

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 July 2022

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

Decision (including any steps ordered)

1. In a five part request, of which four are requests under FOIA, the complainant has requested information from Lambeth London Borough Council ('the Council') associated with a long running dispute with the Council. The Council has disclosed information within scope of three parts and is withholding the information within scope of the remaining part under section 42(1) of FOIA, which concerns legal professional privilege.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, the Council has disclosed all the information it holds that falls within scope of Q3 and Q4 of the request and has complied with section 1(1) of FOIA.
 - The Council has incorrectly applied section 42(1) to Q1 of the request.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.

- Disclose to the complainant the information they requested in Q1 of the request.
4. The Council must take this step 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.

Background

5. The Commissioner notes that he has previously considered a separate but related complaint from the complainant, reference FS50755871 (March 2020), which concerned works to a particular property. The Council had provided some information and the Commissioner had found that the Council held no further relevant information (in the format specified). The complainant did not appeal that decision.

Request and response

6. On 1 December 2020 the complainant wrote to the Council and requested information in the following terms:

"I [1] I would like to know the total legal fees and miscellaneous expenditures paid to the legal firm [redacted]

ii [2] In the case above a settlement was reached and compensation and interest were payable. To date the interest component remains outstanding. Consequently, I would be grateful if you would give me details of the person I should contact about this issue...

...I. [3] I would refer you to [redacted]'s email of the 7th January 2020 addressed to myself entitled 'Work Orders as requested by ICO and my letter in response, dated the 19th January 2020, requesting and listing further missing documentation. To date [redacted] has not responded to my letter. I would be grateful if you would provide all the listed documentation mentioned in both correspondence.

II. [4] Reference Work Order reference [redacted 1] – Roof Repairs. Please provide the names of the manager and surveyor who "cancelled works to a leaking roof and proceeded to re-raise as a new Order to suit a new contract this will save money".

III.[5] COMPLAINT reference[redacted 2] & [redacted 3]– logged in June 2018. I should be grateful if you would provide me with a copy of the complaint."

7. The Council wrote to the complainant on 22 January 2021 and provided them with some relevant information.
8. Following an internal review the Council emailed the complainant as follows:
 - Q1 – the Council disclosed what appears to have been a copy of an email. (The Commissioner has not been provided with copies of documents attached to the Council’s internal review response.)
 - Q2 – the Council advised the complainant to seek their own legal advice.
 - Q3 – the Council disclosed a copy of what appear to be three emails. The Council noted that in this part, the complainant referred to a letter they had sent to the Council dated 19 January 2020. The Council said it did not have a copy of that letter.
 - Q4 – the Council disclosed what appears to be a copy of an email.
 - Q5 – the Council advised that a member of its Housing Complaints team would contact the complainant separately.
9. The Commissioner is not certain about the date of the above internal review, but it may have been sent on 26 March 2021. The complainant received this email because they responded to it by email on 29 March 2021. With regard to Q1 and Q4, they said they had not been able to open the files the Council had sent and confirmed that they had advised the Council previously to send the information in hard copy. The complainant asked the Council to send them that information again in hard copy.
10. The complainant queried the Council’s response to Q2 and, with regard to Q5, advised that they expected to hear from the Housing Complaints team in due course.
11. With regard to Q3 the complainant attached to their email the letter dated 19 January 2020 that they said they had previously sent to the Council, and associated documents. The complainant said that the attached material evidenced that the Council **had** originally received their 19 January 2020 letter and that the Council had corresponded with the Commissioner about matters raised in that letter [in the course of FS50755871]. The complainant said they had not received the documents that the Council had told the Commissioner it would send to them. The complainant again asked the Council to send to them the documents referred to in the Council’s letter of 7 January 2020 and the complainant’s response to it of 19 January 2020.

