

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2020

Public Authority: London Borough of Ealing
Address: Perceval House
14-16 Uxbridge Road
W5 2HL

Decision (including any steps ordered)

1. The complainant has requested information on fees paid to the London Borough of Ealing ("the Council") in regard to filming at specified locations.
2. The Commissioner's decision is that on the balance of probabilities, the Council has provided the information it holds in the scope of the request.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Background

4. The request of 9 April 2019 is one in a series of requests made to the Council regarding filming events in the borough and specifically Brunswick Road. The complainant explained that he has corresponded with the Council since 2016 on issues regarding filming in residential streets and had reached Stage 3 complaints with the Council in 2018, before making his FOIA requests. During the course of her investigation the Commissioner has discussed with the complainant the broader circumstances surrounding this particular request. He explained his legitimate concerns, including why the residents are inconvenienced with road closures, cones blocking access and specifically access to emergency services, "enforcers" from film companies who are aggressive, the filming of his house from the outside (without permission) and intrusively into a particular downstairs' room causing distress at times of a resident's sickness. The Commissioner has

engaged at length notwithstanding explaining that her focus must be the specific request in this case. She has allowed a significant length of time for the complainant to provide the further written arguments and reasoning which he advised the Commissioner would inform her decision in this case.

Request and response

5. On 9 April 2019 the complainant wrote to the Council and requested information in the following terms:
6. "Has the London Borough of Ealing, its agents or representatives ever received any fees under whatever heading or in whatever respect for filming events, including the storage of film equipment, at, on, outside or inside properties at 6 Brunswick Road and/or 78 Brentham Way?

Were any such fees received in connection with filming at either or both of these locations on 27th March 2019?"
7. The Council responded on 9 May 2019. It provided information in respect of filming in 2018 regarding a house on Brunswick Road. The Council advised that it had received £100. It confirmed that no fees were received in relation to any filming on 27 March 2019.
8. Following an internal review the Council wrote to the complainant on 10 July 2019. It re-stated the information provided in the initial response and relied on section 40(2) FOIA(personal information) to withhold the specific house number.
9. During the course of the Commissioner's investigation the Council wrote to the complainant on 19 March 2020 and again on 1 June 2020 providing further information.

Scope of the case

10. The complainant contacted the Commissioner on 1 October 2019 to complain about the way his request for information had been handled. Subsequently he explained his view that the Council would have received far in excess of £100 in connection with filming. The request does not state a time frame and it appears that the Council has responded for one year (2018) rather than asking for clarification regarding a time frame or, alternatively advising him of the fees received each year, for example, over the previous 10 years. He also explained his views regarding the West London Film Office and the Council.

11. The complainant advised the Commissioner to consider:

"Or if it would be equitable, in any sense of the word, for us to be penalised for the ever broader nature of the multiple FOIA requests I had to submit as I sought to prevent the Council from withholding information by hiding behind narrow interpretations of the information I was seeking."

12. He further added:

"No one should have had to spend the many hundreds of hours that I have had to, to seek to defend the right of the 17 Brunswick residents (one of them critically infirm) to have emergency ambulance access to their property at all times."

13. The Commissioner explained to the complainant that she does not have a remit to investigate the Council in a broad consideration of its conduct or operation over a number of years, other than in its consideration of the specific access to information legislation. She is therefore unable to comment on the complainant's wider concerns and allegations regarding its conduct and must focus on the Council's handling of the specific request in this case.

14. The Commissioner considered the scope of her investigation to be the application of section 40(2), clarification of the searches undertaken by the Council in determining the information held within the scope of the request and the relationship between the West London Film Office and the Council.

Reasons for decision

15. Section 40(2) of FOIA allows a public authority to withhold information if that information is, or would reveal, the personal data of an individual other than the requestor.

16. The Council revisited its reliance on section 40(2) in regard to the specific numbers of the houses detailed in its response to the request. It determined that the information held was not personal data as the information held related to the Council itself and a film company.

17. The complainant appears to believe that the Commissioner should nevertheless consider the initial:

"wrongful application of the section 40(2) exemption."

18. However, the Commissioner allows for public authorities to revise their position during the course of her investigation and will therefore not analyse the Council's decision in this case.

Section 1 – The duty to provide information

19. 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.*

20. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

21. In this case the complainant asked the Commissioner to consider:

“If you can download the video I've sent you via WeTransfer, ask yourself while viewing it if there's even the remotest possibility that Ealing or any other council would knowingly permit such traffic obstruction if they weren't gaining financially from it.”

22. With regard to the amount of information provided the complainant made allegations regarding the reason:

“Ealing is so concerned to evade my FOIA requests is to protect its relationship with (redacted) who entered into an agreement with the council which both are desperate to keep out of the public domain.”

23. The Commissioner has questioned the Council on the steps it has taken to search for information in respect of fees received by the Council.

24. The Council explained the relationship between the West London Film Company and the Council itself as follows:

“The West London Film Office (WLFO) is entirely within and part of Ealing Council. The WLFO arrange film shoots on the street, within parks and any other locations owned by Ealing Council like libraries, community centres and council estates.

The WLFO along with all other London boroughs we can charge a fee for filming in those areas. The WLFO work with Ealing Council's parking dept to suspend controlled parking bays for filming within private properties and allowing crew vehicles to park within council-owned parks and car parks. Where the WLFO is able to do so, a licence is issued to cover filming activities. The WLFO also check Health & Safety risk

assessments, public liability insurances and where it is able to stipulate that a letter to affected residents is sent out.

These are the main activities the WLFO carries out in relation to filming, but where filming applications are more complex the film office will help to arrange extra aspects of those shoots as well.

25. Following this explanation the Commissioner questioned whether the Council had included the WLFC in its searches for information in the scope of the request. The Council explained that it had done so and advised:

"The West London Film Office hold records back to 2013 which includes Database software and dedicated email accounts within their team."

26. Further to this the Council explained that searches were carried out in the Council's Outlook email and film database systems. The Council added:

"Those emails and files contain the details which would enable us to find the information requested in (name redacted) FOI since they contain location and other information about all licenced film shoots in the borough going back to 2013. The email searches were all carried out on the council-wide Outlook email and centralised filing system."

27. The Council explained its policy regarding retention of invoices relating to fees charged, which is a 6-year retention period. It confirmed that no information had been deleted or destroyed.

28. The Council advised:

"There are numerous reasons to retain information relating to film shoots including for debt recovery, resident enquiries and statistics we send to Film London which monitor the number of days of filming in each London borough."

29. The Commissioner considers that the Council has conducted appropriate searches for information and understands why such searches should locate fee information. The further searches revealed the additional information provided to the complainant on 1 June 2020. The Council explained:

"We have thoroughly reviewed all information the council holds with regards to the two properties referred to in the FOI. In light of this we have located another archived invoice from Mar 2016 in which the council charged £300 to a film company for filming outside 6 Brunswick Rd. We can now confirm this and the £100 charged in 2018 included in our original response are all the charges made for filming on the road outside 6 Brunswick Rd since 2013. Our film database showed a record

of this extra shoot in 2016 without charging information. However, when the finance system was searched the relevant invoice had been archived and was not found. Email searches also showed no evidence of charges for this shoot.”

30. The Commissioner notes the Council’s response that there is no statutory reason for it retaining the requested information, however, the information is retained for business purposes:

“There are numerous reasons to retain information relating to film shoots including for debt recovery, resident enquiries and statistics we send to Film London which monitor the number of days of filming in each London borough.”

31. The Commissioner understands the complainant’s frustration and the inconvenience caused to him and others by vehicles and obstructions in Brunswick Road and has seen the video evidence provided demonstrating this. Nevertheless these circumstances cannot be resolved by her investigation of the Council’s handling of the request in this case. She must focus her attention on the Council’s final position reached during her investigation.
32. The Commissioner has determined that, on the balance of probabilities, no further information within the scope of the request is held by the Council.

Other matters

33. During her investigation the Commissioner questioned the Council on the broader arrangements for filming events. The Council helpfully explained that it has specific responsibilities with regard to granting approval for certain aspects of filming, for example, for approving ‘on street’ filming; filming in parks; filming other buildings owned by the Council and for parking suspensions associated with filming. In these instances, the Council would issue a licence.

34. The Council added that it:

“... cannot issue a licence for filming conducted entirely in a private property. This means it is possible filming has taken place at the two properties without the West London Film Office being involved or aware.”

The Council explained that when it issues a licence, it stipulates that nearby residents must be informed. However, it cannot stipulate that a letter is sent when it does not issue a licence.

35. With specific regard to relations between residents and film crews, the WLFO can mediate between crews and residents if required; modify parking requests so they are more beneficial to residents; agree on filming start and finish times and other similar things to facilitate filming while minimising disruption. The Council further explained:

“We do on occasion monitor crews and have visited the Brunswick Rd location to do this. We have also asked permission to tell all film crews we know to be planning to film in the area that there are specific access requirements for the complainant’s neighbour’s property. We have not received this permission.”

Right of appeal

36. 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

37. 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.

38. 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

Susan Hughes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF