

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2021

Public Authority: London Borough of Hackney
Address: Town Hall
Mare Street
London
E8 1EA

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Hackney (the Council) seeking information about a facility used as part of its Family Learning Intervention Programme. The Council provided the complainant with a response to her request, initially withholding part of a relevant document. It subsequently provided the complainant with an unredacted version of this document and explained that it did not hold any further information falling within the scope of this request.
2. The Commissioner is satisfied that the Council does not hold any further information falling within the scope of the request. However, she has concluded that the Council breached section 10(1) of FOIA by not responding to the request within 20 working days and not disclosing all of the information falling the scope of the request within the same timeframe.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the Council on 10 July 2019:

'Please provide the following information in relation to Silver Trees, 113 Bagley Wood Road, Kennington, Oxford OX1 5NA (a facility owned and operated by Hackney Council for its Family Learning Intervention Programme):

(1) The date on which this facility commenced operations

(2) The total number of nights this facility has been occupied by Hackney families overnight between the date on which it commenced operations and 30th June 2019 (inclusive)

(3) The total number of Hackney families that have stayed at this facility between the date on which it commenced operations and 30th June 2019 (inclusive)

(4) The estimated (or, if available, actual) total annual running costs associated with this facility (by way of example, including - but not limited to - staffing costs, garden/ household maintenance costs, cleaning costs, utilities and other outgoings, family/ staff transport costs, provision of food/ beverages, recreational activity costs both on site and in the local vicinity, and other costs/ expenses associated with delivering the FLIP programme at Silver Trees)

(5) Copies of any cost/ benefit evaluation(s) undertaken with respect to this facility since it became operational.'

5. The Council responded to this request on 2 September 2019. It provided the information sought by the request. In response to question 5 it attached two documents but explained that a paragraph from a 'Budget Board Paper' (page 2, paragraph 2) had been removed as it was considered to be 'commercially sensitive'. No specific FOI exemption was cited.
6. The complainant contacted the Council on 16 September 2019 in order to ask for an internal review of this response. She challenged the Council's decision to redact information from the Budget Board Paper and questioned whether the Council was likely to hold any further information falling within the scope of her request.
7. The Council informed the complainant of the outcome of the internal review on 17 April 2020. The Council provided her with an unredacted

version of the Budget Board Paper. It also explained that the disclosed information was the only information in existence at the time of her request. However, the Council provided her with a copy of a presentation made at the 'CACH Budget Board' on 2 October 2019. It noted that this presentation predated her request, but it decided to release it to her as it was relevant to the subject matter of her request.

Scope of the case

8. The complainant initially contacted the Commissioner on 6 February 2020 about the Council's failure to complete the internal review in relation to her complaint.
9. Following the completion of the internal review, the complainant confirmed to the Commissioner that she remained unhappy with the Council's handling of her request. She asked the Commissioner to consider the following grounds of complaint:
 - She remained of the view that the Council is likely to hold further information falling within the scope of part 5 of her request. Specifically, she noted that page 10 of the presentation that had been provided to her referred to a 'new business case approved by DCS on 26/06/2019'. She argued that this business case document fell within the scope of her request given that it predated her request and this should have been provided to her by the Council.
 - She was also unhappy with the time taken by the Council to complete the internal review, and by implication, the time taken to provide her with an unredacted copy of the Budget Board Paper.
10. During the course of the Commissioner's investigation, the Council provided the complainant with a copy of the business case document referred to in the first bullet point above. The Council explained that the request had specifically sought the cost/benefit evaluations of the project whereas this document is a proposed business case for its development. The Council explained that it had therefore adopted the position that this document did not fall within the scope of the complainant's request. However, it acknowledged that some of the information contained in the business case may be pertinent to the complainant's interest in the Family Learning Intervention Programme (FLIP) and therefore it was happy to share this document with her.
11. In light of this disclosure this decision notice simply considers whether the Council holds any further documents falling within the scope of part 5 of the request and whether it has complied with the procedural requirements of FOIA in handling this request.

12. With regard to the time taken to complete the internal review, FOIA does not contain a statutory time limit for completing such reviews. However, the Commissioner has commented on this point in the Other Matters section at the end of this notice.

Reasons for decision

Does the Council hold any further information in the scope of the request?

13. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
14. With regard to whether the Council was likely to hold any further information falling within the scope of this request, the Commissioner asked the Council to explain the searches it had undertaken to locate information falling within the scope of this request and to explain why these searches would have been likely to locate all of the information in scope.
15. In response, the Council explained that as stated in the original FOI response, it had provided all cost/benefit analysis that was available at the time. It noted that it had even gone so far as to provide further documentation, namely the presentation made on 2 October 2019 at the internal review stage despite this not being covered by the time period to which the request pertained.
16. In terms of the searches, the Council explained that the Head of Service responsible for the FLIP project, the then Director of Children, Adults and Community Health Finance and the Director of the Children and Families Service were all consulted in the Council's efforts to ascertain what cost/benefit analysis of the project had been undertaken. The Council explained that no such documents would exist without being discussed and approved by all three of these post holders.
17. In light of the Council's response to the Commissioner, she is satisfied that on the balance of probabilities it does not hold any further information falling within the scope of this request. In reaching this conclusion the Commissioner has taken into account the fact that any cost/benefit analysis of the FLIP project falling within the scope of part 5 of the request would have been considered by the three individuals identified by the Council. In light of this, in the Commissioner's view it is

reasonable for the Council to argue that consulting these individuals in order to establish what information they held falling within the scope of the request represents a sufficient step to locate any and all relevant information.

Procedural requirements

18. Section 1(1) of FOIA explains that any individual submitting a request to a public authority is entitled, subject to the application of exemptions, to be informed whether that information is held, and if so, to be provided with that information.
19. Section 10(1) of FOIA requires a public authority to comply with the requirements of section 1(1) within 20 working days.
20. In the circumstances of this case, the Council received the complainant's request on 16 July 2019 but it did not respond to this request until 2 September 2019, outside of the 20 working days required by FOIA. Furthermore, the Council did not provide the complainant with all of the information falling within the scope of her request until 17 April 2020, which was the point at which it disclosed the unredacted version of the Budget Board Paper. Both of these delays represent a breach of section 10(1) of FOIA.

Other matters

21. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe.¹ In the Commissioner's view this means that most internal reviews should be completed within 20 working days, with only reviews in more complicated cases taking up to 40 working days. As is clear from the above chronology the Council took seven months to complete the internal review.
22. In its submissions to the Commissioner the Council accepted that this was an unacceptable time period for a review into an individual request and noted that an apology was expressed to the complainant in its eventual internal review response.
23. The Council explained that the complaint itself triggered a process review into current practice around how it handled internal reviews. The

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Council explained that as a result a new, customer-centric and user tested, approach was introduced and trialled. The Council explained that this approach allowed for internal reviews to be managed and dealt with by the Information & Knowledge Management team in the first instance without having to rely upon frontline services who have understandably had resources needed to be redirected as a result of the COVID-19 pandemic. The Commissioner welcomes this development and hopes that this results in the Council being in a position to ensure that internal reviews are completed within a reasonable timeframe in the future and the unacceptable delay in this case is not repeated.

Right of appeal

24. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.

26. 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

Jonathan Slee
Senior Case Officer
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