

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 01 October 2012

**Public Authority:** London Borough of Sutton  
**Address:** Civic Offices  
St Nicholas Way  
Sutton  
SM1 1EA

#### Decision (including any steps ordered)

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1. The complainant requested information from the London Borough of Sutton ("the Council") on the Common Purpose training undertaken by its employees.
2. The Information Commissioner's decision is that the Council breached section 10(1) of the FOIA by not responding to the complainant within 20 working days.
3. The Commissioner requires no steps to be taken.

#### Request and response

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4. On 5 February 2012 the complainant requested information of the following description:

"Please provide copies of the unredacted invoices for each of the attendees of common purpose training, in each case identifying the recipient/council officer.

In each case, please provide copies of the correspondence with common purpose from initial contact to placement of the contract.

Please provide the documents to show that Best Value was applied, i.e. how the contract(s) went out to tender."

5. On 22 March 2012 the Council responded. It denied holding some of the requested information and referred the complainant to the Council's website.
6. The complainant requested an internal review on 22 March 2012 and provided further explanation of the information sought as detailed in the paragraphs extracted below:

"The least that should have been provided were the invoices that did apply. As you have stated that 27 senior officers attended, then they should have been named.

You were asked to provide the requisite correspondence. Because you had decided to apply your own narrow interpretation, you have refused to provide any correspondence. What you should have provided was whatever correspondence there was.

You were required to provide documents demonstrating that Best value was applied.... Part of obtaining Best Value also includes obtaining evidence of the benefit accrued to the taxpayer consequent upon the expenditure on the training."

7. The Council provided the outcome of its internal review on 19 April 2012. It revised its position and provided an invoice for the training session and some general correspondence about the training session.
8. On 27 April 2012 the complainant wrote again to the Council detailing the information she expected to have received in response to her request.

"I was expecting to see the original contact to or from Common Purpose which would have preceded the placement of the contract for the training. This is important, as it is essential to know precisely who within Sutton Council was contacted by Common Purpose regarding this training. I also expected to see not only that Sutton Council had determined a need for such training, but that the training need could not be provided in-house, and therefore the training provision had gone out to tender. I expected to see how Sutton Council had progressed from initial; contact with Common Purpose to the placement of the contract, with the identifications of authorisations along that route."

9. The Council responded on 10 May 2012 explaining that no further information is held within the scope of the request.

## Scope of the Case

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10. The complainant contacted the Commissioner on 20 April 2012 to complain about the Council's handling of her request.
11. On 26 June 2012 the Commissioner confirmed the scope of the case to be to determine whether the Council had provided all the information it held in respect of the request.
12. The complainant confirmed this to be the scope of her complaint.

## Reasons for decision

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13. In cases 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 ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. Consequently in order to determine such complaints the ICO must decide whether, on the balance of probabilities, the public authority holds any information which falls within the scope of the request.
14. The Council explained to the Commissioner some background information which was pertinent to the request. The training resulted from the Corporate Management team ('the CMT') at the Council determining a need for leadership skills to deal with challenges resulting from reduced budgets. Consequently training was arranged. The incumbent Head of the Chief Executive's office at the time and Corporate Development officers within Human Resources were given responsibility for the organisation of the training.
15. The Commissioner acknowledges the complainant's assumptions regarding the recorded information she expected to be held by the Council, as set out in paragraph 8. He considers it reasonable to have assumed that information concerning the decision to purchase external training and to determine who was to provide that training.
16. The Council provided copies of emails containing redactions, which were held because they had been provided in response to a previous FOIA request. It explained that the original emails which formed the Council's correspondence with Common Purpose were no longer held. The Council believes that they were destroyed when the incumbent Head of the Chief Executive's Office left the Council in 2009.

