

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 May 2009

Public Authority: London Borough of Enfield
Address: Civic Centre
Silver Street
Enfield
EN1 3XJ

Summary

The complainant submitted a series of requests to the public authority which were mainly focused on housing issues relating to the 'Edmonton Partnership Initiative' regeneration project and as a consequence of the responses received made several complaints to the Information Commissioner ("the Commissioner"). On 25 January 2008 the complainant requested information relating to Enfield Trading Standards. The complainant alleged that the public authority failed to respond to this request. Following intervention by the Commissioner, the public authority disclosed some of the information requested, confirmed that it did not hold other information and sought clarification of some of the request, a position which the Commissioner upheld. The Commissioner investigated and found that the public authority breached sections 1(1)(a), 1(1)(b), 10(1) and 17(1) of the Act in respect of the delay and refusal notice but does not require the public authority to take any action.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 25 January 2008, the complainant wrote to the public authority requesting the following information:
 - i) "Please confirm if [named person 1] and [named person 2] are still employed by Enfield Trading Standards? If so, please state their roles."

- ii) "You have copied the letter to Trowers & Hamlin. It is safe to assume they have been in contact with Enfield Trading Standards. Kindly provide copies of all correspondence between Trading Standards and Trowers & Hamlin, MHT/L&Q, Enfield Council."
3. As the complainant has made a series of requests and complaints regarding the Edmonton Partnership Initiative to the public authority since early 2004 there is a great deal of correspondence between the two which displays the inability of the parties to reach a settlement on the issues. Not all of these pieces of correspondences are relevant to the complaints made to the Commissioner and so are not recorded here.

The Investigation

Scope of the case

4. On 26 March 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He alleged that the public authority had verbally refused to issue a response to his request and wished to complain that it had both refused to provide the information sought and issue a refusal notice.
5. The Commissioner is considering the outcomes to parts i) and ii) of the request made on 25 January 2008.

Findings of fact

6. MHT is an abbreviation for Metropolitan Housing Trust.
7. L&Q is an abbreviation for London & Quadrant Housing Trust.
8. MHT and L&Q have worked in partnership with the London Borough of Enfield to deliver the 'Edmonton Partnership Initiative' regeneration project..
9. Trowers & Hamlin are a law firm acting on behalf of MHT.
10. As a result of submissions from the complainant, the Commissioner identified six different complaints between the parties requiring their own investigation. This has generated a substantial amount of cross referenced and interrelated correspondence.

Chronology

11. As stated above, due to the involved and related nature of the complaints involving these parties, there is a large volume of correspondence. The Commissioner does not consider it necessary or beneficial to detail each of these communications but has instead chosen to highlight those relevant for consideration in this case.

12. The interrelated nature of the complaints and correspondence has led to confusion as to which of the numerous requests had been answered. The Commissioner was not helped by the complainant being unable to clearly identify which requests had been dealt with.
13. The initial request was made on 25 January 2008. The Commissioner was unable to identify a specific response provided to the complainant prior to his intervention.
14. Following intervention by the Commissioner, the public authority in a letter dated 12 March 2009 informed the complainant of the following:
 - “[named person 1] is no longer employed by the Authority and we therefore hold no recorded information as requested.”
 - “With regard to [named person 2], I enclose the recorded information held by the Authority confirming her contact details and role.”
 - “I can confirm that the only correspondence passing between Trading Standards and Trowers & Hamlin is the letter addressed to you dated 9 January 2008 sent by [named person 3] of Trading Standards.”
15. The letter at paragraph 14 also requested clarification from the complainant as to the aspect of the request relating to ‘MHT/L&Q, Enfield Council’.

Analysis

Request i)

16. The public authority has confirmed that [named person 1] is no longer an employee. Upon further investigation the Commissioner learnt that the public authority did not address the situation as at the time the request was received as required by section 1(4). The public authority therefore failed to respond to the request appropriately.
17. The recorded information provided in relation to [named person 2] took the form of an extract from the Enfield Council People Directory and stated her role and contact details. This information was provided in a letter dated 12 March 2009. However, this disclosure was only made following intervention by the Commissioner and 14 months after the date of the request.
18. Any written question put to a public authority is technically a freedom of information request as recorded information could exist which answers the question. The Act does not require public authorities to answer questions generally, only if they already hold the answers in recorded form. The public authority provided an answer to the question and provided supplementary information in the spirit of providing advice and assistance. However, this was only communicated to the complainant following intervention by the Commissioner and 14 months after the date of the request.

