

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 8 March 2011**

**Public Authority:** London Borough of Wandsworth  
**Address:** The Town Hall  
Wandsworth High Street  
London  
SW18 2PU

### Summary

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The complainant submitted a request to the London Borough of Wandsworth (the 'Council') concerning documents relating to the Trewint Street bridge over the River Wandle. The public authority stated that it had released many details since the correspondence began between the two parties on this issue in 1983. It further said that much of the information was not held or was a matter for the complainant to seek his own legal advice and was outside the scope of the Act. The Commissioner has decided that the authority has released all the information it holds on this matter and has therefore complied with section 1(1) of the Freedom of Information Act 2000 (FOIA). However, the Commissioner also found procedural breaches of section 10(1).

### The Commissioner's Role

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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.

### Background

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2. The complainant has been making enquiries concerning the bridge to the Council and other parties since 1983. An area of dispute has been the ownership of the bridge; the Land Registry has informed both parties in the intervening years that no owner is registered. The authority's one-off repair of the bridge, in 1983, was carried out

without prejudice to subsequent maintenance or ownership. The complainant believes that the bridge is in imminent danger and should be adopted by the authority. The latter has carried out occasional surveys from 1993 to the present to satisfy itself that it is still capable of providing access across the river. The bridge allows access to a travellers' site and an industrial estate.

## The Request

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3. On 13 August 2009 the complainant wrote to the Council and requested the following information about the reconstruction of the bridge in the early 1980s:

"...could you please let me know if the solicitor was trespassing when building the new bridge in Trewint Street and taking down the old bridge...

I would like to know if the same law applied then as it does now regarding trespass,

because the council said they couldn't do a Load Assessment to test the bridge without permission or the exercise of some specific power of entry or the owner could in theory bring an action against the council for trespass to their bridge/land and the director of technical services...this was so that the council could build a bridge as the old one was dangerous. They should have ensured they had special powers when they dismantled the old bridge. I would like to know, Did they have the special powers?"

4. On 9 September 2009 the complainant also submitted a further fourteen questions (referenced a to n) to the Council and these are detailed in paragraph 9 below.
5. On 16 September 2009 the Council responded to the requests of 13 August 2009. It stated that it had no knowledge of a solicitor being on the bridge; that the query involving trespass was a matter for legal advice and not of Freedom of Information; and that it did not believe it acted beyond its authority in repairing the bridge, and if special powers were needed, this would be a matter for legal advice sought by the complainant. This letter also referred the complainant to a letter sent to him by the Council on 27 July 1993 stating the nature of the one-off grant from the Department of the Environment that allowed the bridge repair in 1983, and that the complainant may wish to pursue his enquiries with that government department.

6. On 10 November 2009 the Council responded to the complainant's requests of 9 September 2009 and stated that it does not hold any of the requested information.
7. On 13 November 2009 the complainant wrote to the Council saying that he was unhappy with its responses of 16 September 2009 and 10 November 2009, and that he was writing back for an internal review as "I cannot appeal to the Information Commissioner until I have received a reply from yourselves".
8. On 20 November 2009 the authority wrote to the complainant, stating that his request was being treated as a Chief Executive level complaint.
9. On 8 February 2010 the authority wrote to the complainant in reply to the fourteen questions mentioned in paragraph 4. As established in the cases of i) *Day and the Department of Work & Pensions* and ii) *Fowler and Brighton & Hove City Council*, and in keeping with s.8 of the FOIA, the complainant's questions can be viewed as FoI requests. These are the questions followed by the public authority's answers:

a) "Under what provisions did Wandsworth Borough Council obtain power/authority to apply to undertake the work to the bridge, if they were not the owners of the bridge?"

"Paragraph 3 of the 'LGO document' provides a response."

b) "What authority/power did Wandsworth Borough Council have to undertake the work referred to in their letter dated 1<sup>st</sup> June 1993?"

"Paragraph 3 of the 'LGO document' provides a response."

c) "Please provide copy full file, including copies of all assessments, surveyors' reports, memos and copy letters linked to reference ES/HT3/RAC."

