

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2012

Public Authority: London Borough of Lewisham
Address: Town Hall
Catford Road
London
SE6 4RU

Decision (including any steps ordered)

1. The complainant has requested information about written policies, advice and information provided by the London Borough of Lewisham (the council) to schools about the recording and the provision of information since 1 January 2005. The council's response stated that it did not hold any information falling in the scope of the request. The complainant was not happy with this and made a complaint to the Information Commissioner.
2. During the course of the Commissioner's investigation, the council considered a different objective reading of the request and located information which it had not previously found. This was then provided to the complainant.
3. The Commissioner has determined that in initially failing to identify that information falling in the scope of the request was held, the council breached section 1(1)(a) of the FOIA. Further to this, in failing to provide the information within 20 working days, the council has breached section 1(1)(b) and section 10(1) of the FOIA. The Commissioner also considered section 16 but found that the council had not breached this section. The Commissioner requires no steps to be taken.

Request and response

4. On 29 July 2011 the Chief Executive of the council wrote to the complainant, stating that the council had advised schools in the summer

term of the requirement to issue publication schemes and had provided access to the ICO template for this purpose.

5. The complainant informed the Commissioner that he wanted the council to *"either make a formal statement of their revised position and explain why they cannot answer the FOI request or answer the request with a brief statement of the facts, which may be insufficient to substantiate their letter of 29th July to me about the FOIA."* The Commissioner therefore considers that the complainant made his subsequent request to the council in light of the comments made in the Chief Executive's letter of 29 July 2011.

6. On 2 August 2011, the complainant wrote to the council and requested information in the following terms:

"1) Please give me a list of all the written policies, information and advice issued by the council to Lewisham schools about the legal requirements of schools in the recording and the provision of information since 1 January 2005.

2) Please give me copies of the most recent written policies, information and advice issued by the council to Lewisham schools about the legal requirements of schools in the recording and the provision of information.

3) Please advise about the plans the council has to issue written policies, information and advice issued by the council to Lewisham schools about the legal requirements of schools in the recording and the provision of information.

4) Please advise how the council has ensured schools have fulfilled the legal requirements in the recording and the provision of information since 1 January 2005."

7. The council responded on 7 September 2011. It requested clarification of the request.

8. The complainant responded on the same day making the following clarified request:

"1) Narrowly, what information are schools (teaching staff and governors) legally required to record and provide for parents and pupils – how has Lewisham Council advised schools since January 2005?"

2) Broadly, what information are schools legally required to record and provide for organisations – how has Lewisham Council advised schools since January 2005?"

9. The council responded on 22 September 2011 stating that:

"The local authority has not had to give advice to governing bodies in this area as the Department stipulates what information should be in the prospectus; therefore we have only reminded them from time to time about producing a school prospectus."

The council also provided the complainant with a link to the Department for Education's guide to law for school governors and directed him to chapter 25 which contains advice on what information schools should provide and to whom.

10. Following an internal review the council wrote to the complainant on 3 November 2011. It upheld its original response and stated that it does not issue policies to schools about the legal requirements of schools in the recording and the provision of information.

Scope of the case

11. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
12. The complainant's correspondence with the Commissioner suggested that his request of 2 August 2011 was made in relation to the statements made in the Chief Executive's letter of 29 July 2011 regarding FOIA advice given to schools. The Commissioner therefore agreed with the complainant that the scope of his request was to determine whether the council holds any advice, information or guidance issued to schools since 1 January 2005 in relation to the statements made in the letter of 29 July 2011.
13. The Commissioner's investigation focused on whether the council's response was in line with the requirements of section 1 of the FOIA. He also considered whether the request was dealt with in a timely manner. Finally, he considered whether the council could have offered any advice and assistance in line with section 16 in order to provide the information that the complainant advised the Commissioner the request was designed to seek.

Reasons for decision

14. In order to consider whether the council has breached section 1(1) of the FOIA, the Commissioner must first consider whether the council's

interpretation of the clarified request was valid, and whether it should reasonably have considered another interpretation.

