

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 9 June 2009

Public Authority: The London Borough of Islington
Address: 222 Upper Street
Islington
N1 1XR

Summary

The complainant requested the criteria used by the Council's contractor to reward Parking Attendants and also for "statistical" information concerning individual Parking Attendants relating to the rewards over the last 12 months. The complainant made it clear that he did not wish any individuals to be identified. It was not clear from the Council's initial responses whether it held the criteria but it did state that it did not hold any statistical information relating to how individual Parking Attendants had met the criteria. During the Commissioner's investigation, the Council stated that it had not held the information requested by the complainant at the time of his request and that it did not believe its contractor held this information on its behalf. The Commissioner investigated this position and was satisfied that the information was not held at the time of the request either by the Council or by the Council's contractor on its behalf. The Commissioner also found that the Council breached section 10(1) and 1(1)(a).

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (The "FOIA"). This Notice sets out his decision.

The Request

2. On 24 January 2007, the complainant requested information from the Council in the following terms:

"What disciplinary measures are in place for a Parking Attendant who is found to have deliberately issue [sic] a Penalty Charge Notice (PCN) when one was not warranted.

I understand that Parking Attendants are offered an 'Argos' points scheme and a 'quarterly performance payment'. Such enhancements must be subject to a compilation of statistics of sorts. I request that these statistics be released to me, including information such as the number of PCNs issued, complaints, ticket cancellation rates and any other criterion considered in the award of these two enhancements, for the 'best performing' Parking Attendants in the Islington area over the past twelve months.

I would also like to know what the timetable for such awards are, e.g. when are the awards made in relation to the end of the period during which the statistics are compiled.

I do not expect that personal information be released identifying anyone; you may use any reference that you wish to distinguish between attendants".

3. On 21 February 2007, the Council responded. The Council did not state whether it held the information or whether National Car Parks Limited ("NCP"), its contractor, held it on its behalf. It made comments about disciplinary action and the criteria used for the two rewards referred to by the complainant but it was not clear whether these comments were based on recorded information. Regarding the two enhancements, the Council stated that as this was an "NCP issue" the complainant would need to request information concerning this directly from NCP. It provided the address. It also provided details of the number of Penalty Charge Notices issued, the number of complaints logged and how many were against Parking Attendants, how many Penalty Charge Notices were cancelled, and how many of those cancellations were as a result of Parking Attendant error and this information appears to have been based on recorded information because the Council wrote "our records indicate".
4. On the same day, the complainant complained to the Council about the response. He explained that the Council's responses had not been specific enough to satisfy him that his requests had been properly addressed. He also explained that he had already contacted NCP and had been told by it to address any queries to the Council.
5. On 16 March 2007, the Council completed an internal review. At this point, the Council stated that it did not hold information pertaining to NCP's best performing Parking Attendants or the outcome of disciplinary matters. It stated that it was therefore unable to provide statistics relating to the best performing Parking Attendants. It stated that it had provided all the information it held although, as explained in paragraph 3, it was not clear whether the Council had provided any recorded information other than the general figures about Penalty Charge Notices which were not part of the request. It advised the complainant that if he remained dissatisfied, he could contact the Council's Service Development team who would consider whether the complaint should be investigated further.
6. On 18 March 2007, the complainant replied. He stated that he had been unhappy with the time taken by the Council to respond and that if he had not received a

further response by 23 March 2007, he would complain directly to the Commissioner.

7. On 30 March 2007, the Council replied and stated that it was in the process of contacting NCP to try to obtain the information. It stated that it would provide details of NCP's response when received.
8. On 6 April 2007, the complainant wrote again to the Council and complained that he had still not received the Council's response.
9. On 20 April 2007, the Council replied and stated that it was still trying to obtain the information from NCP.

