

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice**

Date: 16 March 2016

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

Decision (including any steps ordered)

1. The complainant requested a copy of a contract between Ascham Homes and contractors who carried out kitchen and bathroom programmes from 2010-2015. Ascham Homes was a company wholly owned by Waltham Council and therefore a public authority under FOI in its own right. It applied section 43(2) to the entirety of the contracts. During the course of the Commissioner's investigation all services provided by Ascham Homes were taken over by the council. The council agreed to provide further information to the complainant, retaining section 43(2) for the pricing schedules within the contracts. The complainant was happy with that level of disclosure but wished the Commissioner to recognise the delays by decision notice.
2. The Commissioner's decision is that the council has not complied with section 10(1) of the notice in that the complainant's request was not responded within 20 working days. However the Commissioner notes that the council only took over responsibility for the request in November 2015 and the delays were primarily an issue with the response of Ascham Homes in withholding the information.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 21 June 2015 the complainant wrote to Ascham Homes and requested information in the following terms:

"Please provide me with a copy of your contract with your contractor(s) who carried out the kitchen and bathroom programmes from 2010-2015"
5. The letter was received by the Ascham Homes on 23 June 2015.
6. On 3 August 2015 Ascham Homes responded. It withheld the information stating that it was commercially confidential.
7. Following an internal review the Ascham Homes wrote to the complainant on 23 November 2015. It stated that the information was exempt under Regulation 43(2) as parts of the contract contained commercially sensitive information.

Scope of the case

8. The complainant initially contacted the Commissioner on 29 July 2015 to complain that his request had not been responded to. As the case developed the nature of the complaint changed to the fact that the initial refusal notice did not stipulate the grounds on which the information was being exempted, and following the outcome of the internal review, the fact that the entire contract was being exempted under section 43(2).
9. The Commissioner considers therefore the complaint relates to a) the time which Ascham Homes took to respond to the initial request, b) the failure to provide a valid exemption to withhold the information in the initial response, and c) the fact that the exemption was applied to the entirety of the document.
10. Ascham Homes Ltd was an arms-length management organisation of the London Borough of Waltham Forest Council. As a company wholly owned by a public authority, and under the terms of section 6(1) of the Act it qualified as a public authority in its own right for the purposes of the FOI Act.
11. Ascham Homes Ltd was however wound up through a decision of the council and its functions and services reverted to Waltham Forest Council on 30 November 2015.

12. As part of that transfer, responsibility for responding to request for information transferred to the London Borough of Waltham Forest Council. The council accepts that this is the case.
13. The council then reconsidered the request. It wrote to the Commissioner and agreed to disclose the majority of the information to the complainant. It wished to continue to apply section 43(2) to the pricing schedules however.
14. The Commissioner contacted the complainant who agreed to accept that level of disclosure. She said however that she still wished the delays in responding to the request to be recognised via decision notice. The council therefore disclosed the information on 2 March 2015.
15. This notice therefore only considers the delays which occurred between the request being made and the disclosure of the information to the complainant on 2 March 2015. It does not analyse the application of Regulation 43(2) by the council.

Reasons for decision

Section 10(1)

16. Section 10(1) of the Act 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."

17. The complainant has a recorded delivery slip demonstrating that the request was received by Ascham Homes on 23 June 2015.
18. Ascham Homes responded to the request on 3 August 2015. This falls outside of the 20 working days required by section 10(1) of the Act.
19. Further to this, the entire contracts were initially withheld however Ascham Homes admitted to the complainant that sections may not fall within the scope of the exemption.
20. After Waltham Forest Council took over the functions and services of Ascham Homes it reconsidered the request and disclosed the majority of the information to the complainant on 2 March 2015.
21. As the information was disclosed during the course of his investigation the Commissioner has not considered the initial reasons for Ascham Homes withholding the information further. He does however recognise

the delay in the information being disclosed by issuing a decision notice which finds that section 10(1) was not complied with.

22. Again therefore the Commissioner considers this to be a failure to comply with section 10(1) of the Act.
23. Under the circumstances however the Commissioner recognises that the council did not take over responsibility for dealing with the complaint until 30 November 2015. Its handling of the complaint from that point was both constructive and helpful.

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: 0870 739 5836

Email: GRC@hmcts.gsi.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

Andrew White
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Wycliffe House
Water Lane
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