

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2011

Public Authority: Enfield Council

Address: Civic Centre
Silver Street
Enfield
EN1 3XY

Decision (including any steps ordered)

1. The complainant has requested copies of invoices that Knight Frank, in its role as managing agent, presented for payment to Enfield Council (the "Council") in the 2009/10 financial year.
2. The Commissioner's decision is that the Council has now complied with the request by providing all the relevant information it holds. He does, however, find that it breached sections 1(1)(b) and 10(1) of FOIA by its handling of the request.
3. The Commissioner does not require the Council to take any steps as a result of this notice.

Request and response

4. On 11 February 2011 the complainant wrote to the Council and requested information in the following terms:

"Please provide copies of all invoices which were presented for payment to the council by Knight Frank for the 2009/2010 financial year which relates to their role as managing agents."
5. The Council acknowledged receipt of the request later the same day. It confirmed that copies of invoices dating up to 30 June 2009 had already been provided and were thus exempt information under section 21 (information reasonably accessible) of FOIA. In respect of the remaining information, the Council informed the complainant that it would respond within the statutory timescale.

6. Following the receipt of further correspondence from the complainant highlighting its failure to respond, the Council wrote to the complainant on 7 April 2011 to confirm that copies of the requested invoices had been sent.
7. The Council subsequently carried out an internal review of its handling of the request, the outcome of which was provided to the complaint on 27 June 2011. This found that all the information covered by the scope of the request had been provided but conceded that this was disclosed outside of the statutory 20 working day period.
8. In response to the complainant's comments regarding the findings of the internal review, the Council wrote to the complainant again on 5 August 2011. It provided a list of invoices it had disclosed and also advised that it had sent an additional eight invoices supplied by Knight Frank. While the Council did not consider this information was covered by the original terms of the request, it said that the invoices had been supplied in the spirit of openness.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically, the complainant claimed that the Council had not identified and provided all the information it held that related to his request.

Reasons for decision

10. Section 1(1) of FOIA provides a general right of access to information held by public authorities.
11. It states that, with some exceptions none of which apply here, any person making a request for information to a public authority is entitled (a) to be informed whether the authority holds information of the nature described; and if so (b) to have that information communicated to them.
12. As observed by the Information Tribunal in *Bromley*¹, there can rarely be absolute certainty that requested information does not remain

¹http://www.informationtribunal.gov.uk/Documents/decisions/EA20060072_lindabromleyWin_for_31Aug07.pdf

undiscovered somewhere within an authority's records. The standard of proof that the Commissioner will therefore apply is the civil standard of the balance of probabilities.

13. In deciding where the balance lies, the Commissioner will consider the scope and quality of searches carried out by a public authority, as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.

14. In response to the Commissioner's investigation, the Council has explained the process by which it deals with invoices submitted by Knight Frank:

"The invoice is received by the property section where it is verified and signed off by the responsible officer. It then passes to another finance officer within the property section who actions the signed invoice by logging it electronically to our central finance team where it is entered onto the SAP system. The original of the invoice is sent to central finance. A hard copy is kept by the property section. Payment of the invoice is actioned electronically via the SAP system via central finance."

15. The Council has confirmed that it has made enquiries of the property finance officer, as well as interrogating the central SAP system for relevant invoices.

16. The Council considered that the steps taken to locate information were appropriate in the circumstances. It did note, however, the existence of one invoice that had not been processed for payment because of an incorrect VAT calculation. A copy of this invoice had not previously been disclosed.

17. Upon reflection, the Council decided that this information could be said to fall within the provisions of the request and so a copy of the invoice was passed to the complainant on 28 November 2011.

18. With the disclosure of this invoice, the Commissioner is satisfied on the balance of probabilities that the Council does not hold any further information. This finding is based on the nature and direction of the searches carried out by the Council.

Procedural issues

19. The Commissioner has found that the Council breached section 1(1)(b) of FOIA due to its failure to disclose all the relevant information it held by the completion of its internal review.

20. The Commissioner has also determined that the Council did not comply with section 10(1) of FOIA by issuing its substantive response outside of the statutory time limit of 20 working days.

Other Matters

21. Although they do not form part of this decision notice the Commissioner wishes to draw attention to his concern regarding the time taken for the Council to complete its internal review.
22. The request for a review to be carried out was put to the Council on 3 May 2011. However, the findings of the internal review were only provided to the complainant on 27 June 2011.
23. The Commissioner notes that FOIA itself does not stipulate a time limit for completion of an internal review, although the section 45 Code of Practice associated with FOIA states they should be dealt with in a reasonable timeframe. The Commissioner's own view is that a reasonable time for completing an internal review is 20 working days from the date of the request for review. It is evident in this case that the Council failed to subscribe to the recommended timeframe.

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

Andrew White
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