17. The Council provided a copy of the invoice for the training session and explained that individual invoices for the individual delegates were not held as they were never created. The invoice was paid centrally and proportionately charged back to the appropriate departments in respect of the staff attending.
18. The Council explained that a senior officer no longer employed by the Council introduced Common Purpose training to the Council. Human Resources staff reviewed potential providers and in accordance with the Council's financial and contractual frameworks at the time, as published in the Council's constitution, sought only one written quotation. The Council went on to explain that the cost was agreed, and due to the value (£10 000 plus VAT) there was no requirement to conduct a competitive tender exercise. The Council stated that there was no actual contract between the Council and the provider.
19. Notwithstanding the Council's explanation set out in paragraph 16 the Commissioner asked the Council to explain the searches it had undertaken to locate any further recorded information that may be relevant to the complainant's requests. The Council searched the CMT minutes and found a note dated 25.03.2009 on the apportioning of the cost as described in paragraph 18 and one dated 01.04.2009 when a member of Common Purpose staff attended the meeting to discuss the aims, venue, pre-course material and practical arrangements. The Council pointed out that verbatim minutes of CMT meetings are not taken with only key discussion and action points recorded. No information was found which could provide details of the selection of Common Purpose to provide the training undertaken.
20. Electronic files and folders held on the Council's Local Area Network were searched using the search term 'Common Purpose'. The current Head of the Chief Executive's Office searched the hard copy and electronic files of the Chief Executive's Office for relevant communications or correspondence during the time period. The Council explained that there was no reason why such information would be held at the time of the request as once the training had taken place that information did not form part of the Council's retention policy.
21. The Commissioner considered the Council's records management policy in place at the time of the training. The policy provided guidance on the retention of financial records and staff training but not exchanges of correspondence with a practical content. The Commissioner notes that contract documentation was subject to a 6 year retention period after completion. However, the Council explained that it had not created a written contractual document employing Common Purpose to provide the training in this instance because there had been no formal competitive tendering procedure conducted.

22. The Council referred the Commissioner to its constitution which, it explained, stated the requirements placed on the Council to achieve 'Best Value' in taking decisions 'efficiently and effectively'. The Commissioner requested further information from the Council in respect of the term 'Best Value'. The Council explained that 'Best Value' was a performance regime introduced in 1999 under the Local Government Act and required councils to be measured by various performance indicators with the aim that all councils would perform to the standards of the top 25%. Between 2000/01 and 2007/08, 'Best Value' provided the statutory basis on which councils planned, reviewed and managed their performance. Under 'Best Value' councils had a duty to continuously improve their services. From 2002, audit and inspection became part of the Comprehensive Performance Assessment (CPA).
23. The complainant considers that she should have been provided with "documents demonstrating that Best Value was applied" and she further explained her understanding as follows:
- "Part of obtaining Best Value also includes evidence of the benefit accrued to the taxpayer consequent upon the expenditure on the training."
24. The Commissioner understands the complainant's reasoning in respect of her expectations of the evidence to which she refers in paragraph 23; however following the Council's explanation of the searches carried out to locate such evidence, he accepts that such documentation was not held at the time of the request. The Council has stated that achieving 'Best Value' was its procurement policy at the time, although the Council's Constitution did not specify retention of evidence that the policy had been applied.
25. The Commissioner is satisfied that the Council has, on the balance of probabilities, provided all the information it holds within the scope of the request. The Commissioner considers that the complainant did not have unreasonable expectations with regard to the information she expected to be held by the Council; however, in considering the Council's explanations, the organisation of the training and the absence of any policy or statutory requirement to retain the correspondence which may have existed, the Commissioner accepts that no further information is held.
26. **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."

27. The Council acknowledged the complainant's request on the day after receiving it, however its response was provided 34 days later. The Council apologised to the complainant for the delay in responding.
28. The Commissioner therefore finds the Council in breach of this procedural requirement of the FOIA.

### **Other matters**

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29. The complainant has stressed to the Commissioner her concerns regarding 'financial probity' with respect to 'out-sourced contracts'. The Commissioner cannot comment on this matter and would point out that his decision notices concern only the access to recorded information and a public authority's actions in handling a request for recorded information in accordance with the FOIA.

## Right of appeal

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30. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

31. 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.
32. 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**