

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 August 2018

Public Authority: Royal Borough of Greenwich
Address: Town Hall
Wellington Street
Woolwich
London
SE18 6PWX

Decision (including any steps ordered)

1. The complainant has requested information from the Royal Borough of Greenwich (RBG) about documents relating to an undertaking provided to the Information Commissioner during a previous investigation. It is RBG's position that it does not hold information falling within the scope of the request.
2. The Commissioner's decision is that RBG does not, on the balance of probabilities, hold information falling within the scope of the request. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 14 January 2018 the complainant wrote to RBG and requested information in the following terms:

"I attach a copy of a communication that was sent to RBG and to me on October 17th 2017. Its contents are crystal clear: RBG made a commitment in 2014; RBG did not follow through; the Information Commissioner shares my concerns about this.

As three months have passed since this communication RBG has had ample time to take the matter in hand.

Therefore, under FOI legislation I should like to see all the records of discussions and decisions on the implementation of RBG's 2014 undertaking."

4. RBG responded on 7 February 2018. It denied holding any information within the scope of the request.
5. The complainant requested an internal review on 8 February 2018 and RBG wrote to the complainant on 2 March 2018. It upheld its original position.

Scope of the case

6. The complainant contacted the Commissioner on 12 March 2018 to complain about the way her request for information had been handled. Specifically she was concerned by the absence of information in relation to an undertaking which had been given to the Commissioner and which was reflected in a decision notice dated 10 November 2014 held under reference FS50548078¹.
7. The Commissioner considers the scope of her investigation is to determine whether RBG does or does not, on the balance of probabilities, hold information falling within the scope of the request. The Commissioner notes the complainant's position that RBG did not follow through with its undertaking but considers that this is not pertinent to her decision in relation this request but she will address this issue in the 'other matters' section of this notice.

Reasons for decision

8. 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."*

¹ https://ico.org.uk/media/action-weve-taken/decision-notice/2014/2013933/fs_50548078.pdf

9. In scenarios where there is some dispute between the public authority and a complainant as to whether the information requested is held by the public authority, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of proof - i.e. on the balance of probabilities in determining whether the information is held.
10. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
11. The Commissioner notes that from the complainant's correspondence and from telephone conversations with the complainant that she appears to accept the fact that RBG holds no information falling within the scope of her request.
12. Notwithstanding this fact, the Commissioner considered it appropriate to conduct an investigation in order to reach her decision.
13. Responding to the Commissioner's request for a submission in this case, RBG set out that any information within the scope of the request would be held as electronic records. It confirmed that the search terms used in this case were 'site visits' and 'ICO'.
14. In response to the Commissioner's specific questions about retention and deletion of information, RBG set out that it has no access to historic emails for staff who have left. Although relevant to the investigation, the Commissioner did not consider that the responses adequately addressed her specific points.
15. Providing further detail, RBG explained that it could not find any information falling within the scope of the request. It further explained that this is due to the fact that the commitment was made in 2014, some years ago. RBG asserted, and that due to the extremely high turnover in staff in local government during this period, the relevant department could not locate any information.
16. RBG stated that of the "*very few staff still here*" none was able to recall or find any paperwork given the time lapse. RBG stated that this does not mean that its commitment was never actioned and that this should not be inferred from the lack of recorded information.
17. RBG explained that there is no written information which evidences the commitment made in 2014 because the guidance regarding such visits is laid out in the Council's constitution and the statement of community involvement.

18. Having considered both of these documents, the Commissioner is satisfied that neither contains information falling within the scope of the request.
19. Having considered the submissions forwarded by RBG, the Commissioner has little doubt that on the balance of probabilities, RBG does not hold any information falling within the scope of the request.

Other matters

20. The Commissioner considers it appropriate to address the issue of the 2014 undertaking by RBG.
21. It is the Commissioner's position that having given an undertaking, of its own volition, that there would, going forward, be records of all site visits which would ensure the existence of an audit trail, it is quite unusual that there is no recorded information available to reflect any discussion or change to policy or procedure in relation to that undertaking.
22. The Commissioner notes that the 2014 request related to two site visits, one undertaken by the Council Tax Department and one by the Tree Preservation Officer. As a result of this request, RBG gave the undertaking in relation to 'all site visits' and the Commissioner's position is that the undertaking therefore relates to any site visit undertaken by RBG.
23. In its submissions to the Commissioner, RBG explained that when it is appropriate to undertake a site visit, they are, and have always been, recorded. It explained that the recording of site visits is either through photographs and/or site notes or a visual inspection only. RBG did not explain how a visual inspection only was recorded. It did explain that it was most commonplace for visits to be recorded by photographic means. The practice at RBG is that those undertaking the site visit make a professional judgement of the most effective way to record what they are inspecting.
24. She notes RBG's position that it does record site visits and always has but in these circumstances, the undertaking would, it appears, have been entirely unnecessary.
25. The Commissioner received a complaint from the complainant in 2017 in respect of the absence of site visit notes and wrote to RBG in October 2017 expressing her concern regarding the 2014 undertaking.

26. In that letter, the Commissioner explained that it is not within her remit to determine what records should be held or how they should be held.
27. However, it is her position that in these particular circumstances, she would have expected RBG to be able to evidence, via recorded information, that it had acted in accordance with its own undertaking provided to her office following an earlier investigation.
28. Although RBG is at pains to point out that the lack of recorded information relating to the undertaking does not mean that the undertaking was not acted upon; it is unable to provide any evidence to demonstrate that it was acted upon.
29. The Commissioner considers this approach to be somewhat concerning. Where an issue, such as the undertaking in 2014 is concerned, the Commissioner does not consider it unreasonable to expect this to be recorded in shared drives/folders as appropriate and not held on personal accounts (if any information was ever held) with the potential to be lost upon staff departures.
30. With regard to the passage of time, the Commissioner considers that the lapsed time between the undertaking and date of request is 3 years and two months; in the event that any recorded information ever existed, she does not consider this to be a particularly lengthy retention period. She would have asked for RBG's retention/destruction policy but this would have been a pointless exercise given that RBG cannot confirm if any information was ever held, only that it is not held now.
31. It is clear from the 2014 decision notice that RBG's position is that as a result of the Commissioner's decision notice there would be a record of all site visits.
32. The Commissioner considers that the difference in how site visits are recorded may serve to cause confusion in terms of FOIA requests which, on the face of it, are for broadly similar information but which may result in different outcomes. It is clear that site visits, where recorded, may be recorded in a variety of ways as detailed in paragraph 22 of this notice. It is clear that whilst information relating to one request may comprise photographs only, another may comprise notes, photographs and/or whatever recorded information stems from a visual inspection. The complaint in 2017 referred to the lack of notes in relation to a site visit.
33. It is clear from RBG's submissions that there should never be an instance where a site visit has taken place and nothing is recorded.

34. In the absence of any recorded information in relation to the undertaking given in 2014, it is difficult for the Commissioner to comment further on the issue of whether or not the 2014 undertaken has been acted upon or not.
35. She would however note that where an undertaking is given, whether it is voluntary or based upon the Commissioner's recommendation, she would expect a public authority to be able to evidence the fact that it has acted in accordance with that undertaking.

Right of appeal

36. 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 7395836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.
38. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF