

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 November 2019

Public Authority: London Borough of Barnet
Address: Hendon Town Hall
The Burroughs
Hendon
London
NW4 4BG

Decision (including any steps ordered)

1. The complainant has requested information about a particular parking tribunal hearing. The London Borough of Barnet (“the London Borough”) had failed to respond to the request at the date of this notice as it was still considering where the balance of the public interest lay.
2. The Commissioner’s decision is that the London Borough has failed to complete its public interest considerations within a reasonable timeframe and has thus breached section 17(3) of the FOIA.
3. The Commissioner requires the London Borough to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response to the request.
4. The London Borough 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

5. On 20 June 2019, the complainant wrote to the London Borough and requested information in the following terms:

"I would like to request a copy of all records held by the council in relation to PCN [redacted] and the corresponding tribunal case, reference [redacted], subject to any personal data being redacted."

6. The London Borough responded on 19 July 2019. It confirmed that it held information within the scope of the request, but it considered that section 31 of the FOIA (prejudice to law and order) was likely to be engaged and it needed additional time to decide where the balance of the public interest would lie in relation to disclosure. It estimated that it would need another 20 days to complete this work.
7. Despite several chasers, the London Borough had yet to inform the complainant of the outcome of its deliberations on the public interest at the date of this notice.

Scope of the case

8. The complainant contacted the Commissioner on 7 October 2019 to complain about the failure, by the London Borough, to respond to the request.
9. In line with her usual practice, the Commissioner contacted the London Borough on 24 October 2019 to highlight the outstanding response. She requested that the London Borough complete its deliberations and respond to the request within 10 working days. Besides an automated acknowledgement, her correspondence was not responded to.
10. Given the substantial delays in responding to the request, despite her intervention, the Commissioner now considers that a decision notice is appropriate in this case.
11. The scope of this notice is to determine whether the delay in responding to the request is reasonable in the circumstances.

Reasons for decision

12. Section 1(1) of the 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.*

13. Section 8(1) of the FOIA 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.*

14. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
15. Section 10 of the FOIA states that responses 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."*
16. Section 10(3) of the FOIA states that, where a public authority is considering the balance of public interest, it can extend the 20 working day deadline *"until such time as is reasonable in the circumstances."*
17. Under Section 17(3) of the FOIA, a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. The Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to justify the time taken fully.
18. At the date of issuing this decision notice the London Borough has had five months to respond to this request but has not done so. The Commissioner would struggle to imagine prevailing circumstances which would render such a delay "reasonable" and the London Borough has not made any attempt to explain what they might be.
19. In the Commissioner's opinion the London Borough has failed to complete its public interest test considerations within a reasonable timeframe and therefore she has concluded that the London Borough has not complied with Section 17(3) of the Act.

Right of appeal

20. 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@justice.gov.uk

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

21. 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.
22. 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

**Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**