

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2021

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

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Waltham Forest (the Council) which included a number of questions mainly focused on water collection arrangements. The Council provided the complainant with information in response to her request. The complainant questioned whether the Council had provided her with all of the information falling within the scope of her request and also raised a number of further concerns about the Council's handling of her request.
2. The Commissioner's decision is that the Council does not hold any further information falling within the scope of the complainant's request. However, she has also concluded that the Council breached section 11 of FOIA because it did not initially provide the complainant with a response in hard copy albeit it subsequently did so. Furthermore, the Commissioner has concluded that the Council breached section 10(1) of

FOIA by failing to respond to two new requests for information which were included in the complainant's request for an internal review.¹

3. No steps are required.

Request and response

4. The complainant submitted the following request to the Council on 28 August 2019:

'1) In 2016, the High Court ruled that Southwark - which claimed to have a water collection arrangement where it acted as an agent for the water company in collecting charges - was in fact a water reseller, and had therefore overcharged its tenants. See below link.

<http://www.bailii.org/ew/cases/EWHC/Ch/2016/457.html>

The ruling against Southwark set a legal precedent that means other councils and housing associations may now have to make a payout as well. In preparation of this, how much money have you set aside for your council tenants?

2. How many residential properties do you own? And how many are tenanted?

3) Did you seek legal advice in respect of this case and your water collection arrangement/s? If so, how much money was spent on legal fees? Please provide a breakdown citing Solicitor/QC fees, external consultations and so forth in a table for ease.

4) A copy of all the FOI requests submitted to you about this water collection arrangement by the BBC ([names of BBC journalists redacted] etc).

5. A copy of all the FOI disclosures released to the BBC ([names of BBC journalists redacted] etc) about this water collection arrangement.

I would like the above information to be provided to me in paper format and sent to the following address...'

¹ The Council has now logged these requests and has confirmed to the Commissioner that it will respond to them accordingly.

5. The complainant contacted the Council on 9 September 2019 via an email which simply read:

*'Deadline date?!
Case reference number?!'*
6. The Council replied on the same day and acknowledged receipt of the request, provided a reference number for it and explained that a response was due by 25 September 2019.
7. The Council issued a response to this request, via email, on 27 September 2019. The Council provided the complainant with a hard copy response on 30 September 2019.
8. The complainant contacted the Council on 14 October 2019 and asked it conduct an internal review. She explained that she was dissatisfied for the following reasons:
 1. The Council failed to acknowledge her request or provide her with a reference number until she asked it do so.
 2. The Council failed to comply with the requirements of section 11 (means of communication) of FOIA when responding to the request.
 3. The Council failed to respond to the request within 20 working days and therefore breached section 10 of FOIA.
 4. In relation to question 3, the information provided was not sent in the format specified in the request.
 5. In relation to question 4 she asked for a copy of all the FOI requests submitted to the Council about this water collection arrangement by the BBC and provided two names to assist the search. She noted that only one request from the BBC was provided and she asked whether there were any others.
 6. In relation to question 5, she asked for copies of any disclosures provided to the BBC and noted that only one such disclosure was provided. She asked whether there were any further such disclosures.
 7. In relation to the disclosure provided to the BBC journalist, she asked the Council to clarify what it meant by the term 'discounts'.
 8. She asked whether the term 'TW' referred to Thames Water.
 9. She asked why the disclosed spreadsheet had a header marked 'Essex and Suffolk' and for clarification as to what the word 'Affinity' means in relation to the spreadsheet.
 10. She asked for confirmation as to whether he BBC journalist whose FOI response she had been provided with had sought an internal review of this response or escalated the matter to the Commissioner. If so, she asked for a copy of his review and any subsequent disclosure.

9. The Council informed the complainant of the outcome of the internal review on 20 January 2020. It addressed each of the points above which the complainant had raised. The Commissioner has not included details of the Council's internal review response here but has referred, where necessary, to the relevant parts of the Council's response in her analysis below. However, it is relevant to note at this stage that in relation to points 7 and 10 of the internal review request, the Council explained to the complainant that these questions did not form part of her information request of 28 August 2019 and invited her to submit new requests for this information via the Information Officer.