The Investigation

Scope of the case

10. On 14 May 2007, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically complained that he had not received the information he had requested from the Council.
11. As some information was disclosed during the Commissioner's investigation that satisfied the complainant, the Commissioner has not considered the Council's response to the complainant's request for information about the disciplinary measures in place and the time table for the award of the enhancements in this Notice. For clarity, the following chronology and the remainder of this Decision Notice only concerns the following request:

"I understand that Parking Attendants are offered an 'Argos' points scheme and a 'quarterly performance payment'. Such enhancements must be subject to a compilation of statistics of sorts. I request that these statistics be released to me, including information such as the number of PCNs issued, complaints, ticket cancellation rates and any other criterion considered in the award of these two enhancements, for the 'best performing' Parking Attendants in the Islington area over the past twelve months".

Chronology

12. On 7 August 2008, the Commissioner wrote to the complainant setting out his understanding of the complaint. The Commissioner stated that he understood the complaint to be that the complainant did not accept that the Council had provided him with all the information it (or NCP) held in relation to the request he had made. He also asked the complainant to confirm whether he had received any further information from the Council since the complaint was made.

13. The complainant responded on 9 August 2008, he stated that he was satisfied that the Commissioner's letter had accurately reflected his complaint. He also stated that he had heard nothing further from the Council about his request.
14. On 13 August 2008, the Commissioner wrote to the Council. The Commissioner explained to the Council its duties under section 1(1) of the FOIA to state whether it holds information of the description specified in the request. He also explained that in accordance with section 3(2)(b), information held by another person is held by a public authority if it is held on its behalf. The Commissioner asked the Council to provide a clear statement about what information it considered it held and to explain, if it believed NCP did not hold information on its behalf, why that was the case.
15. On 24 September 2008, the Council provided its response. The Council stated that it held bonus criteria and referred the Commissioner to a section of its correspondence where it had made comments about the criteria for the quarterly performance payment. However, in contradiction of the statement at the opening of the letter that it held criteria concerning the quarterly bonus payment the Council stated that at the time of writing it did not hold any document setting out the criteria but that NCP had agreed to provide a copy. Regarding the Argos Points Scheme, the Council stated that it was not party to any formal company document concerning the reward but it made some comments about the scheme.
16. On 9 October 2008, the Commissioner wrote to the complainant asking him to provide clarification concerning the request.
17. On 15 October 2008, the complainant responded and provided clarification.
18. On 28 October 2008, the Commissioner wrote to the complainant and stated that he understood that the complainant was seeking information in connection with the Argos Points Scheme and the quarterly performance payment of the following description:
 - 1) All statistical information relating to individual parking attendants that was considered in the award of these enhancements (although the complainant does not need to know the names)
 - 2) The criteria used to decide who to award the enhancements toAs stated in the original request, the time period covered by the request was for information over the last twelve months from the date of the request.
19. The complainant wrote to the Commissioner on 2 November 2008 and confirmed that the Commissioner had correctly understood his request.
20. On 6 November 2008, the Commissioner wrote to the Council and outlined his understanding of the information that had been sought by the complainant as it appears in paragraph 18 of this Notice. He asked the Council to clarify what information it held or was held on its behalf by NCP. He also asked the Council to provide a copy of any agreement it had with NCP on the issue.

