. The Commissioner therefore considers that a decision notice is appropriate in this instance.
10. In determining the scope of this case the Commissioner has considered the content on the complainant's request to the London Borough. For ease, she refers to its various questions and points by the numbers assigned by the complainant; 1, 2, 3, etc.
11. Questions 1 and 4 of the complainant's request are explicitly premised on the claim that the London Borough made a false assertion in its response to a previous request for information. Based on these premises, the complainant asks the London Borough to "revisit" the relevant questions.
12. Posed in this manner, questions 1 and 4 are not framed so as to seek access to recorded information. They do not describe information sought, but instead invite the London Borough of revisit questions that have already been addressed. Therefore, the Commissioner does not

consider that questions 1 and 4 constitute valid requests for information under the FOIA.

13. Point 5 of the complainant's request simply quotes a portion of the London Borough's 2017 response. It therefore does not constitute a valid request for information under the FOIA.
14. Accordingly, the Commissioner does not consider that questions 1 and 4, nor point 5 of the complainant's request fall within the scope of this notice.
15. As set out in "Reasons for decision", the Commissioner considers that the remaining questions posed by the complainant (2, 3, and 6 respectively) constituted valid requests for information under the FOIA.
16. The scope of this notice and the following analysis is therefore to consider whether the London Borough has complied with section 10 of the FOIA in respect of the valid elements of the complainant's request.

Reasons for decision

17. 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.*

18. 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.*

19. The Commissioner considers that points 2, 3, and 6 of the complainant's request, though worded as questions, sufficiently identified the (potentially) recorded information sought and thus fulfil the requirements of section 8 of the FOIA.¹
20. 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.*"
21. Therefore, from the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the valid elements of the complainant's request within 20 working days, the London Borough has breached section 10 of the FOIA.

Other matters

22. The Commissioner would remind the public authority that section 16 of the FOIA obliges public authorities to provide "*reasonable*" advice and assistance to those who "*purport*" to make a request for information but fail to do so.
23. Questions 1 and 4 of the complainant's request dispute the accuracy of the information provided in response to the 2017 request. Under section 1 of the FOIA, a person making a request for information to a public authority is entitled to have that information communicated to them if it is held, or otherwise be issued with a valid refusal. The Commissioner therefore emphasises that her remit under section 50 is to consider whether information held by a public authority has or has not been communicated to a requestor in accordance with the FOIA. Under section 50, it is not within the Commissioner's remit to consider whether the information held by a public authority, and subsequently communicated to a requestor, is itself accurate.

¹ See p. 18 of the Commissioner's guidance regarding requests framed as questions <https://ico.org.uk/media/for-organisations/documents/1164/recognising-a-request-made-under-the-foia.pdf>

Right of appeal

24. 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

25. 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.
26. 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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SK9 5AF