

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 September 2023

Public Authority: London Borough of Newham
Address: Town Hall
Barking Road
East Ham
London
E6 2RP

Decision (including any steps ordered)

1. The complainant has requested documentation relating to "Operation Autocue". The London Borough of Newham ("the Council") stated that it did not hold information within scope of the request.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, the Council does not hold information within scope of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 25 January 2023, the complainant wrote to the Council and requested information in the following terms:

"Newham council, and some of its managers, have been involved in something called "Operation Autocue". This has also involved the Met Police (Forest Gate) and Stoploansharks.co.uk (based in Birmingham both of which are nothing to do with Newham Council but are provided to enable you to identify the necessary documents.

Can you please provide documentation that shows that this investigation was approved and the estimated cost of it to Newham Council.

If these documents do not exist can you confirm that they do not and that no approval was given."

5. The Council responded on 22 February 2023. It stated that it had consulted its Trading Standards, Licensing, Enforcement and Our Newham Money Teams, who would be the most likely services within the Council to engage on such action, however none of the services consulted were aware of any involvement by the Council in the stated operation.
6. The complainant contacted the Council again on an unspecified date. In their request, the complainant provided the Council with copies of emails received and sent from the Council featuring the term "Operation Autocue" in the subject line. The complainant asked that the Council's IT team to conduct a search of all emails, including deleted emails, and consult with a named Council employee.
7. The Council responded on 1 March 2023. It stated that it did not hold a 'central record of all actions and activities currently being undertaken or have historically been undertaken locally by all services and a team across the Council from which we could instantly source this data'. The Council also stated that a Council wide email search would not normally be undertaken to retrieve the type of information requested, and to undertake such a search would be lengthy and time-consuming.
8. The Council stated that it would broaden its searches to include additional services and advised the complainant that they could request an internal review.
9. Following further exchanges between the complainant and the Council, on 24 April 2023 the Council wrote to the complainant to apologise for the delay in responding to their 'comeback enquiry'. The Council stated that, in light of the additional information provided by the complainant, it had extended its searches but had not located any information held in scope of the request. The Council advised the complainant that they could request an internal review.
10. On 24 April 2023 the complainant wrote to the Council to request an internal review. The complainant stated:

"You have already made available some of the data in response to a SAR

so there is no doubt that some of the data exists and that you are aware of it but have chosen not to supply it.”

11. Following an internal review the Council wrote to the complainant on 23 May 2023. It stated that it was maintaining its position that information within scope of the request is not held. In response to points raised by the complainant in their emails, the Council stated that the requested information may not have been exchanged via email therefore it was not appropriate to conduct a Council-wide email search.
12. The Council also stated that it did not consider it appropriate to approach individual named officers as suggested by the complainant, as to do so could be interpreted as “seeking individual opinion rather than fact or information held by the Council as a public authority.”
13. Finally, the Council stated that it was unable to confirm or deny the existence of the requested information and added that “adverse inference” should not be drawn that the authorisation as described in the request was not sought at the time:

“It is not appropriate to automatically assume that as we have not been able to locate the specific documents requested, that they did not exist or any required authorisation at that time was not agreed.”

Scope of the case

14. The complainant contacted the Commissioner on 6 July 2023 to complain about the way their request for information had been handled.
15. The Commissioner considers that the scope of his investigation is to determine whether, on the civil standard of the balance of probabilities, the Council holds information within scope of the request.

Reasons for decision

16. Section 1 of FOIA states that:

“Any person making a request for information to a public authority is entitled -

- (a) to be information 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.”

17. The Commissioner wrote to the Council to query the searches it had undertaken when responding to the request.
18. The Council explained that the request had been referred to Trading Standards as the most likely department to have been involved in such an operation. The Assistant Director of Licensing and Regulation confirmed no knowledge of the operation in question but suggested to contact the Our Newham Money service to find out whether it held any information within scope of the request. The Operations Manager of Our Newham Money confirmed that they had no knowledge of "Operation Autocue" and also checked with the Council's Enforcement team, who also confirmed that they were not aware of the investigation. The request was then referred to Community Safety where the Assistant Director of Community Safety confirmed no knowledge of the investigation, and also referred to HR who stated the same.
19. At this point, as none of the departments consulted had any knowledge of the investigation the Council decided it would not be appropriate or proportionate to conduct a Council wide email search.
20. The Council stated that, following notification of the Commissioner's investigation, it had reviewed the copies of emails provided by the complainant and confirmed that it did hold information relating to "Operation Autocue" and acknowledged that copies of emails had been disclosed as part of a SAR. The Council explained that the SAR had been processed for a separate individual.
21. The Council stated that it then searched all Exchange online mailboxes using the search terms "Operation Autocue" and "Op Auto Cue" between August 2020 to date, and had identified emails relating to "Operation Autocue". However, the Council stated that while it held copies of emails relating to "Operation Autocue", the emails did not contain information within scope of the request, which specifically asks for documentation showing that the investigation had been approved by the Council and the estimated costs associated:

"The data in the emails shows that this investigation was not being carried out by LBN but by another Local Authority who were simply asking LBN to assist with their investigation therefore there is no information held relating to approval from LBN or associated costs."
22. The Council did acknowledge that a universal check of Council email addresses should have been initiated across its network on receipt of the evidence submitted by the complainant, and apologised for this oversight.

The Commissioner's position

23. The Commissioner is satisfied that, on the civil standard of the balance of probabilities, the Council does not hold information within scope of the request.
24. He understands that the complainant is in possession of emails relating to "Operation Autocue", which were sent to and from Council email addresses and demonstrates that the Council were involved in the investigation. This fact has not been disputed by the Council. However he has not received any further evidence from the complainant to suggest that the Council either commissioned or approved the investigation, such that it would contradict the Council's position as outlined at paragraph 21 above. For this reason the Commissioner also takes the position that it would be unlikely that the Council would hold information on the costs incurred in undertaking the investigation.
25. The Commissioner also does not consider that the emails already in the complainant's possession fall within scope of their request.
26. The Commissioner is not persuaded that further searches would be likely to identify any other information within scope of the request. He does not therefore consider it reasonable or proportionate to require the Council to extend its searches in respect of the request. The Council has already outlined the business areas it consulted with in order to respond to the request and the Commissioner considers that the approach taken was reasonable.
27. For the reasons given above the Commissioner is satisfied that the Council does not hold information within scope of the request.

Right of appeal

28. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

29. 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.
30. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF