

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 December 2014

**Public Authority:** London Councils  
**Address:** 59½ Southwark Street  
London  
SE1 0AL

#### **Decision (including any steps ordered)**

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1. The complainant has requested various information from London Councils relating to the Parking on Private Land Appeals (POPLA) service which it provides under contract to the British Parking Association. London Councils has disclosed some of the information requested (with redactions under sections 40(2) and 43(2) of the FOIA) but withheld details of appeals from penalty charge notices (PCN) issued by ParkingEye on the basis that it does not hold this information for the purposes of the FOIA.
2. The Commissioner's decision is that London Councils does not hold the information relating to the ParkingEye appeals for the purposes of the FOIA and therefore he does not require any further steps to be taken.

#### **Background**

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3. The complainant made a similar request to the one dealt with by this Decision Notice in December 2013 when he asked London Councils for the number of appeals allowed by POPLA for PCNs issued by ParkingEye.
4. London Councils refused to provide this information on the basis that it did not hold it for the purposes of the FOIA and the Commissioner

upheld its refusal in his Decision Notice FS50537635<sup>1</sup> dated 27 August 2014.

## Request and response

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5. On 13 August 2014 the complainant wrote to both London Councils (LC) and POPLA requesting information in the following terms:

*'Please provide all records:-*

- 1) showing how many appeals ParkingEye has won and lost in calendar year 2014 to date and include the appeal reference number(s) and car park location. It would be useful if you could provide this in msft excel format.*
- 2) what is the average cost for disposing of an appeal in calendar year 2014 to date.*
- 3) provide a list of all the names of the assessors and list their relevant legal qualifications*
- 4) provide details of assessor rates of pay, I am not asking for names.*
- 5) provide copy of the contract with the BPA for the provision of POPLA.'*

6. LC responded on 9 September 2014. It stated that it was withholding the information detailed in question 1 of the request on the basis that it did not hold it for the purposes of the FOIA. However, it did provide some information on ParkingEye appeals allowed and refused by POPLA from October 2012 to March 2014 which it pointed out was publicly available in the Lead Adjudicator's annual reports<sup>2</sup>. In relation to question 2, LC stated that it did not hold the information in a recorded format. With regard to question 3, LC directed the complainant to the Lead Adjudicator's annual report which lists the assessors' names but withheld their relevant legal qualifications under section 40(2) of the

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<sup>1</sup> [https://ico.org.uk/~/media/documents/decisionnotices/2014/fs\\_50537635.pdf](https://ico.org.uk/~/media/documents/decisionnotices/2014/fs_50537635.pdf)

<sup>2</sup> <http://www.popla.org.uk/AnnualReport.htm>

FOIA. LC disclosed the pay band for assessors in response to question 4. In relation to question 5, LC disclosed a copy of its contract with the British Parking Association (BPA) with some redactions made under sections 40(2) and 43(2) of the FOIA.

7. On 9 September 2014 the complainant emailed LC and enquired whether he would also be receiving a response to his request from POPLA.
8. LC replied on 10 September 2014 and stated that its earlier response was made on behalf of POPLA which it added was 'not a public body for the purposes of the Freedom of Information Act'.
9. On 10 September 2014 the complaint requested an internal review specifically in relation to LC's statement that POPLA was not a public body for the purposes of the FOIA.
10. LC interpreted the complainant's internal review request as being an expression that his only dissatisfaction was in relation to its response to question 1 of his request.
11. Following an internal review LC wrote to the complainant on 23 October 2014. It reiterated that it did not hold the information falling within the scope of question 1 of his request for the purposes of the FOIA and pointed out that this argument was supported by the Commissioner in his earlier Decision Notice, FS50537635<sup>3</sup>, dated 27 August 2014. (See above). LC added that the information was held confidentially on behalf of the BPA and not for its own purposes.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 27 October 2014 to complain about the way his request for information had been handled.
  13. The Commissioner wrote to the complainant on 11 November 2014 and asked him to confirm that his only outstanding complaint was in relation to LC's response to question 1 of his request. The Commissioner also asked him whether he had appealed his Decision Notice FS50537635.
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<sup>3</sup> [https://ico.org.uk/~/media/documents/decisionnotices/2014/fs\\_50537635.pdf](https://ico.org.uk/~/media/documents/decisionnotices/2014/fs_50537635.pdf)

14. The complaint responded on 11 November 2014 and confirmed that he was happy for the Commissioner to restrict the scope of his complaint to LC's response to question 1 of his request. He also confirmed that he had not appealed the Decision Notice FS50537635.

### **Reasons for decision**

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15. The Commissioner will consider whether LC is correct to say that it does not hold the requested information for the purposes of FOIA.

