

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2012

Public Authority: London Borough of Southwark Council

Address: 160 Tooley Street
London
SE1 2QH

Decision (including any steps ordered)

1. The complainant requested information on schools attendance at a specific leisure centre.
2. The Information Commissioner's decision is that Southwark Council ('the Council') did not hold the information requested.
3. However, the Commissioner finds the Council in breach of section 10(1) in failing to notify the complainant within twenty working days of the request that it did not hold the information.

Request and response

4. On 25 August 2011 the complainant made the following request:

"I am requesting, under the Freedom of Information Act a copy of the attendance register, for the school year 2010/2011 (September – July), at Seven Islands Leisure Centre which schools sign when they turn up for their swimming lessons.

The reason for the request is that there are repeatedly school slots on the timetable which are not used by schools and consequently the pool is not used during these times.

I have raised the issue in the user groups, but the centre have refused to give me access to the above register and now banned me from the user group."

5. On 16 September 2011 the Council responded by advising the complainant to contact Fusion Lifestyle, the company which delivers

leisure services on the Council's behalf, and provided a website address for the company.

6. The complainant asked the Council to review its decision on 2 October 2011. He explained that he had acted on the Council's advice and contacted Fusion Lifestyle; however the company had refused to provide the information explaining that the information was not subject to the FOIA.
7. The Council provided a review of its decision on 28 October 2011 and concluded that the requested information is not held by the Council and is not held on its behalf by Fusion Lifestyle. It explained that the information is held by Fusion Lifestyle as part of its "internal administrative records of operation". The Council upheld its initial response.

Scope of the case

8. The complainant contacted the Commissioner on 20 December 2011 to complain about the Council's handling of his request.
9. The complainant stated that he would prefer the Commissioner to investigate this case in its "wider context, rather than just to look whether the information is held on behalf of the Council". The complainant went on to explain:

"The point of my FOI request was that Fusion put on schools on the time table when there are no schools using those slots. During those unused school slots the public cannot use the pool. Not only does this compromise the use the public get from the pool for no reason, but Fusion also waste income for those sessions. The schools are not paying for sessions they have not booked and the public are not allowed to pay to use the pool during these sessions."

Reasons for decision

10. Notwithstanding the complainant's preference for an investigation in a wider context the Commissioner's focus must be to determine whether the requested information is held by the Council or by Fusion Lifestyle on behalf of the Council. The answer to this point directs the Commissioner in his consideration of the Council's application of the FOIA.

11. The initial response from the Council did not say whether the requested information was held by itself or on its behalf by Fusion Lifestyle . The Council referred the complainant to Fusion Lifestyle suggesting that it may hold the requested information. The complainant had already explained in his request to the Council that he had previously requested the information from the Seven Islands Leisure Centre but nevertheless acted on the advice provided by the Council in its response, without success.
12. At the time of the internal review the Council confirmed that the requested information is not held by the Council but is held by Fusion Lifestyle.
13. The Council informed the Commissioner that all the leisure centres managed by Fusion Lifestyle maintain a register of schools and children attending their sites. Initially copies of the school registers, including the names of the children attending, are made at the time of the lessons. This detailed information is recorded for Fusion Lifestyle's internal Health and Safety and Safeguarding Children procedures. Although copies of the registers are made at the time of the lessons they are not retained by Fusion Lifestyle. The registers are used to collate the total number of children from each school attending the sessions and the usage statistics are consolidated for the reports required by the Council.
14. The Council explained to the Commissioner that the agreement in place between Fusion Lifestyle and the Council in respect of monitoring the performance requires Fusion Lifestyle to report on the usage figures of the facilities it manages for a range of user groups, including usage by 'under 16s'. Statistical attendance information for a range of user groups is reported on a monthly basis through Fusion Lifestyle's attendance management system. This includes trend analysis which identifies month on month and year on year comparisons. In reporting usage statistics on the key target groups and school usage, the total number of users and the total number of schools using each facility is provided to the Council. The Council does not require a breakdown by reference to the attendance register of an individual school or club. The Council's performance indicator is the 'total/overall usage figures by under 16s'.
15. Furthermore, the Council informed the Commissioner that although the contract between the Council and Fusion Lifestyle requires Fusion Lifestyle to report on the usage of the centre, it does not require the maintenance of the school attendance register.