Scope of complaint

10. The complainant contacted the Commissioner on 21 January 2020 in order to complain about the Council's handling of her request of 28 August 2019. The Commissioner subsequently established with the complainant that her grounds of complaint mirrored the points that she had raised in her request for an internal review. The only additional point she made was that in relation to points 7 and 10 of her internal review request where she explained that her understanding was that supplementary questions under FOIA were allowed.
11. The Commissioner has considered each of the complainant's grounds of complaint below. The only exception to this is in relation to complaint 3. This is because the Commissioner has already issued a decision notice on 19 December 2019, reference number FS50877458, as a result of a previous complaint from the complainant which found that the Council breached section 10(1) by failing to respond to the request within 20 working days.²

Reasons for decision

Complaint 1

12. In its internal review response the Council explained that an acknowledgment is normally printed and posted to a requester or sent by email. However, it was unable to verify whether an acknowledgment
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² <https://ico.org.uk/media/action-weve-taken/decision-notice/2019/2616867/fs50877458.pdf>

was sent to the complainant when the request was received. (Albeit the complainant informed the Commissioner that the Council did acknowledge receipt of the request on 9 September 2019 after she had prompted it to do so.) The Council also explained in its internal review that guidance had been provided to the Information Officer to ensure that acknowledgements are sent for all FOI requests.

13. FOIA does not place any obligations on public authorities to acknowledge receipt of FOI requests. Therefore, even though the Council did not acknowledge receipt of the request until prompted to do so by the complainant, this does not mean that the Council breached the requirements of FOIA.
14. Nevertheless, the Commissioner considers it good practice for public authorities to acknowledge receipts of requests and she welcomes the Council's comment in the internal review response that such acknowledgments are sent for all requests in the future.

Complaint 2

15. The complainant has argued that the Council failed to comply with the requirements of section 11 when responding to her request.
16. Section 11 of FOIA allows a requester to express a preference for having the information communicated by a particular means, including a preference to have the information provided in hard copy. The public authority must make the information available by the preferred means so far as reasonably practicable.
17. The Council initially provided the complainant with a response to her request via email on 27 September 2019. The Council subsequently provided the complainant with a hard copy response on 30 September 2019. Therefore, the Council initially failed to comply with the requirements of section 11 when responding to this request but rectified this three days later by providing the information in hard copy. The Commissioner is not aware of any reason why it would have been unreasonable for the Council to initially provide the information in hard copy.

Complaint 4

18. The complainant argued that the Council's initial response failed to provide her with the information sought by request 3 in the format she had requested, namely in a table. This request was as follows:

'Did you seek legal advice in respect of this case and your water collection arrangement/s? If so, how much money was spent on legal

fees? Please provide a breakdown citing Solicitor/QC fees, external consultations and so forth in a table for ease.'

19. The Council's initial response stated that:

'I can confirm that legal advice was sought via the Local Government Association (LGA) and this totalled £1696.99.

In addition, we sought advice from our in house legal team, which amounted to £787.00'

20. The Council's internal review explained that:

'The information in relation to this request was provided to you, but not in table format. Whilst the Act does specify the format by which a disclosure should be made, this is in relation to communicating the information to you, i.e. by email or post rather than the way it is formatted within the response. I consider the response to this question was adequate and clear. I have however placed it into a table for you as part of this response'.

21. The Commissioner agrees with the Council that section 11 did not place an obligation on it to provide the complainant with the information sought by question 3 in the format of a table. Section 11, as the Council suggests, allows a requester to state a preference for how information is communicated to them:

'Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely—

(a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,

(b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and

(c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as reasonably practicable give effect to that preference.'

22. In the Commissioner's view none of the requirements of section 11 would place an obligation on the Council in this case to provide the information in a table. In particular, in the Commissioner's view section 11(1)(c) which refers to a digest or summary of information, means a

shortened version of the information. It does not mean that a requester can ask for a version of the requested information tailored to their particular requirements, nor does it mean that a public authority has to produce a bespoke statistical analysis of the requested information.

23. In terms of the requirements of FOIA that the Council *was* under in relation to question 3, section 1(1) of FOIA required the Council to provide this information to the complainant, assuming it was not exempt from disclosure. In the Commissioner's view the Council clearly complied with this obligation in its initial response by providing the complainant with the information sought by question 3 of her request.