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

16. Section 1 of the 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.
17. Section 3(2) provides –

“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.”
18. The Commissioner's position on the interpretation of “held” for the purposes of the FOIA is that when information is solely held by a public authority on behalf of another person, it is not held by the public authority for the purposes of the FOIA. However, the information will be held by that public authority for the purposes of the FOIA if it is holding the information for someone else, and also holding it to any extent for its own purposes.
19. LC explained that it has a contract with the BPA to carry out POPLA on its behalf. LC also confirmed that it is responsible for setting up the appeals process, including its administration. LC also employs and pays the staff that administers and hears the appeals, from monies provided under its contract with the BPA.
20. LC explained that there was a clause in the contract which clarified that information produced as a result of this contract was held by the BPA and not by LC and therefore the information in question was not subject to the FOIA. LC also explained that the information was subject to a duty of confidence; therefore if it was disclosed, it would constitute a breach of that confidence.

21. Furthermore, LC explained that the requested information was produced under the contract for the purposes of delivering the POPLA service and was therefore held solely by LC on behalf of the BPA, which is not subject to the FOIA.
22. LC also referred to the Decision Notice FS50537635 dated 27 August 2014 (see above) regarding a similar request to the present one where the Commissioner upheld its argument that information on appeals from PCNs issued by ParkingEye and dealt with by POPLA was not held by LC for the purposes of the FOIA.
23. The Commissioner has produced guidance on information held by public authorities for the purposes of the FOIA. In this guidance, the he points to factors that would indicate whether information would be held solely on behalf of another person, including:
  - the authority has no access to, use for, or interest in the information;
  - access to the information is controlled by the other person;
  - the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or
  - the authority is merely providing storage facilities, whether physical or electronic.
24. When deciding whether the requested information was "held" for the purposes of FOIA, the Commissioner also considered the case of the *University of Newcastle upon Tyne v the Information Commissioner and the British Union for the Abolition of Vivisection* [2011] UKUT 185 (AAC) 1 May 2011, ("BUAV"). This case looked at whether information contained in project licences issued under the *Animals (Scientific Procedures) Act 1986* was held by the University or by individual members of staff.
25. The Upper Tribunal accepted the First-tier tribunal's finding that "'hold' is an ordinary English word" and "is not used in some technical sense in the Act", but at the same time it "is not a purely physical concept and has to be understood with the purpose of the Act in mind". This means that information may be kept on an authority's premises (or even on its IT network) but not held by the authority for the purposes of the FOIA. To be considered as held, there has to be "*an appropriate connection* between the information and the authority"
26. The Commissioner also notes the First-tier tribunal (Information Rights) (the tribunal) decision in *Digby-Cameron v Information Commissioner* (EA/2008/0010, 16 October 2008). This concerned a request to a local authority for a transcript of a Coroner's hearing. Although the council

provided funding and administrative support for the Coroner's Service, the tribunal found that the council held the information solely on behalf of the Coroner. This was because the Coroner had sole control of the information, having a statutory authority (via the Coroner's Rules 1984) to determine who had access to it. The tribunal concluded that "*the decision whether or not to disclose information was for the Coroner, not the Council.*" The tribunal also pointed out that the "*ownership' of and control over this information lay both in fact and law with the Coroner*".

27. The Commissioner notes that in the present case, LC is a public authority which has chosen to tender for the contract to deliver POPLA on behalf of the BPA. As part of this service it provides administrative support which allows it to access, use and express an interest in the appeal statistics including the requested information. However, the Commissioner concludes that this is for the sole purpose of delivering the service to the BPA under its contract which requires it to (amongst other things) provide the BPA with statistics on a weekly basis of the number of appeals received and decisions reached. The Commissioner accepts that the control and use of this information is subject to the direction of the customer, namely, the BPA and that LC does not have access to this information for its own purposes.
28. LC explained that it holds the requested information confidentially on behalf of the BPA which the Commissioner believes is a reference to the terms of its contract which contains a confidentiality clause. The Commissioner has seen this contract and notes that it acknowledges that LC is subject to the requirements of the FOIA. He is therefore satisfied that the BPA was aware of this when it entered into the contract with LC. With regard to confidentiality clauses in contracts, the Commissioner considers that whilst public authorities can use confidentiality clauses to identify information that may be exempt, they should carefully consider the compatibility of such clauses with their obligations under the FOIA.
29. The Commissioner also considers that these clauses may help identify occasions where the other party to a contract should be consulted before disclosure. However, such clauses cannot prevent disclosure under the FOIA if the information is not confidential.
30. Although LC is providing storage facilities for the information as part of the POPLA, the Commissioner concludes that this is for the sole purpose of delivering its contractual obligations to the BPA and not for any purpose of its own.
31. Taking all of the above into account, the Commissioner considers that although LC holds the requested information and has access to it, it does so solely for the purpose of delivering POPLA under the terms of its

contract with the BPA and not for its own purpose or benefit. Accordingly, the Commissioner has concluded that LC does not hold the requested information by virtue of section 3(2)(a) of the FOIA.

## Right of appeal

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32. 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)

33. 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.
34. 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  
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