15. Section 16 of the FOIA states that it is the duty of the public authority to provide advice and assistance as far as it would be reasonable to expect it to do so.
16. Paragraphs 8 to 11 of the section 45 code of practice deal with clarifying the request. A public authority is entitled to ask for clarification of the request if it reasonably needs more information in order to identify and locate the information sought.
17. The council asked for clarification of the request on 7 September 2011. Specifically it asked the complainant to explain what he meant by 'the recording and provision of information', specifically what information was he referring to and to whom it would be provided. The complainant clarified his request in two parts; firstly, information schools are required to record and provide for parents and pupils, and secondly, information that schools are required to provide to organisations.
18. The Commissioner has considered whether the council's interpretation of the clarified request was an objective one, and therefore whether a further duty under section 16 arose to seek additional clarification of the request.
19. The Commissioner notes that the complainant had intended to find out whether the council had provided schools with advice about complying with the FOIA. The complainant stated in his clarified request that he wanted to know about how the council has advised schools about their legal requirements regarding the recording and provision of information since 1 January 2005. Since the FOIA came into force on 1 January 2005, the Commissioner sees the link as to why the complainant may have thought the council would have understood what information he sought. However, the complainant's apparent reluctance to clearly explain in his clarified request the fact that he wanted to know what advice had been provided to schools in relation to the FOIA, as referenced in the Chief Executive's letter to him of 27 July 2011, has led to the council taking a wider and more general interpretation of the request as it was presented.
20. During the course of the Commissioner's investigation, he asked the council to determine whether any information falling within the scope of the complainant's interpretation of his request was held. Namely guidance or advice provided to schools in the summer term of 2011 about the requirement to issue publication schemes under the FOIA. The council therefore located a letter and guidance that was provided to schools in the summer 2011 term about complying with the FOIA,

satisfying the Commissioner that the relevant searches had now been completed.

21. The Commissioner considers that the council's interpretation of the request was objective and that it was the only objective reading that it was aware of. As a result, no section 16 duty arises and so no breach of this section is found.
22. However, the Commissioner has also revisited the request as submitted by the requestor and finds that it *could* have been seen to have had an alternative reading. The Commissioner is of the view that the wording as presented could have been perceived to have covered all information provided by the council to schools within its area on the matter of the provision of information by schools, beyond the information governance issue it was interpreted as, . To that end, this presents a wider scope which then requires the Commissioner to consider whether the information that has since been provided could have been done so at the time of the request, because if it is found that the request can be objectively read in 2 or more ways then there will be a breach of section 1 to the extent that information relating to the complainant's intended alternative objective reading of the request has not been provided.
23. Section 1(1) of FOIA 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,

(b) if that is the case, to have that information communicated to him"
23. It should be noted that FOIA only offers the complainant the right to recorded information that is held at the date of the request. It does not present any obligation to answer questions or provide additional accountability where it does not hold relevant recorded information of that description.
24. As highlighted above, the Commissioner considers that in this case confusion was generated by the way in which the complainant had expressed his original request and provided his subsequent clarification. This led to the council misunderstanding the information that he sought. The council therefore failed to confirm that it held information falling within the scope of the request in line with section 1(1)(a) or communicate that information in line with section 1(1)(b).

25. However, the council remedied this misunderstanding during the course of the Commissioner's investigation by identifying and providing information that was held within the scope of the complainant's interpretation of the request, as detailed in paragraph 12 of this notice.

Procedural matters

26. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days and comply with its obligations found in section 1 of the Act (subject to a limited number of exceptions none of which are relevant in this case).
27. The council did not:
- a) Respond to the request within 20 working days; or
 - b) Comply with all of its obligations imposed by section 1(1) in the same timeframe.
28. It therefore breached section 10(1) of FOIA.
29. The Commissioner has used his discretion to require no remedial steps to be taken in this case, because there are no steps that can remedy the breach that have not already been taken.

Right of appeal

30. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

31. 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.
32. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF