

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2012

Public Authority: London Borough of Tower Hamlets

Address: Town Hall
Mulberry Place
5 Clove Crescent
London
E14 2BG

Decision

1. The complainant requested a copy of a report into recurrent unemployment. The London Borough of Tower Hamlets stated that the report was not held. Following further searches, both internally and external to the public authority, copies of late draft versions of the report were located and disclosed to the complainant. These were not, however, the information which had been requested and the Commissioner finds that the requested information is not held by the public authority.
2. The Commissioner's decision is that the London Borough of Tower Hamlets has complied with section 1(1) of FOIA.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 23 November 2011, the complainant wrote to the London Borough of Tower Hamlets (the council) and requested information in the following terms:

"I am trying to access a report by SQW consultants on recurrent unemployment. Here is a reference to the report in the LBTH council minutes on Wednesday 26th January, 2005, (page 11):

To fill the gap in understanding the issues impacting unemployed people in the Borough, the Creating and Sharing Prosperity CPAG recently commissioned consultants SQW to look at the issues resulting in recurrent unemployment in the Borough. The final report will be available in March 2005.

I look forward to hearing from you with a copy of the report or link."

5. The council replied on 23 November, explaining that it had been unable to locate the quotation from its minutes, cited by the complainant, and requesting clarification in order to assist it in locating the information requested.
6. The complainant replied on the same day, providing a link to the document on the council's website, and a copy of a brochure from SQW consultants which is understood to refer to the report.
7. The council responded on 21 December 2011, stating that it did not hold a copy of the report.
8. The complainant requested an internal review, and further correspondence followed, culminating in a further request for information on 20 February 2012. No internal review appears to have been undertaken and the complaint was accepted on this basis. The Commissioner has also served a decision notice in respect of the council's failure to respond to the 20 February request in case reference FS50442036¹.

¹ http://www.ico.gov.uk/~media/documents/decisionnotices/2012/fs_50442036.ashx

Scope of the case

9. The complainant contacted the Commissioner on 19 March 2012 to complain about the way their request for information had been handled. The complaint is that the requested information has not been disclosed.
10. The Commissioner considers the scope of this case to be to determine whether, to the required legal standard of 'the balance of probabilities' the requested information is held by council. The requested information has been clarified with the complainant, and is the final version of a report produced by SQW consultants under a contract awarded by the council.

Reasons for decision

General Right of Access

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."
11. The Commissioner contacted the council to ask about its interpretation of the complainant's request, and requested details of the searches undertaken for the information, together with any reasons why the report was not likely to be held.
 12. The council's response, of 18 July 2012, indicates that it regarded the request as a straightforward request for the report itself. The complainant's email had been forwarded to colleagues in its Development and Renewal department, but it was advised that the information was not held. It referred the Commissioner to its information retention policy and explained that, for documents of this nature no formal retention period is set, and the document would be retained for as long as there was value to it. No record of its destruction was provided.
 13. In response to the Commissioner's enquiries, the council acknowledged that:

"The original searches did not take account of the structural changes and followed a linear process within the Council. An additional email dated 21/12/2011 was sent to SQW requesting a copy of the report, but no response was received. However we have now engaged Corporate and Directorate Policy officers and Partnership officers, in the hope that we will find the original finalised report."

14. The council undertook searches of a wider area of its operations, including asking staff who were no longer employed in that particular area. A draft copy of the report was located and disclosed to the complainant. The council undertook to make further internal searches for a final version of the report
15. The Commissioner also asked the council to consider that if SQW consultants had retained a copy of the report for their own records, then it appeared possible that this would also be held on behalf of the council, depending on the terms of the contract under which SQW was engaged to produce it. The council agreed to approach SQW if it was unable to locate the final version of the report.
16. The council subsequently confirmed that final version was not identified in its further searches and that it must now be presumed that this is no longer held. It confirmed that it had asked that SQW again for a copy and had been informed that it is not SQW policy to retain such documents beyond 2 or 3 years. Nevertheless SQW conducted a search and identified a later version of the report, which appears to be from September 2005. This was also disclosed to the complainant.
17. The complainant still requires the final version of the report and, while acknowledging the value of the draft copies located, explains that some material in the report is incomplete.
18. The Commissioner notes that the public authority initially conducted searches within the Development and Renewal department, which is understood to be the department which would have a business need for the information. No copy of the report was located and the complainant was informed that the requested information was not held.
19. Subsequently, wider searches were conducted, involving staff who were no longer involved with the department but who are understood to have had some involvement at the time when the report was produced. Some additional information was located by these means and disclosed to the complainant. This was not the requested information but a draft version of the report, prior to the final version which the complainant requires, was located and disclosed. Similarly, a later draft copy was obtained from the company which had been contracted to produce the report.

Again, while not the requested information, this was also provided to the complainant.

20. The Commissioner therefore recognises that, during his investigation, the council has undertaken further, more widely directed, searches, and has also approached the party which produced the report. No copy of the final report has been located. Given the lengths the public authority has now gone to, in order to locate a copy of the report, the Commissioner is satisfied that the searches undertaken are sufficiently thorough and appropriately-directed. No final version of the report has been located by these searches.
21. The complainant is sceptical that the report will have been disposed of, and argues that it is likely the report will remain held. The council has given its view that there is probably no ongoing need for this report, some five years after its completion. There is no record of the report's disposal, however the nature of this report is such that its retention and disposal is not covered by the council's records retention and disposal policy so no formal note of disposal is necessary.
22. The Commissioner recognises that draft copies of the report have been located (outside the department with responsibility for the area of business covered by the report) and disclosed to the complainant, and therefore that there is no reason to suppose that, had a final version of the report been located, the council would have sought to withhold it. The complainant has speculated that the final version may have been critical of certain organisations, and argues that there remain avenues which have not been explored by the council in its attempts to locate the report, for example in backup files or by asking partner organisations which may have had an interest in the report.
23. Noting that these partner organisations are external to the council, whether they hold the report or not is immaterial to the question of whether it is held by the London Borough of Tower Hamlets. In respect of backup files, the Commissioner's view² is that information which has been intentionally deleted, but which may nevertheless still be held on backup media, is not held for the purposes of FOIA.

² See

http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Practical_application/determining_whether_information_is_held_foi_eir.ashx

24. The complainant also argues that the report was cited in a different report in 2010, and is also referred to in council minutes from 2006. The Commissioner observes that these both pre-date the request by over one year and, in the second case, by over five years. While they may suggest that the report was held at the time, they are of limited value in determining, on the balance of probabilities, whether the information is still held at the time of the request in late 2011.
25. Given the age of the report, the Commissioner recognises that its value may have diminished over time and there may be no business reason to have retained a copy.
26. The complainant also argues that there will be an audit trail associated with the procurement process, and the management of the contract which awarded the work to SQW. The Commissioner agrees that this would enable confirmation as to whether a final version of the report was produced, however it is of no assistance in determining whether it is still held and, if so, where it can be located (given that the responsible department has not located a copy). He finds that there are reasonable grounds to conclude that, on the balance of probabilities, the report is not held by the London Borough of Tower Hamlets.
27. The council's initial (21 December 2011) response indicated that the requested information was not held by the council, and this has been borne out by subsequent searches of a more detailed nature. The Commissioner therefore concludes that the information is not held, and the 21 December response was correct, albeit it may have been based on a less thorough process than would have been desirable.
28. His decision is that the London Borough of Tower Hamlets has complied with the requirements of part 1 of FOIA and therefore no action is required.

Right of Appeal

29. 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

30. 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.
31. 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
Group Manager
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