12. On 5 April 2021 the complainant submitted their complaint to the Commissioner and, after a regrettable delay due to the impact of the Coronavirus pandemic, their complaint was progressed after February 2022. The Commissioner wrote to the Council for its submission on 15 February 2022. There then followed a further regrettable delay and a protracted series of communications, miscommunications and telephone calls with both the complainant and the Council. The Council advised the Commissioner on 21 March 2022 that, on 2 March 2022, it had written to the complainant and asked them to confirm what address they wanted the hard copy information they had requested [on 29 March 2021] to be sent to. The complainant subsequently advised the Commissioner that they had not received this letter of 2 March 2022.
13. On 23 March 2022 the Commissioner confirmed the complainant's address with the Council and asked the Council to send the 2 March 2022 letter to them again.
14. On 19 May 2022, the Commissioner instructed the Council to send the complainant the hard copy information within scope of their request. It was not until 14 June 2022 that the Council confirmed to the Commissioner that it had posted the hard copy information it holds to the complainant that day.
15. In its covering letter to the complainant, the Council advised that the complainant's request for legal fees and expenditure (Q1) was "privileged". With regard to Q2, the Council advised that the complainant had been legally represented in that matter, that the file was closed and that the complainant's costs had been paid. The Council nonetheless provided the complainant with the name and email address of an individual in its Legal Services team that they could contact about that matter.

Scope of the case

16. The complainant first contacted the Commissioner on 5 April 2021 to complain about the way their request for information had been handled.
17. Having reviewed the supporting information the complainant provided to the Commissioner he notes that on 13 April 2021 what appears to be the Council's Housing Complaints team wrote to the complainant. The Commissioner understands from this correspondence and the correspondence that followed that the matter being discussed concerns Q5 of the request. That information is the complainant's own personal data as it is about a service complaint that they had submitted to the Council in 2018. As such, Q5 of the request is out of scope of this investigation which must be focussed solely on FOIA, not the data

protection legislation. The Commissioner observes that, if held, an applicant's own personal data is exempt from disclosure under section 40(1) of FOIA in any case.

18. In correspondence to the Commissioner on 15 July 2022, the Council confirmed that it had provided a separate response to the complainant's request for their 2018 complaint under the data protection legislation. If they have not already done so, the Commissioner advises the complainant to submit a data protection complaint about Q5, through the ICO's website, if they remain dissatisfied with the Council's response to that question.
19. The Council satisfactorily addressed Q2 in its correspondence to the complainant of 14 June 2022.
20. In its submission to the Commissioner also dated 14 June 2022 the Council had advised him that it considered Q1 fell outside the scope of FOIA. The Commissioner advised the Council on 8 July 2022 that he disagreed. He noted that, from its response to the complainant of 14 June 2022, it appeared to the Commissioner that the Council considered the information requested was exempt under section 42(1) of FOIA, which concerns information subject to legal professional privilege. The correspondence he received from the Council on 15 July 2022 indicated to him that that was its position.
21. The Commissioner's investigation has therefore focussed on Q1, Q3 and Q4 of the request. He will consider whether, on the balance of probabilities, the Council holds further information within scope of Q3 and Q4. Finally, he will consider whether the Council is entitled to withhold the information requested in Q1 under section 42(1) of FOIA.

Reasons for decision

Section 1 – general right of access to information held by public authorities

22. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to them if it is held and is not exempt information.
23. In Q3 of their request, the complainant has requested documents referred to in correspondence they received from the Council dated 7 January 2020 and in correspondence from the complainant to the Council dated 19 January 2020.

24. It is material within scope of this part that the Commissioner understands to be included in the information that the Council posted to the complainant on 14 June 2022. The Commissioner notes that the complainant had re-sent their letter of 19 January 2020 to the Council on 29 March 2021.
25. In its brief submission to the Commissioner dated 14 June 2022, the Council said that it has responded to the complainant's request and considers that it has provided them with the information requested. The Council said it had originally posted the information to the complainant within a reasonable time of his request but understood that the complainant "will deny receiving these documents". The Commissioner considers that the Council may be alluding here to it having originally posted the documents following its discussions with the Commissioner regarding his earlier investigation, which is discussed at paragraph 11.
26. The Council notes in its submission that it also sent copies of the information to the complainant by email and that the complainant had advised they were not able to open the documents. The Council said it had posted the documents to the complainant a second time on 14 June 2022.
27. The Council said that the search terms it used to search for relevant information were (i) Name (ii) property address (iii) property address reference number and (iv) the building reference number. It had interrogated its Housing Services systems, namely the 'Northgate' database and the 'Information at Work' database.
28. On 13 July 2022 the Commissioner asked the Council to confirm that it had taken account of the letters of 7 January 2020 and 19 January 2020 referred to in Q3 and that the material it had sent to the complainant did indeed include the documents referred to in those letters, if held and if not exempt information. In its correspondence to the Commissioner dated 15 July 2022 the Council confirmed the material it had posted to the complainant had taken account of those two letters.
29. Q4 of the request is for the names of the manager and surveyor who "cancelled" particular works.
30. Again, because its submission of 14 June 2022 was not clear, in his further correspondence of 13 July 2022, the Commissioner asked the Council to confirm it had disclosed this information to the complainant.
31. In its correspondence of 15 July 2022 the Council confirmed that it had provided the complainant with the information requested in Q4.
32. The Commissioner has considered this case over a number of months. During that time he has corresponded with Council multiple times and