21. The Council responded in a letter received by the Commissioner on 16 December 2008 (incorrectly dated 12 November 2008). It enclosed a copy of the Council's contract with NCP. The Council stated that it did not hold information falling within the scope of the request as outlined at paragraph 18 of this Notice and that NCP did not hold this information on its behalf.
22. On 7 January 2009, the Commissioner wrote to the Council. He asked some questions to help him to consider whether the Council held the information requested.
23. The Council responded to the Commissioner's enquiries on 19 January 2009.
24. On 29 January 2009, the Commissioner telephoned the Council to clarify certain aspects of its response in relation to the quarterly performance payment and particularly how the Council had been able to list the relevant criteria in its response to the Commissioner. The Council advised that it would not be able to provide a full response because the relevant staff member was not available at that time. The Council agreed to contact the Commissioner when she was available.
25. In the meantime, the Commissioner wrote further to the Council on 11 February 2009. The Commissioner stated that it appeared from the Council's letters that it knew details about the criteria considered for the award of the two enhancements. The Commissioner invited the Council to consider writing to the complainant and confirming these details in an effort to achieve informal resolution of the complaint.
26. On 11 March 2009, the Commissioner wrote to the complainant explaining that he had asked the Council to provide some information.
27. The Council provided a copy of its response to the complainant to the Commissioner on 23 March 2009. The response to the complainant was dated 13 March 2009.
28. The Commissioner wrote to the complainant on 30 March 2009 to ask whether the complainant was able to withdraw his complaint in view of the Council's recent response.
29. On 4 April 2009, the complainant responded. He stated that he remained dissatisfied with the Council's response.
30. On 15 April 2009, the Commissioner wrote to the Council. He explained that the complainant had not agreed to withdraw his complaint and he therefore needed to seek some further clarification from the Council.
31. On 11 May 2009, the Council provided a copy of information that NCP had provided to it during the tender process for the contract awarded to NCP, concerning the remuneration of parking attendants. The Commissioner noted that this included information about the quarterly bonus payment although it did not

mention the Argos Points Scheme. The Council also responded to the Commissioner's questions.

32. Following receipt of the Council's response, the Commissioner telephoned the Council to ask why it had claimed that the information concerning the quarterly performance payment criteria was not held when it appeared that it had been provided by NCP as part of the tender. The Council stated that it had not been held at the time of the request. At this point, the Council clarified that it had provided to the Commissioner a copy of the new contract it had with NCP and tender information associated with that rather than the contract and tender information that was relevant at the time of the request. The Council agreed to provide the information that was relevant at the time of the request to the Commissioner as soon as possible. It stated that under the old tender, the Council had not asked for details of parking attendants' remuneration and it therefore maintained that the quarterly performance payment criteria was not held at the time of the request.
33. On 18 May 2009, the Council provided to the Commissioner details of the contract it had with NCP at the time of the request and information concerning what information it asked NCP to provide as part of the tender.

Analysis

Procedural matters

34. In accordance with section 1(1)(a) of the FOIA, the Council has an obligation to state whether it holds recorded information of the description specified in a request. The Commissioner notes that when the Council initially responded to the request, it did not state this and it therefore breached section 10(1) of the FOIA by failing to state whether information was held within the statutory time limit of 20 working days.
35. When the Council completed its internal review, the Council stated that it did not hold statistics relating to NCP's best performing Parking Attendants because they are the employees of NCP. However, in relation to the criteria for the two enhancements, it was not clear whether this information was held. In view of this, the Council breached section 1(1)(a) for not stating whether it held this information.
36. The complainant asked the Commissioner to investigate the Council's position that the information he requested was not held by the Council. During the Commissioner's investigation, the Council maintained its position that the information sought by the complainant was not held by it and was not held on its behalf by NCP.
37. The Council explained to the Commissioner that in order to ascertain that it did not in fact hold the information detailed at paragraph 18 of this Notice, it carried out searches within its Parking Services department. It listed the staff members

who had been involved in carrying out the search as evidence of the thoroughness of this search and the fact that relevant staff members had been consulted about the request. The Council explained to the Commissioner that it did not hold any of the information of the description of the request outlined in paragraph 18 at the time the request was made and never held it at any time before the request. It stated that it had not been deleted, destroyed or mislaid. There was no evidence available to the Commissioner upon inspection of tender documents and the contract that would suggest that the information requested had been provided to the Council by NCP.

