

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2022

Public Authority: London Borough of Southwark
Address: 160 Tooley Street
London
SE1 2QH

Decision (including any steps ordered)

1. In a multi-part request, the complainant requested information associated with a penalty charge notice he received on 28 January 2021 and later appealed.
2. London Borough of Southwark (the 'Council') addressed each of the complainant's questions but stated it did not hold some of the requested information and it withheld information requested in one question under section 40(2) of FOIA, as it considered this to be personal data.
3. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold some of the requested information as it is not held in recorded form. The Council is also entitled to withhold the qualifications under section 40(2) of FOIA as it is the personal data of another individual and disclosure would be unlawful. However, the Council breached section 10(1) of FOIA as it did not provide the complainant with a response within 20 working days of the request.
4. The Commissioner does not require further steps.

Request and response

5. On 16 February 2022, the complainant hand delivered a multi part information request to the Council. This is set out in Annex A to this notice.

6. In a letter dated 22 March 2022, but not received by the complainant until after 27 April 2022, the Council addressed each of the complainant's questions. In relation to questions 1.1-1.5, 1.7-1.8, 1.10, and 2.3 the Council stated that it was unable to comment as 'Representations and Appeals Officers do not keep notes.' The Council withheld information requested in question 2.15, as it considered this to be the personal data of a Council employee.
7. The Council upheld this position at internal review. The Council argued that the correct access regime was the Environmental Information Regulations 2004 (EIR). It explained to the complainant what information was covered under the EIR, namely, 'any recorded information' but not information that had to be newly created or that was in a Council employee's head. It also clarified that requests for opinions and views, or responses to complaints and grievances could not be answered if the Council did not hold the 'recorded information' to do so. The Council also stated that the qualifications of Council employees can be withheld as this constitutes their personal data.
8. The Commissioner notes that the complainant appealed the penalty charge notice and it was cancelled before the date the complainant submitted the request.

Reasons for decision

9. The following analysis sets out why the Commissioner has concluded that the correct access regime is the Freedom of Information Act 2000 ('FOIA'), the public authority did not hold some of the requested information as it was not held in recorded form, and that it was entitled to rely on section 40(2) of FOIA to withhold the qualifications.
10. The Commissioner has previously investigated a significant number of complaints concerning requests for similar information and the

Commissioner considers the correct access regime to be FOIA – see IC-66578-W4V0¹, IC-147270-Z7X2² and FS50883408.³

11. Section 1 of FOIA says that a public authority is required to confirm or deny that it holds the requested information, and disclose relevant information that it holds, unless an exemption applies.
12. Section 84 of FOIA defines “information” as: “information recorded in any form”. FOIA therefore only applies to information that a public authority already holds in recorded form at the time of a request. If the Council do not hold a particular piece of information that a requester has asked for, they do not have to create it. FOIA does not require a public authority to answer general questions, provide opinions or explanations. In addition, information contained in someone’s mind is not recorded information. This is supported in the Commissioner’s guidance⁴ and in these decision notices⁵.
13. The Commissioner has reviewed the request and notes the Council states in relation to questions 1.1-1.5, 1.7-1.8, 1.10, and 2.3 that it does not hold the requested information to answer these questions - as the Representations and Appeals Officers ‘do not keep any notes.’ The Commissioner sees no reason to doubt the Council’s explanation. In the Commissioner’s opinion, given that the questions relate to the thought

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2620256/ic-66578-w4v0.pdf>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4019562/ic-147270-z7x2.pdf>

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2618142/fs50883408.pdf>

⁴ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/determining-whether-we-hold-information/>

⁵ https://ico.org.uk/media/action-weve-taken/decision-notices/2006/380268/FS50068004_DN.pdf; <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021456/ic-170091-11y5.pdf>

processes of a named Council employee in reaching their decision, the Commissioner is satisfied that this information was likely to be in their head and not in recorded form. The Commissioner also notes that, for the most part, these are framed as general questions rather than requests for specific pieces of recorded information.