Request ii)

19. Recorded information of the description specified in the request exists in the form of a letter from Trading Standards to the complainant and copied into Trowers & Hamlin. Given that the information is a letter to the complainant, the Commissioner is satisfied that the information has been communicated as the complainant was in possession of the information before the request was made. However, the public authority should have refused to disclose the information under section 21(1), as the information was reasonably accessible to the complainant, and by failing to cite section 21(1) it breached section 17(1) in not supplying a refusal notice stating that the information was exempt.
20. The public authority has categorically stated that no other correspondence exists between Trading Standards and Trowers & Hamlin and the Commissioner has no evidence or reason to dispute this. The letter mentioned by the complainant in his request was copied to Trowers & Hamlin, not directly addressed to them therefore it is reasonable to assume that no response was required. Confirmation that no other correspondence exists was provided to the complainant by the public authority, however, this was only done following intervention by the Commissioner and 14 months after the date of the request.
21. The public authority is of the opinion that the element of the request relating to 'MHT/L&Q, Enfield Council' is unclear, a position which the Commissioner upholds.
22. The Commissioner is of the opinion that the request could be interpreted to mean all correspondence between all the parties or all correspondence between:
 - Trading Standards and Trowers & Hamlin; and
 - Trading Standards and MHT/L&Q; and
 - Trading Standards and Enfield Council.
23. The public authority has requested clarification of this aspect of the request from the complainant in accordance with their duty under section 16(1) of the Act. However, this was only done following intervention by the Commissioner and 14 months after the date of the request.

The Decision

Request i)

24. In relation to the information regarding [named person 1], the Commissioner's decision is that the public authority did not deal with this part of the request in accordance with section 1(1)(a), section 1(1)(b) and section 10(1) of the Act, in that the response was not based on the situation at the time the request was received and it was provided outside of the statutory time limit.

25. In relation to the information regarding [named person 2], the Commissioner's decision is that the public authority did not deal with this part of the request in accordance with section 1(1)(a), section 1(1)(b) and section 10(1) of the Act, in that it did not inform the complainant that recorded information was held, or disclose that information within the statutory time limit.

Request ii)

26. In relation to the correspondence between Trading Standards and Trowers & Hamlin, the Commissioner's decision is that the public authority did not deal with this part of the request in accordance with section 1(1)(a), section 10(1) and section 17(1) of the Act, in that it did not inform the complainant that no recorded information, other than that already in possession of the complainant and therefore accessible by other means, was held within the statutory time limit.
27. In relation to the element of the request relating to 'MHT/L&Q, Enfield Council', the Commissioner's decision is that the public authority did not deal with this part of the request in accordance with section 10(1) of the Act in that it failed to respond appropriately within 20 working days.

Steps Required

28. The Commissioner requires the council to comply with sections 1(1)(a) and 1(1)(b) of the Act by responding to whether [named person 1] was employed by Enfield Trading Standards, and if so to state his role, as at the time the request was received.
29. To comply with section 1(1)(a)
- It must confirm or deny in writing whether it holds relevant recorded information or indicate that is relying on an exclusion to the duty to confirm or deny in this case (these exclusions allow the public authority to state that it is unable to confirm or deny whether information was held because to do so would disclose exempt information). If it is relying on a prejudice and public interest based exemption it must indicate why confirming or denying would engage the exemption (that there would, or would likely to be prejudice to a purpose outlined in the Act) and its conclusion about where the balance of public interest lies.
30. To comply with section 1(1)(b)
- If it confirms that it holds relevant recorded information, it should either provide the information or issue a notice, which complies with section 17 of the Act, indicating that it is relying on an exemption. If it is relying on a prejudice and public interest based exemption it must indicate why the exemption is engaged (that there would, or would likely to be prejudice to a purpose outlined in the Act) and its conclusion about where the balance of public interest lies.

Other matters

Request ii)

31. The responsibility for progressing the matter lies with the complainant to provide clarification of his request. The clarification would constitute a new request for information and any issue with the handling of this is outside the scope of this Decision Notice.

Right of Appeal

32. Either party has the right to appeal against this Decision Notice to the Information 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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

Dated the 7th day of May 2009

Signed

**Gerrard Tracey
Deputy Commissioner**

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

Legal Annex

Freedom of Information Act 2000

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.”

Section 1(4) provides that –

“The information –

- (a) in respect of which the applicant is to be informed under subsection (1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Time for Compliance

Section 10(1) 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.”

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,

- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Information Accessible by other Means

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”