

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 1 August 2022

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 has requested information regarding email responses from the emergency services regarding the implementation of Emergency Traffic Order (ETO) by the Council. The Council provided some information in response to the request, but the complainant argued that this information did not fulfil their request and that the Council should hold further recorded information.
2. The Commissioner's decision is that, on the balance of probabilities, the further information sought by the complainant is not held.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. On 4 March 2021, the complainant requested the following information:

"Thank you for the information provided on FOI286292580.
It appears to be missing some emails.

Could you please look into searching for the emails received from the LAS, Fire brigade and Police on or after 7th August 2020?

The emails relate to T36ab(20) ETO for Station Road made on 20th August 2020

You've sent me the attachment Station Road ETO Redacted.pdf which is the email to the emergency services but not the reply from them."

5. The Council responded on 15 March 2021 and supplied five redacted documents that they said were in scope of the request.

6. On 13 July 2021, the complainant requested an internal review as they believed information was missing in the response from the Council and asked again:

"Could you please look into searching for the emails received from the LAS, Fire brigade and Police on or after 7th August 2020?" And

"You've sent me the attachment Station Road ETO Redacted.pdf which is the email to the emergency services but not the reply from them."

7. On 11 August 2021, at Internal Review, the Council further explained its initial response and advised that no additional information other than that already provided in its original response, was held by the Council.

Scope of the case

8. The complainant contacted the Commissioner on 11 August 2021 to complain about the way their request for information had been handled.
9. The Commissioner considers the scope of this case is to determine whether it is likely, on the balance of probabilities, the Council holds further information which would fall within the scope of the complainants request.

Reasons for decision

Section 1 – General right of access to information

10. 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.*

11. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.

12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

13. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The Complainant's position

14. The complainant argues that the Council should hold the requested information (response from the emergency services) for record keeping and auditing purposes.

The Council's position

15. The Council argues that it has conducted relevant searches and has provided all the information held within scope of the request.

16. The Council clarified its response and said "We have checked with the service, and they have confirmed that there are no additional records other than that which you received from the information officer on 15

March 2021. I am satisfied that your freedom of information request was completed.”

17. During the Commissioners investigation, the Council advised that the emails sent to the emergency services were sent from a specific mailbox for this purpose, and any responses were checked within that mailbox to ensure that they were accounted for.
18. They have also said that the Council did not carry out a specific evaluation process of the effects of the ETO, and therefore did not hold any further information on this at the time of the request, they said that studies have been carried out by third parties, but they were not involved or privy to these, and therefore not recorded as a record by the Council.

The Commissioner's conclusion

19. The Commissioner has considered the Council's position, in conjunction with the request.
20. The Commissioner recognises that the complainant believes that the information requested should be recorded and alleges that the Council are obliged to hold the information.
21. The Council has confirmed to the Commissioner that after conducting relevant searches, it has been confirmed that a copy of any recorded information relevant to the specific request is not held.
22. There is no contradictory evidence available to the Commissioner that indicates the Council's position is wrong.
23. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

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: 0203 936 8963

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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF