

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 March 2018

**Public Authority:** London Borough of Lewisham

**Address:** [freedom.information@lewisham.gov.uk](mailto:freedom.information@lewisham.gov.uk)

### Decision (including any steps ordered)

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1. The complainant has requested information relating to her deceased brother, his care and her own involvement with his care.
2. The Commissioner's decision is that the London Borough of Lewisham ("the London Borough") has failed to respond to those elements of the request which fall under the Freedom of Information Act ("the Act") within 20 working days and has therefore breached Section 10 of the Act.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Respond to the request by issuing a substantive response in accordance with the Act.
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 28 September 2017, the complainant wrote to the London Borough and requested information about her deceased brother and the way officers of the London Borough had corresponded with each other and with various other organisations about him and his care needs. The complainant used the London Borough's Subject Access Request form, but clarified that she was seeking, under the Act, any and all information

within the scope of her request which did not constitute her own personal data. She also requested, to the extent that the information sought represented her own personal data, that the London Borough consider the request under Section 7 of the Data Protection Act 1998.

6. The London Borough contacted the complainant 10 October 2017 in the following terms:

*"This is to acknowledge your Subject Access Request; reference number 420270. We will respond to you fully as soon as possible and within 40 calendar days."*

7. In line with her guidance, the Commissioner considers that the London Borough should have considered the complainant's request under both the Freedom of Information and Data Protection Acts.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 8 December 2017 to complain about the way her request for information had been handled.
9. In line with her usual practice, the Commissioner wrote to the London Borough on 4 January 2018 to notify it of the late response. She requested a response from the London Borough within 14 calendar days.
10. Despite the Commissioner sending further reminders on 23 January and 13 February 2018, at the time of issuing this decision notice, no response had been received.
11. Due to the significant delay in issuing a response, the Commissioner considers a decision notice, considering the London Borough's compliance with the Act, to be appropriate in this case.
12. The Commissioner considers that the scope of the investigation is to determine whether the London Borough has complied with Section 10 of the Act – to the extent that the requested information is covered by the Act.
13. The Commissioner considers that the remainder of the requested information has been sought under the Data Protection Act. She will consider those matters separately to this decision notice.

## Reasons for decision

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14. Section 1(1) of the Act 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.*

15. Section 8(1) of the Act states:

*In this Act any reference to a "request for information" is a reference to such a request which –*

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

16. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the Act.

17. Section 10 of the Act states that response to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

18. From the evidence provided to the Commissioner in this case, it is clear that the London Borough did not issue a substantive response to the request within 20 working days and it has therefore breached Section 10 of the Act.

## Right of appeal

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19. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. 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.
21. 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 .....**

**Alun Johnson**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**