14. If a public authority does not hold recorded information to answer a request, the Commissioner cannot require the authority to take any further action. The Commissioner is therefore unable to identify any further action that the Council could reasonably be expected to take as part of its statutory obligations under FOIA in order to identify the requested information. If information is not held in recorded form then it cannot be disclosed in response to a request. The Commissioner, therefore, finds on the balance of probabilities, the Council does not hold any recorded information falling within the scope of some of the request. As such, the Commissioner has decided that the Council has complied with section 1(1) of FOIA.
15. Other than state their view that the FOIA and EIR are 'not fit for purpose' and that it is 'malpractice' if the Council does not hold such information, the complainant has not provided any evidence or reasoning that would indicate that the Council does hold this information. The Commissioner further notes that his role is not to decide whether the Council should hold that information or the way in which particular records ought to be held. The Commissioner is only concerned with the way that information is, as a matter of fact, actually held.
16. The complainant has also requested the legal qualifications of a named Council employee who considered the complainant's appeal against the penalty charge notice. The Council confirmed to the complainant that the employee was qualified to undertake the role of Representations and Appeal officer but that their exact qualifications were personal data.
17. Section 40(2) of FOIA says that information is exempt information if it is the personal data of another individual and disclosure would contravene a data protection principle. The Commissioner is satisfied that the qualifications of named individuals constitutes their personal data. The Commissioner is also satisfied that disclosure of this information in this case would breach data protection principles. This position is supported

in recent ICO decision notices - see IC-44036-R9H0⁶ (para 38 -39) and FS50521219.⁷

18. Section 10(1) of FOIA states that a public authority shall respond to information requests promptly and in any event no later than 20 working days from receipt. The complainant made his request on 16 February 2022 and did not receive a response until at least very late April 2022⁸. By failing to respond to the complainant within the required timescales, the Council has breached section 10(1) of FOIA.

Other Matters

19. FOIA does not contain a time limit within which public authorities have to complete internal reviews. However, the Commissioner's guidance⁹ explains that in most cases an internal review should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances. In this case, the internal review was requested on 31 May 2022 and the Council did not respond until the Commissioner intervened on 16 August 2022. The Commissioner notes that the Council included an apology for the delay in its internal review but considers such a delay to be unacceptable. He has recorded this delay for his own purposes of monitoring the Council.
 20. The Commissioner also wishes to comment more generally on the way the Council has handled this request for information.
 21. Whilst the Commissioner has found the Council, on the balance of probabilities, did not hold any recorded information to answer some of
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⁶ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619601/ic-44036-r9h0.pdf>

⁷ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/959572/fs_50521219.pdf

⁸ The Council has told the Commissioner that the letter dated 22 March 2022 was provided to the Council post room for posting on 27 April 2022.

⁹ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/#20>

the requests and that s40(2) FOIA was engaged, the Commissioner was disappointed with the cursory nature and quality of the explanations provided to the complainant about these issues in the initial response dated 22 March 2022 (received by the complainant in late April 2022). He expects public authorities to provide complainant's with reasoned and detailed accounts of why it has reached a decision that it does not hold recorded information, not simply assertions such as 'do not keep any notes.' The Commissioner also expects public authorities to explain in detail which Act and sections/exemptions it is relying on.

22. Also, in the Commissioner's opinion, a number of the questions in the request are not valid requests for information as they are not asking for recorded information, for example, questions 1.7.3, 2.73 or 2.13. In future, the Council may wish to note that while questions can be valid requests, questions that do not make any attempt to ask for recorded information are not likely to meet the requirements of section 8(1)(c) of FOIA. Such questions therefore will not be valid requests for information and for such questions the Council is under no obligation to respond.
23. In addition, the Commissioner notes that weblinks were provided to the complainant in some of the answers to his questions, however, the complainant communicates by handwritten letter and says he does not have a computer. Normally, a public authority should send the information by whatever means is most reasonable. As the requester has made their request by handwritten letter, the Commissioner notes that it would be reasonable for the Council to confirm the complainant's preference for receiving the information, for example, this could be by attaching the information in hard copy form to any letter of response. The Commissioner has issued guidance on this here¹⁰ which the Council is encouraged to consult in future cases.
24. Finally, the Commissioner notes that the complainant remains aggrieved about the penalty charge notice issued by the Council and how the Council handled his appeal. The Council's internal review response acknowledges this and, in the Commissioner's opinion, suggests an appropriate way forward to assist the complainant to raise his outstanding concerns - via the Council's complaints procedure¹¹. The

¹⁰ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/means-of-communicating-information-section-11/>

¹¹ <https://www.southwark.gov.uk/council-and-democracy/complaints-comments-and-compliments/making-a-complaint> and <file:///C:/Users/heyc/Downloads/Complaints%20Policy%202022%20V2.0.pdf>

Commissioner suggests that the complainant may wish to explore this option as this may provide a route to raise his outstanding complaints/grievances and may allow the Council to provide the responses he seeks as the information the Council can provide him can be created and does not need to be already held in a recorded form.

25. These concerns above will be logged and used by the Commissioner when considering the overall compliance of the Council.

Right of appeal

26. 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

27. 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.
28. 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

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

Annex A

1. Section One – My Representation

- 1.1.** Why was my first point line one – line four and three quarters not commented on?
- 1.2.** Why was my second point line 5 last quarter- end of line eight not commented on?
- 1.3.** Why was my third point line 9-16 not commented on?
- 1.4.** Why was my observation on the illegality page 2 of 17 line 1-5 not commented on?
- 1.5.** Why was my comment page 2 line six – line eight on your duty of disclosure not commented on?
- 1.6.** Why did you not look closely at the case I made and stop this ridiculous "MILK THE MOTORIST CAMPAIGN AND THE TRUTH BE DAMNED" mind set ?
- 1.7.** The reason for my presence on Townley Road is explained page 2 of 17 line 27 and page 3 line 1-17.
 - 1.7.1.** Did you read this?
 - 1.7.2.** Did you understand?
 - 1.7.3.** Did you put yourself in my situation?
 - 1.7.4.** Did you put yourself in the time from of late January 2021 when vaccination was only in its 2nd month?
Have you heard "RULES ARE FOR THE GUIDANCE OF WISEMEN AND THE BLIND OBEDIENCE OF FOOLS" Douglas Bader 21 Feb 1910 (WWII FIGHTER PILOT OF TINLEG FAME)?
- 1.8.** Page 3 of 17. Line 18- 24. This poses a question! That is why I wrote "?" on the end! Why was this not answered? What is the answer?
- 1.9.** Page 6 of 17. This is the Geo schematic diagram of the road layout and the direction of travel that proves I was not travelling Northbound as alleged.
 - 1.9.1.** Did you understand this diagram?
 - 1.9.2.** Did you check it's accuracy?
 - 1.9.3.** Did you see the error from this information?
 - 1.9.4.** Why was it not commented on in your standard rejection letter?
- 1.10.** On the back of page 17 of 17 this is the * insert for page 3. Why are the 'term times' not noted as they are in other Boroughs? "?" ignored again and again on line 6 "?" again on line 12 "?" and again on line 13 "?".
 - 1.10.1.** Is [name redacted] allergic to answering questions?
 - 1.10.2.** Will you now direct [named redacted] to answer the questions he has so glibly ignored?
 - 1.10.3.** You have not given me directions as requested in line 15. Answer required!!
 - 1.10.4.** Why was my statement in line 19-20 not commented on? I expect Southwark Council official response to this statement!!

There are 22 questions in this section. I expect a full and honest answer to each and every one of them and explanations where they are required.

2. Section Two – Automatic Rejection of Representation

- 2.1.** Why did it take 73 days to respond to my representation?
- 2.2.** Why was the usual courtesy of mister not pre-fixing my name?
- 2.3.** How long did your 'careful consideration' take when you have not commented on the three legal issues raised? Why were they ignored?
- 2.4.** The picture you sent me does not prove my car was there! Why did you not fulfil your duty of disclosure?
- 2.5.** How do you "smooth the flow traffic" by blocking roads so that nobody can get anywhere?
- 2.6.** Why do you presume to advise me on driving when the only priority for Southwark Council is making money?
- 2.7.** I have returned to the location twice. E. Dulwich Grove does not have any restrictions for entering Townley Road in either direction!
 - 2.7.1.** Have you visited the site?
 - 2.7.2.** Have you been ill advised?
 - 2.7.3.** Have you been lying to me?
- 2.8.** Why choose a time of national pandemic to play with traffic?
 - 2.8.1.** Why use a small local consultation?
 - 2.8.2.** Why was every house in SE22 not consulted?
- 2.9.** Why do you presume "I can follow a link" I do not use a computer. I am being discriminated against. What systems are in place to keep me advised of all the updates?
- 2.10.** Why could you not pass my Freedom of Information requests on as you all work for the same organisation? Do you not fully understand the job name you work under "PUBLIC SERVANT"?
- 2.11.** Why are your black and white photographs smaller than the useless original of 2-2-21? Why bother printing them when they are not legible even with a magnifying glass
- 2.12.** Why do you presume to lecture me again? When you have totally disregarded the legal points I have made? You have not considered and commented on my personal situation at the time of the alleged offences. Why not?
- 2.13.** why was the letter of rejection unsigned?
- 2.14.** Why does [name redacted] presume to his title when he denies me mine?
- 2.15.** How many legal qualifications does [name redacted] hold to justify his position to be judgement on this case?

3. Section Three – The Poor response to my letter of 30 April 2021

- 3.1.** My letter of 30th April 2021 asked the question 'why did it take two months to get your standard letter of rejection? Why was this question not answered?
- 3.1.1.** Why was the only information given that it was done 'in the stipulated timeframe' without telling me what the timeframe was? What is the timeframe?
- 3.2.** – I also complained that it was not addressed as Mister. Why was [name redacted] unsigned letter still missing Mister? Is he insensitive, uneducated or just plain stupid?
- 3.3.** blank
- 3.4.** What has happened to my Freedom of Information request that [name redacted] alleged was passed to the relevant department? My letter of 30th April 2021 was not answered until 7 June 2021, forty one days to write a four line letter. One line every ten days!! Is this within the 'stipulated timeframe'?
- 3.5.** Paragraph 3-4-5 of my letter of 30 April 2021 is blinding obvious that the freedom of information that comprised page 4-5-7 to 17 of my representation was to be forwarded to the relevant department. Why was this not done? What is going to happen now that a freedom of information request has been in your possession for seven months without any action?

4. Section Four – Escalation of Penalty Charge Amount

- 4.1.** While I was awaiting the remote case hearing that had been adjourned on the 14 June 2021 and re-scheduled for 6 July 2021 I received a Charge Certificate for £195, why did you send this to me when the adjudication process was incomplete?
- 4.2.** Why was the 'MISTER' again missing from the form?
- 4.2.1.** Was this 1) intimidation 2) Carelessness 3) or just a symptom of the chaos that is Southwark Council?
- 4.3.** – I telephoned and was subjected to one minute of drivel 'information'. The after 39 seconds EDWARD answered the telephone. I requested to be called back immediately. Why am I still waiting for this return call?
- 4.4.** Will you confirm, in writing that this 'Charge Certificate' has been cancelled?
- 4.5.** Will you also confirm in writing that the Penalty Charge Notice has been cancelled?
- 4.6.** – Do you understand that I do not trust the chaos that is Southwark Council?

5. Section five – The Fallout

- 5.1.** How many Penalty Charge Notices have been issued for the 'Northbound' traffic at the junction of Townley Road and Calton Avenue leading to E. Dulwich Grove?
- 5.2.** How many of the recipients have made representations?
- 5.3.** How many representations have been unsuccessful?
- 5.4.** How many have gone to appeal?
- 5.5.** How many have been upheld?
- 5.6.** How much revenue has this single scheme created?
- 5.7.** Will you now review all these Penalty Charge Notices and refund the victims of your sloppy administration?
- 5.8.** What is a bus gate?
- 5.9.** Why can I not find bus gate by definition or picture in my 'Highway code'?