

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 22 October 2013

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

#### **Decision (including any steps ordered)**

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1. The complainant requested information about the hire of a specified venue. The London Borough of Lambeth (the 'Council') provided some information in response to the request, but the complainant believed that further information was held.
2. The Information Commissioner's decision is that, on the balance of probabilities, the Council holds more information relevant to this request. He is not satisfied, again on the balance of probabilities, that the only location of information falling within the scope of the request would be held on the store manager's computer. He also finds that information on previous hires is within the scope of the request. In addition, by failing to provide its response within 20 working days the Council has breached section 10 of FOIA.
3. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response in relation to the information held on previous hires
  - Conduct a wider search for any information held about the hire of the hall
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 6 April 2013 the complainant wrote to the Council and requested information in the following terms:  
  
*"Provide all information relating to the hire of Mursell Hall, Portland Grove, SW8. This should include, in particular, details of the type of events for which the hall may be hired and restrictions, if any, on the use of amplified music for such events."*
6. The Council prepared its response on 3 May 2013, although from the correspondence on the file, it did not send this to the complainant until 15 May 2013, outside 20 working days from receipt. It explained that Mursell Hall is managed by Lambeth Living, which is a not-for-profit arm's length management organisation. The Council gave details of the types of events held and users of the hall and enclosed a copy of the terms and conditions of hire which hirers are expected to follow, explaining that it does not have the staff to police the hall and instead relies on the goodwill of the hirers to comply with the terms and conditions of hire. It also provided the complainant with a copy of the application to hire form and the associated charges.
7. In the absence of a response within 20 working days of making his request, the complainant had requested an internal review on 11 May 2013. He asked the Council to include a review of its online application process for submitting FOIA requests with reference to some of the information it required; this issue is covered under 'Other matters'.
8. The Council wrote to the complainant on 10 June 2013 with its internal review outcome. It explained the reason for the delay in providing the response, namely that Lambeth Living had not been advised of the correct process for collating and forwarding its draft response to the Council's FOIA team for quality-checking.

## Scope of the case

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9. The complainant contacted the Commissioner on 22 July 2013 to complain about the way his request for information had been handled. He stated that whilst the Council had provided *"a small amount of information, it has failed to identify whether this represents all the information falling within the scope of my request"*.
10. The complainant also raised another matter which is not a section 50 FOIA issue and is covered in the 'Other matters' section of this notice.

11. The Commissioner has considered whether, on the balance of probabilities, the Council held any further information falling within the scope of the request to that which was disclosed.

## Reasons for decision

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10. Section 1 of FOIA states 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."*

11. The task for the Commissioner here is to determine whether, on the balance of probabilities, the Council holds any further information relevant to the request which it has not disclosed to the complainant. Applying the civil test of the balance of probabilities is in line with the approach taken by the Tribunal in past cases when it has considered the issue of whether information is held.
12. The Commissioner asked the Council to provide details of the searches it had undertaken in order to respond to the request. In reply the Council said that the individual at Lambeth Living who is responsible for the management of Mursell Hall holds the following information on his hard drive.
  - Application to hire
  - Charges to hire
  - Contract (Terms and Conditions)
  - All previous contracts, bookings (including cancelled) and enquiries since this individual took over the management of Mursell Hall in January 2008
13. As part of its response to the complainant, the Council provided its application to hire and associated hire charges and a copy of a blank contract which includes the terms and conditions for hire. It provided a narrative of the types of bookings and functions for which the hall had been utilised in its accompanying response letter. It referenced that complaints had been received about the hall in July 2012 which led to the use of the hall being restricted to certain groups.

