

Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 5 July 2006

Public Authority: London Borough of Lewisham

Address: **Lewisham Town Hall**
Rushey Green
London
SE6 4RU

Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority has not dealt with the Complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 1(1).

The public authority is required to issue to the complainant a response to her information request that is compliant with section 1(1).

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

The Complainant has advised that on 13 July 2005 the following information was requested from the public authority in accordance with section 1 of the Act.

- “1. The outputs from RIBA stages A + B and the ITT for the project now known as OJEU UK-London: environmental engineering consultancy services, project number: 2005/s 89-086862
- 2. The outputs from RIBA stages A + B and the ITT for the project now known as OJEU UK-London: architectural, engineering, construction and related technical consultancy services, project number: 2005/S 89-086850
- 3. The most recent version of the Strategic Business Case for the pathfinder wave for Building Schools for the Future.
- 4. The most recent version of the Outline Business Case for the pathfinder wave for Building Schools for the Future.
- 5. The most recent version of the Strategic Business Case for the wave 3 for Building Schools for the Future.
- 6. The most recent version of the Outline Business Case for the wave 3 for Building Schools for the Future.”

The public authority responded to the request on 18 August 2005 by providing a CD ROM. It was said that this included all the information requested. The complainant contacted the public authority on 19 August 2005, stating that the CD ROM did not, in fact, contain all the information that had been requested. The public authority responded on the same day to confirm that the complaint would be looked into.

The public authority subsequently responded again on 24 August 2005 and stated that all relevant information held by the public authority had been included on the CD ROM. This letter also stated that if the complainant was dissatisfied with the handling of the information request, she should request an internal review.

The complainant contacted the public authority by letter dated 2 September 2005 and asked that an internal review be carried out. The public authority responded with the outcome of its internal review on 13 September 2005. In this response, the public authority stated it “...could have made clearer in its response where and why it was unable to respond in full.” This response did not state that there was any further relevant information available to supply to the complainant.

3. Relevant Statutory Obligations under the Act

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.”

4. Review of the case

The Commissioner contacted the public authority on 1 March 2006, providing a copy of the complainant's request and giving advice as to how an information request should be answered. The authority was asked to clarify if continued to maintain that the request had been answered in full.

The public authority responded on 20 March 2006. It acknowledged that the request had not been answered within 20 working days. It also explained that it had revisited its handling of the case and was satisfied that all relevant information held had been provided to the complainant.

In order to ascertain what information had been provided to the complainant, what information had been withheld and the reasons for this, the Commissioner contacted the public authority again by letter dated 28 March 2006. This letter listed the 6 points of the complainant's information request and asked the public authority to confirm whether the information requested in each of these 6 points had been provided and, where information had not been provided, the reasons for this.

The response from the public authority stated that the information requested at 1, 2 and 4 in the information request had been provided and that no information was held in relation to points 3, 5 and 6 of the information request. In this letter, the public authority acknowledged that its initial response to the complainant's request did not include all the information. The public authority also stated that it believed that all relevant information that was held had subsequently been provided to the complainant following internal review.

The Commissioner was concerned that at no stage had the complainant been provided with a response that thoroughly addressed all aspects of the information request. This should either have clarified whether the information was held and included a copy of that information or, if relevant, should have taken the form of a refusal notice as required by section 17 of the Act. It seemed to the Commissioner that by providing a comprehensive response to the complainant, albeit one that



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might repeat some information previously supplied the complainant would be placed in a position to make clearer to the Commissioner the extent to which she believed she had received a proper response to her request. At the same time, such a response would clarify the issues before the Commissioner and might, hopefully lead to an informal resolution of the case. The Commissioner therefore suggested to the public authority that it supply to the complainant a fresh response that complied with section 1(1) or, if appropriate, section 17. The public authority declined to take this action and the Commissioner therefore made a further attempt to clarify with the complainant what information she believed had not yet been supplied to her.

Despite the assertion by the public authority that a response had been given to points 1, 2 and 4 in the complainant's request, the complainant reported to the Commissioner on 5 June that the first two points had not been answered. The complainant was able to produce some evidence, in the form of references to the Official Journal of the European Union, that the requested information was held by the public authority.

The Commissioner remains concerned that as a consequence of having failed to take a thorough and methodical approach to the complainant's request, the public authority may not have complied properly with section 1(1). He is also concerned in the absence, of a thorough response, that it may not have taken all the appropriate steps to ensure that all relevant information held by it has been supplied to the complainant.

5. The Commissioner's Decision

The Commissioner's decision in this matter is that the public authority has not dealt with the Complainant's request in accordance with the following requirements of Part I of the Act:

Section 1(1)

The public authority has failed to confirm or deny whether information is held in relation to each aspect of the information request.

6. Action Required

The public authority is required to respond to the information request in accordance with section 1(1) of the Act. In the event that the public authority locates information falling within the terms of the requests which it considers to be exempt, then it shall give the complainant a refusal notice as required by section 17. This action shall be taken within 35 days of the date of this notice.

7. Right of Appeal



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Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 5th day of July 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**