38. The Council explained to the Commissioner that although it asks for the criteria concerning the quarterly performance payment now, it did not ask for this under the contract it had with NCP at the time. It provided details of what information it asked for as part of the tender to the Commissioner as evidence of this. Having inspected this information, the Commissioner was satisfied that there seemed to be no suggestion that the Council had asked for information about the criteria for the quarterly performance payment as part of the contract in place at the time the request was made.
39. Section 3(2)(b) of the FOIA states that information is held for the purposes of the FOIA if it is held by another person on behalf of the public authority. The Commissioner also therefore considered whether he was satisfied that NCP did not hold the information on behalf of the Council. In order to make this decision, the Commissioner considered the nature of the information requested and also examined the details of the contract that existed between NCP and the Council at the time of the request.
40. In the Commissioner's view, information would be held on behalf of the Council if the contractor was contractually obliged to gather that information or to provide it to the Council. The Commissioner considers that as a contracted business, NCP needs to hold information for its own purposes and information about its staff is clearly an example of such information. He appreciates that there will on some occasions be a cross over between information held by NCP for its own purposes and information that it is required to provide to the Council in order to assist the Council in effectively managing the performance of the contract. However, the Commissioner believes that the Council would in any case be unlikely to require NCP to provide information about how individual officers have performed against bonus criteria because, if the Council did require information about bonus awards, it seems likely that more high level information would sufficiently meet its needs such as the criteria itself. Having examined the contract, the Commissioner saw no evidence of contractual obligations upon NCP to provide statistical information about how individual officers met the criteria for the quarterly performance payment award or the Argos Points Scheme provided by NCP.
41. In relation to the criteria for the quarterly performance award and the Argos Points Scheme, the Commissioner examined the contract and saw no evidence of contractual obligations upon NCP to gather or provide copies of criteria used to decide who to reward with quarterly performance payments or Argos Points. It has become clear from correspondence sent to the Commissioner that the complainant is particularly concerned to establish whether any rewards are

offered for the number of Penalty Charge Notices issued. Whilst the Commissioner can understand why the complainant might expect the Council to have built into its contract with NCP a requirement for it to provide evidence demonstrating how it was rewarding its officers, it nonetheless appears that there was no such requirement under the contract that existed at the time the request was made. In the absence of such an obligation, there seems to be no other reason to suppose that information concerning the internal remuneration process operated by NCP would be held by NCP on the Council's behalf. The Commissioner accepts that this information would be purely held for its own purposes.

42. In view of the explanations and reassurances provided by the Council as well as his own inspection of the contract and consideration of the nature of the information requested in this case, the Commissioner concluded that the information was not held by the Council or held by NCP on behalf of the Council and it therefore did not fail to comply with the requirements of the Act by not providing the complainant with this information. The Council is under no obligation under the FOIA to provide information held by a third party that is not held on the Council's behalf.

The Decision

43. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the FOIA:
- It did not breach section 1(1)(b) of the FOIA by failing to provide information that it held or which NCP held on its behalf.
44. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the FOIA:
- The Council breached section 10(1) of the FOIA for not stating whether it held information of the description specified in the request within the statutory time limit of 20 working days.
 - As the Council had still not stated whether it held the criteria that had been requested by the complainant by the date of its internal review, it breached section 1(1)(a) of the FOIA.

Steps Required

45. The Commissioner requires no steps to be taken.

Other matters

46. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

The FOIA Code of Practice issued under section 45 requires an internal review procedure to be as clear and as simple as possible in order to encourage a prompt determination of the complaint. In his Good Practice Guidance No.5, the Commissioner qualifies this further by explaining that he does not expect an internal review to have more than one stage. The Commissioner is concerned that, despite his guidance on the matter, the Council is operating an internal review procedure with more than one stage. In light of this the Commissioner recommends that the Council amends its current internal review procedures for dealing with complaints about requests for information as a matter of urgency.

Right of Appeal

47. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 9th day of June 2009

Signed

**Lisa Adshead
Senior FOI Policy Manager**

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

Legal Annex

Freedom of Information Act 2000

Section 1(1) provides 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.”

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”