

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2017

Public Authority: London Borough of Lambeth

Address: Olive Morris House
Brixton Hill
London
SW2 1RL

Decision (including any steps ordered)

1. The complainant has requested information relating to the council's council tax function and the court costs incurred when issuing and processing summons and liability orders. The council disclosed some information to the complainant but the complainant remained dissatisfied, as she felt further recorded information should be held addressing the various elements of her request.
2. The Commissioner is satisfied that on the balance of probabilities the council has now identified all the recorded information it does hold and provided this to the complainant. She is therefore satisfied that no further action is required in this case.

Request and response

3. On 30 July 2015, the complainant wrote to the council and requested information in the following terms:
1. Please will you send me statements extracted from the annual accounts for each year from 2009/10 to 2014/15 as signed off by the external auditor;
 - A. Of the annual amounts of Lambeth Council's costs incurred in respect of council tax summons and liability orders including for each year;
 - (a) an analysis of employees costs by pay grade and salary scale.
 - (b) a breakdown of other costs with a detailed explanation of the basis for allocation of each cost to summons and liability order activity.
 - B. Of the annual income for each year of Lambeth Council from council tax summons and liability orders paid by the residents of the Borough of Lambeth.

Additionally, further to my formal complaint:

2. Please provide any minutes of any meetings that arrived at or discussed the figures presented in [name redacted] (Director of Legal and Democratic Services) letter and 'Calculation of Court Cost 2008-09' sent to Camberwell Magistrates' Court on 26 September 2008.
 3. Please provide a copy of the written authority from Camberwell Magistrates' Court for Lambeth to print and despatch summonses on their behalf, and whether this can be further delegated or not.
 4. Please provide the annual number of summonses that have been issued by Camberwell Magistrates' Court for Lambeth Borough Council with regard to unpaid Council Tax, and the number that have subsequently been withdrawn, since 2009.
 5. Please also provide the number of summonses issued prior to 2009 (2008 and any previous years readily available) and the costs applied to each.
 6. Please provide detail of all payments made to Camberwell Magistrates' Court for legal processes, hire of room/s and personnel, since 2009."
4. The council responded on 27 August 2015. The council disclosed information in relation to questions 1A(a), 1B, 4, 5 and 6 (using the

complainant's labelling) but confirmed that it did not hold any recorded information for questions 1A(b), 2 and 3.

5. The complainant requested an internal review on 7 October 2015. She stated that she was unhappy with the information disclosed, as it did not provide the level of detail she required. The complainant was also unhappy that the council does not hold some of the requested information.
6. The council carried out an internal review on 18 November 2015 and notified the complainant of its findings. It provided some additional clarification but in the main upheld its previous response of 27 August 2015.

Scope of the case

7. The complainant contacted the Commissioner on 12 February 2016 to complain about the way her request for information had been handled. She stated that she had continued to correspond with the council following its internal review but had still not received the requested information. She therefore asked the Commissioner to investigate.
8. During the Commissioner's investigation it was established that the complainant had no complaint with the council's responses to questions 3, 4 and 5. The complainant also withdrew her complaint in relation to question 1A(a), as it was established that the council does not hold this information and she was happy to accept this response.
9. The Commissioner's investigation has therefore focussed on questions 1A(b), 1B, 2 and 6 and whether the council holds any further recorded information falling within the scope of these questions.
10. During the Commissioner's investigation the complainant raised further requests and asked for various answers to questions and further explanations. To the extent that these were relevant to the original request and the Commissioner's investigation, the Commissioner made enquiries and her response to them is detailed below. But for those that were not relevant to the original request or constituted new requests and questions disputing the content of information released, the Commissioner advised the complainant of the limitations of the FOIA. She explained that the FOIA provides a right to request access to recorded information. It does not extend to the right to request answers to questions or to be provided with detailed explanations (unless the answers to these are held in recorded form) or debate the accuracy of the contents of disclosed information.

11. The Commissioner also does not have any remit to accept new requests during an investigation. She can only consider the original request and any recorded information falling within the scope of it. Any new requests have to be submitted to the public authority in the first instance.
12. The Commissioner will now address each remaining question in turn, the council's response and her decision.

