

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 September 2015

**Public Authority:** London Borough of Newham

**Address:** Newham Dockside  
1000 Dockside Road  
London  
E16 2QU

#### Decision (including any steps ordered)

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1. The complainant has requested from London Borough of Newham (the "Council") a copy of a specific councillor's report which concerns the accounts in relation to the East Ham Campus.
2. The Council confirmed that it does hold the information but it does not hold the information on the Council's behalf.
3. The Commissioner's decision is that the Council does not hold the information requested for its own purposes. By virtue of section 3(2) of the FOIA, the Council is not required to disclose the information it holds. Therefore, the Commissioner does not require the Council to take any steps.

#### Request and response

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4. On 27 December 2015 the complainant wrote to the Council and requested information in the following terms:

*"The minute for item 14 of the agenda for the investment and accounts committee meeting held on December 15th, 2014 states in relation to the Statement of Accounts for 2013/14:*

*Councillor Gray [the councilor] commented that he had serious concerns around the accounts as he believed there were inaccuracies in particular in relation to The East Ham Campus. Councillor Gray stated that he had prepared a report on the matter which he would like the Investment and Accounts Committee to consider.*

*Would you please provide me with a copy of Councillor Gray's report?"*

5. For ease of reference, Councillor Gray is a councillor in the London Borough of Newham and he will be referred to as 'the councillor' throughout this decision notice.
6. The Council acknowledged the request on 8 January 2015 and it responded on 29 January 2015. It stated that the report had not been presented to the Investment and Accounts Committee. It explained that the councillor had announced at the meeting that he had prepared a report but the Council considered the information contained within the document to be the councillor's personal views and is not publicly available.
7. Following an internal review the Council wrote to the complainant on 21 May 2015. It maintained its position not to release the information and stated that *"the Council has not accepted the report as part of the Council's consideration and deliberation of issues relating to East Ham Campus"*. The Council considered the information to be not held as a document *"releasable"* under the FOIA and it directed the complainant to the owner of the document (the councillor) who would decide whether to release it to him.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 4 June 2015 to complain about the way his request for information had been handled.
9. The Commissioner will consider whether the Council was correct to determine that the information requested was not held for its own purposes and therefore falls outside the definition of information held for the purposes of the FOIA under section 3(2).

### **Reasons for decision**

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#### **Is the requested information held by the Council for the purposes of the FOIA?**

#### **Section 3(2) – information held by a public authority**

10. Section 1 of FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.

Section 3(2) sets out the criteria for establishing if information is held for the purposes of FOIA:

*"For the purposes of this Act, information is held by a public authority if –  
(a) it is held by the authority, otherwise than on behalf of another person,  
or*

*(b) it is held by another person on behalf of the authority"*

11. The Commissioner's guidance on Information held by a public authority for the purposes of the FOIA states that when a public authority holds information solely on behalf of another person it is not held for the purposes of the FOIA and that each case needs to be considered according to the specific circumstances.<sup>1</sup> Therefore, in this case the only circumstance in which information would not be held by the Council by virtue of section 3(2) would be where it is held only on behalf of the named individual, and not to any extent for the Council's own purposes.

### **The complainant's position**

12. The complainant argued that the Council's decision not to release the report prepared by the councillor relating to the East Ham Campus was wrong.
13. The complainant is of the view that the Council had declined his request for information on the grounds that the councillor's report was not considered by the committee and that the information it contains are his personal views. The complainant argued that the Council's reasons did not justify rejecting his request.
14. The complainant further argued that the Council's statement about how the committee had decided not to consider the report was, in his view, irrelevant. He added that the report exists and that the Council holds it.
15. The complainant argued that the councillor wrote his report in his capacity as councillor and as a member of the investment and accounts committee. The complainant believes that the information the report contains are not personal views but the views of an elected member of the Council.

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1148/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.pdf](https://ico.org.uk/media/for-organisations/documents/1148/information_held_by_a_public_authority_for_purposes_of_foia.pdf)

16. He added that the councillor's report is recorded information, held by the Council, and is therefore covered by the FOIA.

### **The Council's position**

17. The Council confirmed that it does hold the requested information on its systems and it explained that the councillor had left a copy of his report with the Committee Clerk following the meeting of the Investment and Accounts Committee meeting. The Council considered that under the FOIA the requested information is not "releasable."
18. The Commissioner asked the Council to clarify its statement "*not held as a document releasable under the FOIA*" The Council explained that as the report was produced by the councillor for private or political purposes, it considers that disclosure of this report is not covered by the FOIA. The Council added that it is not holding the information for its own purposes but it is just providing computing facilities.
19. The Council further explained that although the information was created by the councillor and held on the Council's premises and computer system, it does not consider that the Council holds the information on its own behalf. The Council clarified this and said that the information was not commissioned, accepted or considered as part of the decision making process.
20. The Council explained that the councillor was not commissioned to write the report and that he had decided to prepare the report himself. It added that he had brought a copy of his report to the meeting (the Investment and Accounts Committee) even though the 'East Ham Campus' was not specifically discussed by the committee. The Council said that the councillor had asked for his report to be considered during the meeting.
21. The Council also explained that the report is based on the councillor's opinions on the topic in question and that the contents had not been verified by the Council. Therefore, the Council said, the report may not reflect the true position relating to the East Ham Campus.
22. The Council stated that it advised the complainant that he could request a copy of the report from the councillor directly as the report is the property of the councillor. The Council also stated that it has no powers to stop the councillor if he chooses to release the information himself to the complainant but that it would clearly be information that he has produced himself and decided to release.

23. The Council considers that if it released the information it could be perceived as an acceptance of the contents of the paper. This report, it said, had not been verified by the relevant Council officers.
24. The Council stated that a report was produced by its Chief Executive on the issue of the East Ham Campus and that it is publicly available on the Council's website. However, the Council argued that the requested information was not considered to be part of the discussions of the Investment and Accounts Committee and therefore it is not part of the publicly available documents relating to its committee.

### **The Commissioner's view**

25. The Commissioner acknowledges the Council's confirmation that it does hold the information and he accepts that it is not holding the information for the Council's own purposes.
26. The Commissioner is satisfied with the Council's explanation that whilst the Council holds the information on its systems, the report is the property of the councillor. Therefore the information is not held for the purposes of the FOIA.
27. In addition, the Council has provided adequate explanations as to why it considers that disclosure of the report in question is not covered by the FOIA.
28. The Commissioner's decision is that the requested information is not subject to the duty to disclose recorded information under section 1(1)(a) of the FOIA by virtue of section 3(2)(a) where the information is only held on behalf of another person, in this case the councillor.

## Right of appeal

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29. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

30. 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.
31. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**