

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

### **Decision notice**

**Date:** 23 April 2024

**Public Authority:** London Borough of Southwark  
**Address:** PO Box 64529  
London  
SE1P 5LX

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

---

1. The complainant has requested information from the London Borough of Southwark (the Council), in relation to safety concerns the complainant had previously raised about a specific stretch of road. The Council advised that it does not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold information within the scope of the request.
3. The Commissioner does not require the Council to take any steps as a result of this decision.

## Request and response

---

4. On 1 November 2023, the complainant wrote to the Council highlighting a previous request in the following terms:

"I request the correspondence between Southwark Council, including its relevant departments, to the Landowner (or responsible party; Dulwich Hamlet football club?) for this section of road since I raised this with Southwark to address these serious safety issues (i.e. in regard to the asaid [sic] safety issues). The email chain below refers."

5. The Council responded on 6 December 2023 and stated:

"Unfortunately, we no longer have access to this information due to technical issues, we have tried to retrieve the information however it has not been possible."

6. The complainant requested an internal review on 6 December 2023 and stated the following arguments to support their request:

"I raised an issue of the dangerous arrangements of stub wooden posts and a bent metal post on you Report it website on 11 Feb 2023 (your ref: 10960067). (name redacted), your Highways Maintenance Manager, responded 28 Feb requesting further information, to which I responded the same day.

Following the above I did not receive any further correspondence. I then raised a FOI request on 01 Nov 2023. I received a response today that the information that I requested was not available due to 'technical issues'. I do not consider this to be satisfactory response.

I should remind you of my serious safety concerns that the presence of the stub wooden posts and the inclined metal post could result in a serious injury, especially as they are not easily visible in the dark. Also, they are on a busy school run route to several Dulwich schools. If this is not your highway I still expect Southwark to be addressing this issue with the land owners as it is a public right of way."

7. The Council responded on 11 December 2023 and upheld its original response stating that the information requested was not held.

## Reasons for decision

---

8. This reasoning covers whether the Council is correct when it says that it does not hold information within the scope of the request.

### The complainant's position

9. The complainant considers the Council should hold information within the scope of their request.
10. The complainant said that: "The authority (Southwark Council) has given the reason that it is unable to find the information I have requested 'due to technical issues'.

I am concerned that this Council is failing on a large scale to respond to FOI, and, in my instance, has not demonstrated suitable competence and compliance under the FOI Act."

### The Council's position

11. In its submissions to the Commissioner, the Council maintained its position that it does not hold any information within the scope of the request. It stated that searches were carried out using relevant terms such as "Dulwich Hamlet" and "Bollards" etc.
12. The Council explained that it has conducted searches of records of relevant officers and an extensive check of email records and shared drives for the staff who were working in that team. Any relevant information held would be confined to records relating to this department.
13. The Council also explained that although emails and requests may have been held, due to the Council retention policy and rollout of laptops during the pandemic, Microsoft 365 upgrade and appropriate IT deletion policies, information in scope of the request is not held.

### The Commissioner's position

14. The Commissioner notes that the complainant considers the Council should hold information within the scope of the request as they believe the information should have been communicated within the Council. However, the Commissioner is satisfied that the Council has carried out reasonable searches for information within the scope of the request. He also considers that when conducting its searches, the Council used appropriate and relevant search terms.

15. Furthermore, the Commissioner notes that the Council has stated that its retention schedule states that records relating to enquiries received in the Highways Maintenance team should be reviewed annually and weeded, as necessary.
16. The Commissioner is not required to prove beyond doubt that the Council do or do not hold information but can only make a decision based on the civil standard of the "balance of probabilities" that information within the scope of the request is more likely than not held.
17. Therefore, the Commissioner's decision is that on the balance of probabilities, the Council does not hold information within the scope of the request.

## Right of appeal

---

18. 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](mailto:grc@justice.gov.uk)

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

19. 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.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**