Complaints 5 and 6

24. The complainant's concerns in relation to these points of complaint focus on whether the Council holds more information than has been provided to her in response to questions 4 and 5 of her request.
25. In relation to question 4 she asked for a copy of all the FOI requests submitted to the Council by the BBC about the water collection arrangement and provided the names of two BBC staff to assist the search. The complainant noted that only one request from the BBC was provided and she questioned whether there were any others. In relation to question 5, the complainant asked for copies of any disclosures provided to the BBC and noted that only one such disclosure was provided (a disclosure which was made in response to the request caught by question 4). She asked whether there were any further such disclosures.
26. In scenarios such as this where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
27. 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.
28. In order to consider these grounds of complaint the Commissioner asked the Council to provide details about the searches undertaken to locate information falling within the scope of questions 4 and 5 of the request. She also asked the Council to explain why these searches would have been likely to retrieve all relevant information falling within the scope of these parts of the complainant's request.
29. In response the Council explained that the Senior PR & Digital Officer for Media and Internal Comms led the search for departmental records. The

Council explained that the information located as result of these searches was provided to the complainant. The Council explained that the Housing Service also conducted a search in respect of BBC FOI, but no further records were identified other than those identified already. The Council explained that the Information Officer also conducted a search on the Council's central system on which all FOI requests received by the Council are processed. Again, no additional records were identified other than those provided to the complainant. The Council argued that all potential areas of the organisation where information would be held were included in the search exercise and it was satisfied that all potential avenues to locate data had been exhausted.

30. The Commissioner is satisfied that the Council's searches for information falling within the scope of questions 4 and 5 were focused, logical and sufficiently thorough to ensure that all relevant information was located. The Commissioner is therefore satisfied that on the balance of probabilities the Council does not hold any further information falling within the scope of questions 4 and 5 beyond the information already located and provided to the complainant.

Complaints 7 and 10

31. In its internal review response the Council explained that in its view the part of the internal review request that asked for clarification on the term 'discounts' and the part of the internal review request where the complainant asked for clarification as to whether the BBC journalist had sought an internal review or complained to the ICO, and copies of the internal review or further disclosures, both constituted new requests for information. In response the Council invited the complainant to submit new requests for this information to the Information Officer.
32. The complainant argued that it was her understanding that supplementary questions under FOIA were allowed.
33. The Commissioner agrees with the Council that the two further questions contained in the internal review request constituted new FOI requests. Consequently there was no obligation on the Council to process these requests as part of its response to complainant's original request of 28 August 2019.
34. However, where a requester raises new FOI requests as part of an internal review request, the Commissioner expects the public authority to log and begin to process these new FOI requests at that stage. A public authority should not invite the requester to re-submit these new requests to a specific contact point if they want them to be processed. At the Commissioner's instruction, the Council has now logged these

new requests contained in the internal review request of 14 October 2019 and has confirmed that it will respond accordingly.

35. The Council has breached section 10(1) of FOIA by failing to provide a response to these requests within 20 working days.

Complaints 8 and 9

36. In response to question 5 the Council provided the complainant with the response to a FOI request submitted it by a BBC journalist, including the attachments to that response which had been provided to that BBC requester.
37. In her request for an internal review the complainant asked the Council to explain the meaning or relevance of a number of terms in the documents disclosed to the BBC journalist. The Council's internal review response provided, as far as the Commissioner can see, a clear explanation and clarification in response to the complainant's queries. The Commissioner would therefore consider the complainant's grounds of complaints 8 and 9 to be have been resolved at the internal review stage.
38. In any event, with regard to the obligations placed on the Council by section 1(1) of FOIA, in context of question 5 the complainant sought copies of responses to FOI requests provided to BBC journalists on this topic. The Council provided her with this information. Whilst section 16(1) of FOIA provides an obligation on public authorities to provide advice and assistance to those who have, or intend to make, requests, in the Commissioner's view this does not extent to explaining or providing clarification on what certain terms in disclosed information mean. In the Commissioner's view the Council therefore fulfilled its obligations under FOIA in relation to question 5, and in any event, as noted above, the Commissioner considers that the Council provided the clarification sought by the complainant in the internal review response.

Right of appeal

39. 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@justice.gov.uk

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

40. 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.
41. 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
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