" The letter you refer to, reference ES/HT3/RAC, has already been provided to you. A copy of this letter and other documents was submitted by you to the Council by hand delivery to the offices of Kevin Power on 18<sup>th</sup> June 2009. Dalton Cenac in his letter of 23<sup>rd</sup> June 2006 reference DTS/EDS/HTS/DC confirms receipt of this information. I understand that you also have copies of the following documents referenced below. For ease of reference, I have included copies of these documents with my response: 2<sup>nd</sup> April 1993: letter from Chief Executive; 1<sup>st</sup> June 1993: letter from Head of Environmental Services; 27<sup>th</sup> July 1993: letter from Assistant Borough Engineer; 9<sup>th</sup> August 1993: land registry application for copies of register by VJ Box; 11<sup>th</sup> August 1993: response from Land Registry; 3<sup>rd</sup> September 1993: Memo from Civil Engineering section; 10<sup>th</sup>

September 1993: letter from Head of Environmental Services; 4<sup>th</sup> October 1993: memo from Director of Finance's office to Head of Environmental Services; 2<sup>nd</sup> November 1993: letter dated from Head of Environmental Services"

d) "Who instructed Bullen Partners consulting engineers to inspect the bridge in 1993. Please provide copy letter of instruction."  
"Paragraph 4 of the 'LGO document' provides a response. No information is held regarding a letter of instruction."

e) "How did Wandsworth Borough Council obtain 3<sup>rd</sup> party rights to undertake this work?"  
"No information is held by this authority."

f) "How or why did Wandsworth Borough Council assume the rights to under the works/apply for a grant to undertake the remedial work?"  
"Paragraph 3 of the 'LGO document' provides a response."

g) "Did the local authority provide any copies of conveyance/transfer details as to who the registered proprietor of the property was?"  
"Ownership of the bridge structure has not been established."

h) "Did the local authority undertake the remedial works as a result of the failure of the owner of the bridge to carry out/maintain the bridge?"  
"Paragraph 4 of the 'LGO document' provides a response."

i) "Had Wandsworth Borough Council commenced or warned the then owner that if they failed to undertake the works they, the local authority, would carry out the works and then seek recovery of any monies expended?"  
"Ownership of the bridge structure has not been established."

j) "Was the application made for funding granted, if so?"  
"Paragraph 3 and 4 of the 'LGO document' provides a response."

k) "What were the terms/conditions of the grant sought in 1993?"  
"No information is held."

l) "Who now has the authority/responsibility to undertake/repair/maintain the bridge?"  
"Paragraph 5 of the 'LGO document' provides a response."

m) "Have the local authority made or do they intend to make any applications to adopt the bridge as part of the public highway?"  
"Paragraphs 10 and 11 of the 'LGO document' provide a response."

- n) "Finally, do the local authority know who the owner of the bridge is?"
- "Paragraphs 7, 8 and 25(d) of the 'LGO document' provide a response regarding ownership. To date the Council has not received any information confirming ownership of the bridge."
10. The 'LGO document' referred to above is a point-by-point letter sent from the Council to the Local Government Ombudsman on 5 November 2008. This answers queries made by the Ombudsman in a letter to the Council of 26 August 2008, following the complainant raising the matter of the bridge with the Ombudsman. A copy of this letter was sent with the internal review. The letter goes on to sketch out the past correspondences between the parties since 1983 and states that the complainant is only using the FOIA to reopen old matters previously settled. The Council states that the complainant has made seven information requests on the matter. It then invites the complainant to refer the matter to the Commissioner, which, in fact, he had already done on 22 January 2010.

## **The Investigation**

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### **Scope of the case**

11. On 22 January 2010 the complainant contacted the Commissioner to complain about the way his requests for information had been handled. He stated that he had not received replies to any of the questions raised in his Freedom of Information request to the authority on 13 August 2009 or to questions sent to the authority on 9 September 2009. Taken together, the requests comprise seventeen questions. The authority maintains that it has dealt with all the issues raised, either in recent correspondence or during exchanges between the parties between 1983 and 2008. The Commissioner's scope of this case is determined to be whether the public authority has satisfied its duties relating to section 1 of the FOIA in the quality of its search for information and whether it has released all the information it held relevant to the requests.

### **Chronology**

12. On 8 February 2010 the Commissioner wrote to the Council to enquire about its response to the complainant's request for an internal review of 13 November 2009.

13. On 10 February 2010 the authority replied, enclosing the internal review outcome and a copy of the correspondence provided to the Local Government Ombudsman (referred to above) and the associated correspondence from 1993, detailed in the answer to point c) in paragraph 9 above. The review apologises for the lateness of the response but talks of the historical complexity of correspondence between the complainant and the authority and the fact that the complainant had not been specific in his review as to why he was dissatisfied with the authority's responses. To the complainant's original three questions it repeated the answers given previously, as detailed in paragraph 5 above. As shown in paragraph 9 above, the answers to the subsequent fourteen questions varied.
14. On 11 February 2010 the Commissioner wrote to the complainant, enclosing a copy of the internal review and asking him to outline in what way he remained dissatisfied with the authority's responses. In a subsequent telephone conversation with the Commissioner, the complainant explained he remained dissatisfied with the Council's responses.
15. On 15 February 2011 the Commissioner wrote to the Council and requested confirmation of the checks and searches it had made to establish that it did not hold recorded information falling within the scope of the request.
16. On 7 March 2011 the Council responded to the Commissioner and explained the searches it had undertaken to establish that it does not hold any further recorded information.