16. The Commissioner questioned the Council with respect to the 'Performance Monitoring' section of its contract with Fusion Lifestyle. The relevant section states:

"The Contractor shall monitor its performance in the delivery of the Services in accordance with the provisions of Schedule 4 (Payment Mechanism)."
17. The Council provided the Commissioner with a copy of Schedule 4. The Commissioner notes that the monthly and annual performance standards required by the Council are stated to be; "Reporting the total number of users per activity, broken down into adults, concessions, BME, people with disabilities, 11 – 19 year old and those over the age of 60."
18. The "Method" stated to achieve the data specified in paragraph 17 is as follows; "Record number of users per activity through an electronic and manual activity booking system."
19. The Council additionally set an Annual Performance Standard with respect to schools stated as; "The number of schools and clubs using each Facility". The method of achieving this standard being to: "Work with schools and clubs to develop and sustain use by the clubs and schools."
20. The Commissioner is therefore satisfied that the nature of the reporting required by the Council does not specify the taking of registers. The contract between the Council and Fusion Lifestyle requires Fusion Lifestyle to report on the usage of the centre; it does not require the maintenance of the school attendance register.
21. The Council further confirmed that it has no input in generating the information in the register. A register taken forms part of Fusion Lifestyle's internal administrative records which are accessed for reporting to the Council.
22. The Commissioner has in other cases previously considered papers relating solely to the internal administrative arrangements of an organisation working with a public authority. The Tribunal in the case of Mrs B Francis and the South Essex Partnership Foundation NHS Trust found that information held for the solicitor's own administrative purposes as well as the solicitor's own working file of papers belonged to the solicitor and were not held on behalf of the public authority client.
23. Detailed above in paragraph 9 the complainant illustrates his concerns by explaining his understanding that some of the sessions timetabled as 'School' sessions are not attended and consequently not paid for by

the schools thus resulting in reduced revenue earned by the leisure centre and less sessions available for use by other members of the public. The complainant considers that this cannot be delivering 'best value' which he considers to be a requirement of the contract between the two parties.

24. The Council explained to the Commissioner that any school sessions booked were charged to the school whether or not the school attended.
25. The complainant pointed out to the Commissioner that, in his opinion, as Fusion Lifestyle manages the leisure centres on behalf of the Council the organisation of the functioning of the specific leisure centre as described in paragraph 9 comprises 'management'. The complainant concluded that the requested information must therefore be held on the Council's behalf by Fusion Lifestyle.
26. The Commissioner has considered the complainant's reasoning and concluded that not all information held by Fusion Lifestyle as a result of managing the leisure centres can be considered as information held on behalf of the Council. The Commissioner notes that the contract between the Council and Fusion Lifestyle includes 'Performance Monitoring'. As covered in paragraphs 16 – 19 above he is satisfied that the monitoring in terms of attendance is undertaken by the Council receiving statistical data and trend analysis.
27. The Commissioner therefore considers that the Council does not hold the requested information. This is because, on the balance of probabilities (the civil standard of proof used by the Commissioner in such cases), he finds that it is not held by the Council and is not held by Fusion Lifestyle on behalf of the Council. Consequently, the Commissioner is not obliged to make a finding on whether the information requested was in the possession of Lifestyle Leisure at the time of the request.
28. As referenced in paragraph 11, although the initial response was provided within twenty working days, the Council did not state specifically whether it held the information before referring the complainant to the website of Fusion Lifestyle. The Commissioner therefore finds the Council in breach of section 10(1) as it did not comply with section 1(1)(a) until 28 October 2011.

Right of appeal

29. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

30. 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.
31. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF