

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 August 2011

Public Authority: London Borough of Lambeth
Address: Lambeth Town Hall
Brixton Hill
London
SW2 1RW

Summary

The complainant requested information from the London Borough of Lambeth (the "public authority") relating to the transfer of a playpen. The public authority did not respond to the request. Following intervention from the Commissioner a letter was sent to the complainant by the public authority. However, this was not written within the terms of the Act. The Commissioner has investigated and finds that the request should be dealt with under the provisions of the Act, and he now requires the public authority to respond to the complainant confirming or denying whether information is held. If held, the public authority should either disclose the information to the complainant or issue a valid refusal notice under section 17 of the Act.

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 and chronology

2. On 10 January 2011 the complainant made the following information request:

"Transfer of Playpen outside of Colwall House (Waltham Estate) and estate portion of Aytoun Road"

I am writing for information regarding the alleged transfer of the two items mentioned above.

Please can I have proof copies of the following:

- 1. Transfer of the state portion of Aytoun Road to Stockwell Park Community Trust and*
- 2. Transfer of the Playpen on Aytoun Road and directly opposite Colwall House (Waltham Estate) to Stockwell Park Community Trust.*

Please find enclosed communications regarding these items with Christine Fraser then Manager of London Borough of Lambeth's Performance, Strategy & Regeneration section. Also enclosed is a copy of minutes of [a] handover meeting held on January 2003. Please note paragraph 1. – Estate Boundary”.

3. On 21 March 2012 the complainant first wrote to the Commissioner as she had received no acknowledgement or response.
4. On 26 March 2011 the Commissioner wrote to the public authority and asked it to respond to the complainant. It advised the complainant accordingly.
5. On 28 April 2011 the complainant again wrote to the Commissioner advising she had not received a response.
6. On 12 May 2011 the Commissioner again wrote to the public authority.
7. On 24 June 2011 the public authority wrote to the complainant. It provided some information but did not deal with the request under the terms of the Act.
8. On 11 July 2011 the Commissioner wrote to the complainant to ascertain whether or not this latest correspondence satisfied her request. She remained dissatisfied that her correspondence had previously been ignored.

The investigation

Scope of the case

9. The complainant specifically asked the Commissioner to consider the lack of response to her request.
10. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Analysis

Substantive procedural matters

Section 1 – general right of access

Section 10 – time for response

11. 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.”

12. 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.”

13. The Commissioner finds that the public authority breached section 10(1) by failing to discharge its obligation under section 1(1)(a) within 20 working days of the request.

Section 17 – refusal of request

14. Section 17(1) of the Act 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.”

15. Section 17(7) of the Act provides that:

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and*
- (b) contain particulars of the right conferred by section 50."*

16. The Commissioner notes that the public authority eventually wrote to the complainant on 11 July 2011. However, it made no reference to the Act and failed to respond in accordance with it. It did not state whether or not it held the requested information, it did not refer to any exemptions, and it did not apprise the complainant of her right to seek an internal review or to approach the Commissioner. In failing to do so it breached sections 17(1) and 17 (7) of the Act.

The Decision

17. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.
- The public authority breached section 10(1) of the Act by failing to provide a response to the request within the statutory timeframe of 20 working days.
 - It also breached section 17(1) and (7) in failing to issue an adequate refusal notice.

Steps Required

18. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act.
- Confirm or deny whether the requested information is held to comply with section 1(1)(a).
 - If information is held, either provide the information to comply with section 1(1)(b), or withhold the information by issuing a valid refusal notice under section 17(1) of the Act.
19. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

20. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

21. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk.

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

22. 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.
23. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

Dated the 16th day of August 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
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Cheshire
SK9 5AF**