## **Analysis**

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### **Substantive Procedural Matters**

#### **Section 1 – information held by public authorities**

17. Section 1(1) of the Act provides that a person making a request for information to a public authority is entitled to be informed by the authority whether it holds the requested information and, if that is the case, to be provided with that information. The Commissioner has therefore considered whether the Council holds any information falling within the scope of the request further to that already provided to the complainant.

18. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency (EA/2006/0072)*. In this case the Tribunal indicated that the test for establishing whether information is held by a public authority is a balance of probabilities on the basis of the available evidence.
19. A great deal of correspondence has been exchanged between the parties on the matter over a number of years. The Commissioner has been provided with some of this correspondence.
20. By way of background, the Council has explained to the Commissioner that it has undertaken extensive research to attempt to establish and identify the owner of the bridge referred to in the request. This has included communications with the Land Registry, newspaper advertisements, and letters to all adjacent landowners. Despite these efforts, to date the Council has been unable to identify the owner of the bridge. The Council notes that it would not have undertaken this exercise if it already held information relating to the ownership of the bridge.
21. The Council has also confirmed to the Commissioner that, after making checks and searches of its current records and archives, it does not hold any further information falling within the scope of the requests.
22. The Council has explained that it undertook a comprehensive check of all letters, reports, emails, files, correspondence and archived records within the Department of Technical Services, where any relevant information would have been held. Specifically, it undertook these searches in the following sections of the department:
  - Engineering and Design Services - who have responsibilities relating to the Council's highway assets;
  - Planning Services - who have had direct contact relating to planning matters associated with the bridge;
  - Operational Services - who are responsible for maintaining highway structures; and
  - Environmental Services - who historically dealt with the Department of the Environment in relation to the bridge.
23. In order to provide further reasons as to why it does not hold the requested information, the Council has explained that the bridge in question is not owned by the Council and therefore it has had very



limited dealings regarding it. Furthermore, the work on the bridge which the complainant has referred to was carried out between approximately 1980 and 1983, and was carried out on an exceptional basis because of safety concerns. In view of its limited dealings with the bridge and the fact it does not own it, the Council believes it is reasonable that it does not hold the information the complainant has requested. The structure does not form part of its highway assets and does not carry highway for which the Council is responsible. Therefore it has no reason to hold further information about the bridge.

24. Nevertheless, the Council has explained that it has kept information about the bridge on record despite it not been a Council asset. As far as it is aware, no information held about the bridge has been destroyed. However, after making appropriate checks and searches, the Council is satisfied that it does not hold further information relating to the requests.
25. In view of the explanations provided about the checks and searches made by the Council, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold further information falling within the scope of the request further to that already provided to the complainant.

## **Procedural Requirements**

### **Section 10 – time for compliance**

26. Section 10(1) of the Act requires a public authority to respond to a request for information promptly and in any event within 20 working days.
27. The complainant submitted his second set of requests for information on 9 September 2009. However, the Council did not provide its response to these questions until 10 November 2009.
28. The Commissioner therefore finds that the Council breached section 10(1) of the Act in its handling of this request.



## The Decision

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29. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- The Council has provided the complainant with the information it holds falling within the scope of the requests.
30. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- In failing to respond to the requests of 9 September 2009 within 20 working days, the Council breached section 10(1).

## Steps Required

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31. The Commissioner requires no steps to be taken.

## Other matters

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32. In his good practice guide on internal reviews the Commissioner considers that a reasonable timeframe for completing an internal review is 20 working days from the date of the request for the review. While there may be exceptional circumstances where it may take longer, the Commissioner's view is that in no case should the total time taken exceed 40 working days. The review was requested on 13 November 2009 and the authority's answer was dated 8 February 2010. The review therefore took 55 working days, which exceeds the period recommended by the Commissioner.

## Right of Appeal

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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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 8<sup>th</sup> day of March 2011**

**Signed .....**

**Gerrard Tracey  
Principal Policy Adviser FOI  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### General 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.”

**Section 10(6)** provides that:

“In this section—(a) the day on which the public authority receives the request for information, or

(b) if later, the day on which it receives the information referred to in section 1(3); “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the [1971 c. 80.] Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”