

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 May 2022

**Public Authority:** London Borough of Bromley

**Address:** [info@bromley.gov.uk](mailto:info@bromley.gov.uk)

### Decision (including any steps ordered)

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1. The complainant requested various information in respect of job advertisements for a 'teacher of the deaf' both before and after 16 June 2017. London Borough of Bromley (the Council) provided some information but did not address a certain aspect of the request.
2. The Commissioner's decision is that the Council has failed to demonstrate that it has complied with its obligations under section 1(1) FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Accurately confirm or deny whether it holds information relevant to item one of the request.
4. The Council 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 6 June 2020 the complainant wrote to the Council and requested the following information in respect of job advertisements for a teacher of the deaf, posted 16 June 2017:
  - "1. Dates before and after the job for teacher of the deaf at Griffiths Sensory Support Service was advertised with and without the request for candidates to complete a Childcare Disqualification Declaration form and a Rehabilitation of Offenders form.

2. What criterion is used to assemble content for the interview process to assess a candidate's suitability for the post?
3. Under what circumstances is the interview process specifically designed for a candidate?
4. Under what criterion is a request for a Childcare Disqualification Declaration Form and Rehabilitation of offenders form made alongside a DBS form?"
6. The Council responded on 4 September 2020, providing responses to all four items of the request.
7. The complainant was not satisfied with the response to all four items of their request and contacted the Council on 31 October 2020, outlining the nature of their dissatisfaction in respect of each item and reminded the Council that they were seeking dates before and after 16 June 2017.
8. Following an internal review the Council wrote to the complainant on 24 November 2020. It provided a further explanation in respect of items one to three of the request and an email in respect of item four.
9. The complainant remained dissatisfied with the Council's response and contacted the Council on 28 December 2020 outlining the following reasons for their dissatisfaction:
  - No date was provided when the role was advertised prior to 16 June 2017.
  - The Council had not confirmed whether a request for candidates to complete both specified forms was advertised on this previous date.
10. The complainant also asked when it is standard practice to specify the completion of both forms in a job advertisement.
11. The Council contacted the complainant on 22 April 2021 stating that they had already been provided with a comprehensive response following its internal review.

## **Scope of the case**

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12. The complainant contacted the Commissioner on 10 April 2021 to complain about the way their request for information had been handled, although did not specify the grounds of complaint.

13. The Commissioner has therefore based his investigation on the complainant's letter to the Council dated 28 December 2020 (outlined in paragraph 9 above). Whilst it is clear from the request that the complainant asked for the date the post was advertised before 16 June 2017, the request did not ask whether a request for candidates to complete both specified forms was advertised on this previous date, or, when it is standard practice to specify the completion of both forms in a job advertisement. These would constitute new requests for information and do not therefore form part of the Commissioner's investigation.
14. The scope of the Commissioner's investigation is to consider whether the Council has complied with its obligations under section 1(1) FOIA in respect of the date the post was advertised prior to 16 June 2017.

## **Reasons for decision**

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### **Section 1 – General right of access to information held**

15. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
16. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
17. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
18. The Commissioner has considered the Council's responses to item one of the request and agrees that it has not provided the actual date the role was advertised prior to 16 June 2017 either in its original response or its internal review. He therefore asked the Council to confirm or deny whether it holds this information.
19. The Council acknowledged receipt of the Commissioner's correspondence on 14 March 2022 stating that it anticipated it would provide a full response by 25 March 2022. However, despite contacting

the Council on two occasions since that date, the Council has failed to respond.

20. The Commissioner is therefore unable to conclude that the Council has provided all relevant information it holds in respect of item one of the request and has no alternative but to record a breach of section 1(1) FOIA.

## Right of appeal

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21. 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](mailto:grc@justice.gov.uk)

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

22. 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.
23. 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 .....**

**Catherine Dickenson**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**