14. During the course of his investigation, the Commissioner queried whether all the information listed under the fourth bullet point set out in paragraph 12 of this notice, had been provided to the complainant. The Council confirmed that a blank copy of the contract had been given to the complainant, which sets out the terms and conditions for hire. Whilst it holds previous contracts, it said that these relate to forms completed by individuals and would only contain the information in the blank version. It clarified that it had not provided the complainant with redacted versions of these contracts because his request was about the "*hire of the hall*" and not about individuals. Similarly the Council said it considers that the identities of individual or group hirers, such as those contained in previous contracts, bookings and enquiries, do not relate to the hire of Mursell Hall and fall outside the scope of the complainant's request.
15. In addition the Council explained that, following the internal review, the complainant had asked for information relating to complaints about the hall. It provided this information, and informed the complainant that complaints data was not included in the initial response as it did not relate to the hire of Mursell Hall.
16. The Commissioner, however, considers that information on previous hirings, including the identity of the hirers, is within the scope of the request, given that the complainant has asked for "*all information*" held about the hire of the hall. It is clear that the Council does hold more information than it has provided, given that it has confirmed it has not disclosed previous contracts which it holds. He therefore requires the Council to issue a fresh response to the request as set out in paragraphs 2 and 3 of this notice
17. Further as the complaints followed as a result of the hiring out of the hall, the Commissioner considers that these complaints were in scope and should have been provided as part of its original response.
18. The Commissioner also asked the Council about the searches it had undertaken in order to respond to the request. In response, the Council confirmed that information relating to the hire of Mursell Hall is not stored or located in any other system or on any other PC, stating that the above list constitutes the only information held in relation to this request. It said that the hall manager's records were examined to retrieve the relevant information and to provide the response.
19. The Council said that all documents pertaining to Mursell Hall are kept in a folder on the manager's hard drive clearly labelled in the folder 'My Documents' such that the use of search terms was unnecessary. It confirmed that only electronic records are kept; the position of the

Council was that no manual records falling within the scope of the request exist.

20. In addition, the Council confirmed that no information that would be relevant to this request has been destroyed or deleted and that it has no statutory or business reason to retain the requested information other than any records of financial transactions which have to be retained for six years to satisfy the requirements of auditing and accounting.
21. The Commissioner has considered the wording of the request and that the complainant has asked for "*all information*" relating to the hire of the hall. He is not satisfied that, on the balance of probabilities, the only location of information falling within the scope of the request would be the hall manager's computer.
22. As has been set out the Commissioner considers that information about complaints received about the hall were in scope of the request. Although not provided until the complainant asked for them following the internal review result, the Commissioner notes that the information was not held on the hall manager's computer. This is evidenced by Council confirming that the hall manager had to contact the Council's Environment and Noise Enforcement team for details of complaints made about the hall in order to respond to the complainant. It is also possible, for example, that accounting information relating to the hire of the hall may be held somewhere other than the hall manager's computer by either the Council or Lambeth Living.
23. The Commissioner therefore requires the Council to conduct a wider search for information it may hold relevant to the request as set out in paragraphs 2 and 3 of this notice.

### *Conclusion*

24. The Council has confirmed it believes that all information held by the Council and by Lambeth Living that falls within the scope of the request has been provided to the complainant. The Commissioner, however, has concluded that, on the balance of probabilities, further information is held by the Council or Lambeth Living than has previously been provided to the complainant.
25. The Council also responded to the request outside the statutory 20 working days limit and has therefore breached section 10 of FOIA.

## Other matters

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26. The complainant stated that he had identified "*an incorrect web form requiring too much information*" during the submission of this request and he asked the Commissioner to consider this issue as part of his investigation. Although not a section 50 FOIA matter, the Commissioner has asked the Council to set out the steps it has taken in relation to the webform.
27. In addition to including the online webform as part of his internal review request of 11 May 2013, the complainant wrote to the Council on 1 and 4 June 2013. He asked a number of questions; the Council responded on 4 June 2013 explaining that a postal address is needed where an email address has not been provided for communication, but was non-mandatory where an email address has been supplied. It clarified that a telephone number is non-mandatory but is requested to enable efficient follow-up by its officers where clarification on requests is needed. The Council explained that identifying whether or not the requestor has made a previous request helps to flag up whether the request is on the same subject, which in some circumstances may lead to the aggregation of requests for section 12 of FOIA.
28. The complainant pointed out that the form was requiring a postal address to be provided in all cases, quoting section 8 of FOIA which requires that requests should be in writing, provide a name and address and describe the requested information. He stated that the provision of a telephone number and details of any previous requests submitted should therefore be optional and asked the Council to amend its website accordingly.
29. The Commissioner asked the Council about this issue. In response, the Council provided screenshots of the relevant webpages which show that where the information asked for in the FOIA request webform falls outside statutory requirements, it is not included in a mandatory field – so providing information in these fields is optional. Whilst the Commissioner agrees with the complainant that the Council should not require details other than those specified in section 8 of the FOIA, as these fields are non-mandatory he has not asked the Council to make any amendments to its form.

## 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**