

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 March 2021

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

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Waltham Forest (the Council) seeking information about a gas purchasing consortium of which it was a member. The Council provided the complainant with some of the information falling within the scope of her request but explained that it did not hold information about which other local councils were in the consortium. The complainant disputed this position and argued that the Council was likely to hold this information. The Commissioner has concluded that on the balance of probabilities the Council does not hold details of who the other consortium members are.
2. No steps are required.

Request and response

3. The complainant submitted the following request to the Council on 12 August 2019:

'Please will you provide me with the following:-

- According to the Department for Business, Energy and Industrial Strategy (BEIS), the LBWF is currently part of a gas purchasing consortium with 22 other boroughs that gives them "significant purchasing power" for the gas supply at the Marlowe Road Estate.

1) Who are the other boroughs (by name)?

2) When was this consortium set up?

3) How many purchases have been made under this consortium and for how much money? And from whom?

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

4. The complainant contacted the Commissioner on 27 November 2019 to complain about the apparent failure, by the Council, to respond to her request. In response to the Commissioner's enquires the Council explained that its records showed that it had responded on 5 September 2019. However, the Council provided the complainant with a further copy of its response on 14 January 2020.¹
5. This response explained that the Council did not hold information on who the other boroughs were in the consortium; it explained that the consortium was set up in 1989; and, explained that it had been procuring gas from 'LASER' and the last five purchases through it amounted to £756,345.
6. The Council then sent the complainant a further letter on 23 January 2020 which appeared to be an internal review of its handling of this request, despite the fact that she had not yet requested an internal review. The review explained that a response to this request had been emailed to the complainant on 5 September 2019 with a copy also being sent by post.

¹ The Commissioner issued a decision notice on 23 January 2020 which found that the Council had breached section 10 of FOIA by failing to provide the complainant with a response to her request within 20 working days. <https://ico.org.uk/media/action-veve-taken/decision-notices/2020/2617109/fs50873225.pdf>

7. The complainant contacted the Council on 3 February 2020 and asked it to conduct an internal review of its response. She asked the Council to address the following points:
 1. She argued that it was inconceivable that the Council had been part of the consortium since 1989 and did not know who the other boroughs were.
 2. The response to question 3 was incomplete because she had asked for how many purchases had been and the value of these but the Council had only provided the details of the last five purchases.
 3. She also asked the Council to explain who LASER were.
8. The complainant subsequently sent the Council a further email, also on 3 February 2020, stating that:

'I am currently going through my live FOI cases in date order and sent you an email dated 3 February 2020 asking for an Internal Review. I have since opened new mail from LBWF and note that you sent a FOI Review dated 23 January 2020. In view of your update, there is no need to issue me with a response. I shall now escalate the matter to the ICO for their consideration.'

Scope of the case

9. The complainant contacted the Commissioner on 4 February 2020 to complain about the Council's handling of her request.
10. The Commissioner subsequently clarified with the complainant that her grounds of complaint mirrored the points she had raised in her (withdrawn) request for an internal review of 3 February 2020.
11. During the course of the Commissioner's investigation, and at the Commissioner's request, the Council provided the complainant with details of all annual purchases it had made from LASER not simply those from the last five years and it clarified what LASER stood for. The Council's actions therefore resolved complaints 2 and 3.²

² This information should have been provided to the complainant within 20 working days of her request in line section 10 of FOIA. As the Commissioner has already issued a decision notice finding the Council in breach of section 10 of FOIA in respect of its handling of this request, she has not included a section 10 finding in this notice in relation to the late provision of this information.

Reasons for decision

Complaint 1

12. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
14. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, and/or other explanations offered as to why the information is not held.
15. In response to the Commissioner's enquires the Council confirmed that it did not hold information relating to the identities of the other members of the LASER consortium. In support of this position the Council explained that the energy industry is a highly competitive marketplace and, using its cumulative buying power, LASER competes in this market to procure best value energy deals for its members. The Council noted that the composition of the LASER group would be of value to competitive energy providers and is considered to be commercially sensitive. In light of this the Council explained that it would not hold the names of the other members of the consortium as it might damage the commercial interests of LASER (and that if held, such information would be exempt from disclosure on the basis of section 43(2) of FOIA anyway) and moreover that it held no business purpose for holding the information.
16. The Commissioner contacted the Council and explained that although she noted that it had no business purpose for holding the information, she questioned whether there was a possibility that the relevant service area would nevertheless hold some recorded information which included the names of the consortium members. In response the Council explained that its Energy Management Service had reviewed its contractual and management documentation with LASER and that did not contain any information on the identities of the other consortium members.
17. The Commissioner is satisfied that on the balance of probabilities the Council does not hold any information concerning the identities of the other members of the LASER consortium. She has reached this conclusion on the basis of a number of factors. Firstly, the Council has no business purpose to hold this information. Secondly, the relevant

area of the Council has examined its relevant records and cannot locate the information. Thirdly, given that the information is considered (by LASER) to be commercially sensitive, it appears unlikely that it would share this information with Council, especially if there was no business need for it to do so.

Right of appeal

18. 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

19. 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.
20. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF