

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 07 September 2010

Public Authority: Bury Metropolitan Borough Council
Address: Town Hall
Knowsley Street
Bury
Lancashire
BL9 0SW

Summary

The complainant requested information relating to the inspection of premises carried out by the RSPCA in conjunction with Bury Metropolitan Borough Council (the "Council"). In response, the Council released the case notes associated with the inspection with the exception of one redaction. The complainant has subsequently questioned whether the Council holds further information relating to the request. During the course of the Commissioner's investigation, the Council provided further information covered by the request. The Commissioner, however, is satisfied that no additional information is held and therefore does not require the Council to take any steps. Nevertheless, the Commissioner finds the Council breached section 10(1) in its handling of the request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 6 February 2010 the complainant submitted the following request to Bury Metropolitan Borough Council (the "Council"):

"In relation to the inspection of the land/premises located at the [specified premises] on 26 January 2010 and the alleged cruelty of these animals please supply the following information."

- 1) *"Please state which kinds and numbers of animals were discovered during the recent inspection at the [specified premises] and state their location within the premises by numbering each tin hut and provide a plan of the inspected site."*
 - 2) *"Please state how many animals were discovered in total and classify them into different types. ie horses, dogs, birds etc..."*
 - 3) *"Please further classify the different types of animals into their different breeds and gender."*
 - 4) *"Please state how many puppies were located on the premises."*
 - 5) *"Please state how many bitches were located at the premises."*
 - 6) *"Please state the time and date the person in control of this land was notified that an inspection was to be undertaken prior to the inspection date and time."*
 - 7) *"Please state the job title of each person present during the inspection."*
 - 8) *"Please state the name of each person who attended in their professional capacity for this inspection."*
 - 9) *"Please state what facilities these animals had for example bedding, water food etc."*
 - 10) *"Please state if the inspection noted a dog chained up near the front gate to the property and how long this chain was in length."*
 - 11) *"Please state if the owner or person in control of these animals was questioned about how much exercise these animals get on a daily basis and state, if any, how much exercise it is claimed they do get."*
 - 12) *"Please state if the owner of these animals was questioned in relation to selling of and/or breeding animals at these premises and provide the results of these questions."*
3. The Council responded to the request on 22 February 2010. It did not address each part of the request individually but, instead, attached the case notes associated with the inspection. The name of an individual referred to in the notes had been redacted.
4. On 22 February 2010 the complainant asked the Council to review its response on the basis that it had failed to supply the requested

information. The Council informed the complainant on 23 February 2010 that it had released all the relevant information it held and would therefore not engage in any further communications about this matter.

The Investigation

Scope of the case

5. On 23 February 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
6. During the course of the Commissioner's investigation the Council agreed to the release of information covered by parts 7 and 8 of the complainant's request. Therefore the focus of this decision notice is on the outstanding elements of the request, namely parts 1 – 6 and 9 – 12 and any procedural issues that may have arisen from the Council's handling of these parts.

Chronology

7. The Commissioner wrote to the complainant on 10 May 2010 to set out his understanding of the complaint. The complainant subsequently telephoned the Commissioner on 24 May 2010 to clarify the scope of this complaint.
8. In his email of 3 June 2010 the Commissioner asked the Council to set out, under the terms of the Act, what its specific position was in regards to each part of the request. This was received by the Commissioner on 11 June 2010.
9. The Commissioner presented his findings to the complainant by email on 18 June 2010. In an email later the same day, the complainant put forward further arguments to support his view that further information was held.
10. On 22 June 2010, the Commissioner telephoned the Council to seek clarification on specific parts of the request. Following the discussion, the Council emailed the complainant information satisfying parts 7 and 8 of his request.

Analysis

Procedural Matters

Is the requested information held by the public authority?

11. Section 1(1) of the Act 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"*

12. The complainant states that the information contained in the case notes provided by the Council do not directly answer his requests for information. Owing to what he considers to be the importance of the subject, the complainant has argued that it could be reasonably expected that additional, detailed information may be held. Having viewed the case notes provided, the Commissioner accepts that the information does not fulfil the complainant's request.

13. Where there is any disagreement about whether or not information is held by a public authority, the Commissioner has been instructed by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others and the Information Commissioner v the Environment Agency (EA/2006/0072)*.

14. In this case, the Tribunal indicated that the test to be applied was not one of certainty but rather is the civil standard of the balance of probabilities. Therefore, a decision will *"take into account the scope, quality, thoroughness and results of the searches"* carried out by the public authority as well as considering, where appropriate, any other reasons offered by the authority to explain why the information is not held.

15. As outlined in paragraph 14, in approaching this investigation, the Commissioner has not deemed it necessary to address each part of the request in turn. This is because, as each item refers to information of a similar nature and subject, the Commissioner considers it reasonable that, unless specified, the Council's submissions would apply equally to all.

16. The Commissioner understands that the decision to inspect the premises in question was made in response to a complaint submitted about the alleged mistreatment of animals at the site. The Council has stated that in this case, as with many other cases relating to animal welfare, the RSPCA had taken the lead; the Council only taking on a monitoring role.
17. To support his belief that additional information may be held by the authority, the complainant has highlighted the responsibility of the Council to comply with the requirements of the Animal Welfare Act 2006. This legislation is meant to enhance the protection of certain animals through the administration of areas including *"Licensing and registration"* and *"Enforcement powers"*.
18. In response, the Council has agreed that, where formal enforcement action was being pursued to protect animals in similar circumstances to those presented here, it would be subject to the provisions of the Animal Welfare Act. However, in this instance, the Council has confirmed that no formal action was considered and therefore no corresponding documentation was produced. In any event, the Council has informed the Commissioner that the legislation does not commit the authority to taking action but instead states that it 'may' do so. Traditionally, the RSPCA, rather than the Council, has been the driving force behind any legal proceedings and would therefore be the party responsible for accumulating detailed information relating to a case.
19. The Commissioner accepts the Council's explanations as to why it would not hold the information requested. However, for the avoidance of doubt, the Commissioner has questioned the Council on the extent of its searches for any relevant information.
20. The Council has clarified that it only has one medium for recording information relating to inspections, namely its APP database (an electronic records-management software system). In particular, the actions diary in APP – which constituted the case notes – represented the only information stored which would hold any information of the nature requested by the complainant. This is the only information the Council states is held. The Council has also confirmed that no evidence has been destroyed that would serve to answer any of the complainant's requests.
21. Taking into account the fact that the role of the Council was simply to monitor the inspection, and therefore the business reasons for holding information would be limited, the Commissioner does not find it unrealistic that any relevant information would be stored on the APP

database. The Commissioner is therefore satisfied that the direction and extent of the Council's searches have been appropriate.

22. In reaching his decision, the Commissioner has also borne in mind the following points raised by the complainant during the course of the investigation:
 - a) With regard to part 6 of his request, the failure of the Council to provide a copy of any document which notified the person in control of the land that an inspection was to take place.
 - b) Relating to part 12 of his request, the failure of the Council to provide details of the licensing agreement held by the person in control of the land to breed animals.
23. Referring to (a), the Council has confirmed that *"no appointment was made to visit the premises...Unannounced visits are preferred for enforcement."* The Commissioner considers that the Council response adequately explains why the Council is unable to furnish the information requested by the complainant. Although it does not have a direct bearing on the circumstances presented here, the Council has further confirmed that if such notification was to be given it would be more likely to be sent by the RSPCA than the Council.
24. Turning to (b), the Commissioner considers that the licensing agreement, if held, would not fall within the scope of the request. Instead, the Commissioner considers that the request itself asks for information on what happened at the inspection itself – specifically, whether the owner was questioned about the breeding of animals. There are no references to suggest, nor could the Council be reasonably be expected to infer, that by making the request the complainant wished to be provided with a copy of any licensing agreement held.
25. In view of this consideration, the Commissioner does not accept that the Council had a duty to confirm whether it held such an agreement or that, under section 16 of the Act, it had a duty to assist the complainant in clarifying the request. This is because the Commissioner is satisfied that there is only one objective reading of the request – which would not capture the licensing agreement – and therefore the duty under section 16 does not arise.

Conclusion

26. Based on the explanations offered by the Council, the Commissioner finds that, on the balance of probabilities, the Council does not hold information relating to parts 1 – 6 and 9 – 12 of the request.

Section 10 – time for compliance

27. Section 10(1) of the Act (the full wording of which is included in the legal annex) requires a public authority to comply with section 1(1)(a) – namely the duty to confirm whether requested information is held – within 20 working days of receipt of the request.
28. The Commissioner finds that, in respect of parts 1 – 6 and 9 – 12 of the request, the Council failed to inform the complainant that it did not hold the information within the statutory time-frame. The Council therefore breached section 10(1) of the Act in its processing of the request.

The Decision

29. The Commissioner's decision is that the public authority does not hold any further information that would be captured by parts 1 – 6 and 9 – 12 of the request.
30. However, the Council breached section 10(1) of the Act by failing to confirm or deny if the information requests in parts 1-6 and 9-12 of the request was held within 20 working days.

Steps Required

31. The Commissioner requires no steps to be taken.

Other matters

32. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Part VI of the section 45 Code of Practice (the "Code") makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. The Code recommends that such procedures, referred to as 'internal reviews', should encourage a prompt determination of the complaint.

Paragraph 39 of the Code clarifies that internal reviews should *'....provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue.'*

In this case, the public authority did not make the complainant aware of its internal complaints procedure in the event that he was dissatisfied with its response. In addition, the outcome of the public authority's review, as communicated to the complainant, was very limited and did not demonstrate that a full reconsideration of the factors had taken place. The Commissioner, therefore, advises that the public authority ensures that future internal reviews are carried out in accordance with the guidelines in the section 45 Code of Practice and communicated in full.

Right of Appeal

33. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 07 day of September 2010

Signed

**Rachael Cragg
Group Manager Complaints Resolution**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Right of Access

Section 1(1) provides 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.

Time for Compliance

Section 10(1) provides that –

Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

Duty to provide Advice and Assistance

Section 16(1) provides that –

It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.