Reasons for decision

Question 1

13. The Commissioner asked the complainant to confirm why she remained dissatisfied with the council's responses to questions 1A(b) and 1B.
14. The complainant stated that she has not been provided with any figures that relate to the costs incurred in respect of summons and liability orders. She believes the figures disclosed are an overall budget for the collection of council tax. The complainant advised that she had asked the council for clarification but none has been given and she would like a contemporary detailed analysis of some sort. The complainant also mentioned an annual review of costs, which she understands to have taken place and from which she believes the information could be provided.
15. In relation to 1A(b) of the request, the Commissioner asked the council to explain exactly what figures were disclosed to the complainant on 27 August 2015 and whether a more detailed and comprehensive breakdown of costs year on year is held. The council responded explaining that the figures supplied show council tax court costs raised for each year from 2009 to 2015 and these include both summons and liability orders. With regards to the breakdown of costs, the council confirmed that it had already supplied the complainant with the cost calculation and it does not hold any further recorded information. It explained that the cost calculation is based on the contract price for the council tax service and the number of recovery documents issued. In relation to the complainant's query about obtaining this information from the annual review of costs, the council said that the Head of Revenues confirmed at the beginning of this case that the costs are reviewed annually. However, there were no changes made and no record of these discussions was taken.
16. The complainant remained unwilling to accept this explanation and raised the issue of outsourcing, this being an obstacle to the provision of information and that the information should be obtained from Capita, as if it is indeed held by them, it is held by Capita on behalf of the council.

17. The Commissioner made further enquiries to the council and asked it to consider this point. She also asked the council to approach Capita (if it had not done so already) to establish whether a more detailed breakdown of costs could be supplied over the time period specified in the request.
18. The council complied and released further information to the complainant. However, the complainant remained unhappy. She stated that the additional information referred to the cost of printing and postage yet there will be many other factors involved. She also stated that the figures given were for all recovery notices not just those relating to summons and liability order activity – the focus of her request. The complainant also confirmed that she originally asked for the basis of the allocation and questioned the accuracy of the additional information.
19. Dealing with the accuracy of information first, as the Commissioner has explained in paragraph 10 above, concerns about accuracy are not within her remit. However, the Commissioner noted that the complainant remained dissatisfied and approached the council yet again for further information. Specifically, the Commissioner asked the council to explain in detail exactly what information has recently been disclosed and whether further information could be provided. If further information could not be provided she asked the council to explain in detail why not.
20. The council responded. The council explained that the recent information disclosed was in fact the costs of all printing and postage across the entire contract for the years quoted. The figures are therefore the costs of postage and printing for all services, including council tax and business rates. The figures include the cost of postage and printing for all demands, reminders, finals, summons and any other written correspondence for all services performed. It therefore explained that the information recently provided is not actually what the complainant originally asked for and this information was obtained in good faith with the view to trying to satisfy and assist a long standing complaint about council tax.
21. The council explained that the recently disclosed information does not contribute to the court cost calculation per se and, in hindsight, should not have been provided, as it appears to have complicated and confused matters further.
22. The council stated that it fully understands why the complainant expects it to be able to provide a fully detailed calculation as other council's do. It suggested, possibly, that the complainant has received cost calculations from other public authorities which have provided a

comprehensive breakdown of costs for postage, printing, IT, staffing costs and so on. However, the council is of the opinion that these public authorities operate their council tax function in house rather than outsourcing the service to another provider, which is the case here.