spoken to the complainant and the Council multiple times. He has taken account of those communications, the circumstances of this case and the searches the Council has carried out for relevant information. At this point the Commissioner is satisfied that, on the balance of probabilities, the Council has disclosed all the information it holds that is relevant to Q3 and Q4 of the complainant's request and has complied with section 1(1) of FOIA.

Section 42 – legal professional privilege

33. Section 42(1) states that:

“Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”

34. This exemption is subject to the public interest test.

35. The purpose of legal professional privilege (LPP) is to protect an individual's ability to speak freely and frankly with their legal advisor in order to obtain appropriate legal advice. It recognises that individuals need to lay all the facts before their adviser so that the weaknesses and strengths of their position can be properly assessed. Therefore, LPP evolved to make sure communications between a lawyer and their client remain confidential.

36. In Q1 of their request the complainant has requested the total legal fees and miscellaneous expenditures paid to a particular legal firm [for work associated with the complainant's dispute with the Council]. The information being requested is a figure, in pounds sterling.

37. In correspondence to the Council on 8 July 2022 the Commissioner asked the Council to confirm it was relying on section 42(1) with regard to Q1 and, if it was, to address a series of related questions. The Commissioner would consider its response to these questions to determine whether section 42 was engaged.

38. In its correspondence of 15 July 2022, the Council stated only the following:

“...I can confirm that we rely on litigation advice privilege in regards to Question 1 as litigation was ongoing at the time of the request. We do not consider there is any specific public interest in disclosure as this relates to a specific case which will not have any wider public significance nor would disclosure increase the transparency of the council and how it responds to litigation.”

39. The Commissioner does not consider the Council has presented a satisfactory case for section 42 being engaged regarding the information requested in Q1. As noted, the request is for the amount that has been paid to a legal team – such information cannot possibly be categorised as being legal advice, either that the legal team provided to the Council, or which the Council sought from the legal team. However, the Council was given the opportunity to make a convincing case that section 42 **was** engaged or to apply a different exemption to the information. It did neither and, on the basis of its submission to him, the Commissioner has decided that the Council incorrectly applied section 42(1) of FOIA to Q1 of the request. Because he has found that section 42(1) is not engaged, it has not been necessary to consider the public interest test.

Other matters

40. In a telephone conversation on 14 July 2022 the complainant advised the Commissioner that they had still not received “anything” that the Council had posted to them on 14 June 2022. The complainant has told the Commissioner that they have not received: the hard copy information the Council said it originally sent to them in response to their request; the Council’s original correspondence of 2 March 2022 (which it subsequently re-sent); and now the Council’s correspondence of 14 June 2022. The Commissioner considers that the Council has made a reasonable attempt to send the information it holds to the complainant – at least once by post (and the Council says it has sent it twice) and once by email.

41. In its letter to the complainant of 2 March 2022 the Council had advised the complainant that it could send them the information or they could pick it up themselves from the Civic Centre. In view of the difficulties the complainant has experienced with their postal service and email correspondence, the Commissioner suggests that the complainant contacts the Council to arrange to collect from the Civic Centre the hard copies of the relevant information that the Council holds. At the same time, the complainant may also want to collect from the Civic Centre the information that the Commissioner has instructed the Council to disclose in this notice and similarly, they should arrange that with the Council. Those are matters for the complainant to arrange with the Council directly; they are not matters with which the Commissioner will become involved.

Right of appeal

42. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

43. 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.
44. 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

Cressida Woodall
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