23. The council stated that it holds no further recorded information to that already provided and is unable to assist further. It stated that it has at all times tried to provide the complainant with the information requested but unfortunately, in this instance, it does not hold further specific recorded information for all further points she has made. The council explained that as its services are outsourced the cost calculation is based on the cost to the council for that service by its contractor and divided by the number of documents relating to recovery. If the council tax service was provided in house it would be in a position to calculate its costs differently and it would have a breakdown of IT, staffing, printing, postage, telephone calls and so on, that make up how much the council spends on recovery. As it is, the council currently use the cost of the contract itself when calculating.
24. The council therefore maintains its initial position that it does not hold any further recorded information falling within the scope of this element of the request.
25. The Commissioner has made detailed and lengthy enquiries on this issue to establish to the best of her ability whether, on the balance of probabilities, the council holds any further recorded information. Having discussed the matter further with the council, she is now satisfied that the council does not hold any further recorded information falling within the scope of this element of the request.
26. The council has explained that it does not hold a more detailed breakdown of costs and how these are allocated. Whether the council should hold this information is not the relevant consideration here. The Commissioner is limited to establishing what recorded information is held and whether this can be disclosed.
27. The Commissioner does not agree with the complainant that the council has used its contract with Capita and the fact that the service is outsourced as a means to preventing disclosure of information. During her discussions with the council it accepted that, if the information is held by Capita, it would be held by Capita on behalf of the council and would therefore come within the scope of this request. It has made detailed enquiries to Capita about what information can be supplied and it has reached the position that it is unable to provide the level of detail the complainant requires because it is not held. The recently disclosed information has confused matters slightly but the Commissioner believes this was with the best intentions. It was trying to satisfy the

complainant and her long running dispute about council tax and the Commissioner's investigation. It has explained that this information is not actually the information the complainant was seeking but the costs of postage and printing across the entire service for all tasks.

28. The Commissioner is of the view that all routes have now been thoroughly explored and that, on the balance of probabilities, the council does not hold any further recorded information to that already provided.
29. Turning now to element 1B of the request, the complainant asked for the annual income year on year from council tax summons and liability orders paid by the residents of the borough. Again, the council disclosed some figures on 27 August 2015 (the court costs paid each year) and the complainant raised concerns with this information. She stated to the Commissioner that she expected to receive separate income figures for summons and liability orders and questioned whether the information could be expressed in this way.
30. The Commissioner asked the council to confirm whether it holds the information in this manner. The council responded advising that it does not hold the income figures separately. It confirmed that the figures reported for court costs paid were taken from the year end annual system reports. This report gives details of the total costs paid but unfortunately does not separate the summons costs and liability order costs paid, as the system is not set up to report in this way.
31. The Commissioner has not received any evidence to the contrary and so has concluded that, on the balance of probabilities, the council has provided all the recorded information it holds falling within the scope of this element of the request.

Question 2

32. The council confirmed that it does not hold any record of discussions or meetings leading up to the exchange of letters in 2009. It confirmed that it has checked its council tax section and requested fresh searches to be undertaken but these checks and searches have not revealed any records.
33. The complainant does not believe it is credible to say that the council does not hold any records relating to the discussions and correspondence that took place in 2008 between the council and Camberwell Magistrate Court. She believes this decision has provided an income for the council running into millions and there should be documentation held relating to it.
34. The Commissioner asked the council to clarify exactly what searches have been undertaken. The council explained that the relevant officers

were asked to carry out a search of their electronic and hard copy files against a set criterion for the period of time covered by the request. But no recorded information was found. The council carried out fresh searches for the Commissioner and asked its IT Department to carry out relevant searches of emails and electronic systems. No recorded information is held. The council stated that its previous email systems were fairly unstable and members of staff were often asked to purge emails to try and reduce demands on the system. It explained that mail has always been managed by individual users and so information can be deleted at any time by an individual and there would be no trace of it and there has never been any auditing or tracking of the system.

35. The council also explained that key members of staff involved in the calculation of court costs at this time have since left the council, making enquiries and searches even more difficult to perform.
36. The council confirmed that it has now exhausted all routes available to it and searched to the best of its ability for any recorded information falling within the scope of this element of the complainant's request and no information has come to light.
37. The Commissioner understands why the complainant may feel that further recorded information should be held. She accepts the decision in 2008 was an important one that has affected the council and its constituents. However, this alone does not prove that the council does hold information and is unwilling to release it. The Commissioner has seen no evidence to suggest that further recorded information is held and the council is concealing its existence. The council has explained in detail where this information would be held, if it was, and that it has carried out various searches of its paper and electronic records. The information the complainant is seeking is not held.
38. The Commissioner agrees with the council that all routes have now been explored. She is therefore of the view that, on the balance of probabilities, the council does not hold any recorded information falling within the scope of this element of the complainant's request.

Question 6

39. In this element of the request, the complainant asked for the detail of all payments made to Camberwell Magistrates' Court for the legal processes, hire of room(s) and personnel since 2009. Initially the council responded to this element of the request by saying that it pays the statutory court fee of £3.00 per case to the court service and that it is allocated one court day per month during which it conducts all council tax and business rates hearings. The complainant confirmed to the Commissioner that she was unhappy with this response because the

council had only provided a 'per process' figure rather than a payment figure from annual accounts.

40. The Commissioner wrote to the council and asked it to address the complainant's outstanding concerns and confirm whether it is able to disclose the required information.
41. The council replied stating that all legal costs come out of the same budget code therefore it is not possible to show the exact figures paid to the court for the summons issued, as this information is not recorded separately. It confirmed again that it does not pay the court for the hire of rooms or court staff purely for the summons issued. The council advised that it is able to disclose that it applied for 23,797 summons at a cost of £3 each in 2012/13, 27,903 summons at a cost of £3 each in 2013/14 and 27,994 summons at a cost of £3 each in 2014/15. It however explained that not all of the summons applied for will have been for the debt raised in the year that the summonses were applied for and granted.
42. This information was relayed to the complainant but she remained dissatisfied. She stated that there must be a record of payments made to a particular supplier and to allocate the same budget code to all legal services is unacceptable accounting procedure. She asked whether there was a different method by which this information could be provided – for example bank transfer to a designated account, statements or invoices.
43. Again the complainant disputed the accuracy of the council's response in relation to the £3 quoted fee. As stated above, issues of accuracy are not matters which the Commissioner can formally investigate so such concerns are outside the scope of this investigation.
44. The Commissioner made further enquiries to the council to see if the requested information could be provided from another source and asked it to explain how the payments are made to the court and how the council is billed for these payments at the outset.
45. The council responded explaining further that all legal costs come out of the same budget code – these include the legal costs for council tax, business rates and BIDs. The requested information is not recorded separately. The service's budget code is for all legal fees incurred by the team – so any costs defending a case, any costs incurred for external solicitors used as well as any court costs. It advised that it does have a new system in place now which accounts for all transactions including invoices from external providers but this has only been in operation for the last year and so does not cover the time period specified in the request. It also explained that there is a paper folder used to record the procurement card usage for monthly payments made to the court but it

only now holds the previous two year's folders containing this information. The council confirmed that it is not required to retain these as the payments have cleared and the annual end of year accounts have been signed off.

46. The complainant was unwilling to accept this explanation and asked the Commissioner to undertake further enquiries. The council provided further explanations about the £3 fee quoted in its earlier responses and the process by which this is applied and this information was then later relayed to the complainant. It however then came to light that the council holds some documents in a paper file from which the requested information could be provided for a couple of the years specified in the request. The said documents are not held for the entire period specified in the request – only for a short time, as they were retained by Business and Customer Services Department.
47. The Commissioner asked the council to provide this information to the complainant. It agreed and proceeded to do so.
48. The Commissioner may understand why, to a degree, the complainant has concerns over the council's responses and whether further recorded information is in fact held. It is accepted that the complainant has had to question and question responses issued and for this element of the request for example further recorded information has come to light. However, the Commissioner is now satisfied in this case that detailed enquiries have been made and all possible routes have now been explored. She has no reason to doubt that the council has now established fully exactly what recorded information it does hold and provided this to the complainant. As stated above, whether further recorded information should be held (and we accept the complainant is of this viewpoint) is not the relevant consideration here. The relevant consideration here is what recorded information is held by the council and can this be provided. The Commissioner is satisfied now that the council has met its obligations under the FOIA and no further action is required.

Right of appeal

49. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

50. 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.
51. 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

Samantha Coward
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