

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2024

Public Authority: London Borough of Barnet
Address: Hendon Town Hall
The Burroughs
London
NW4 4B

Decision (including any steps ordered)

1. The complainant has requested details of CCTV footage from specific dates. The above public authority ("the public authority") denied holding the information.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority has not complied with section 1(1) of FOIA because it has not considered whether the information was held on its behalf.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response, to the request, on the basis that any CCTV footage held by GLL is also held on behalf of the public authority.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 27 October 2023, the complainant wrote to the public authority and requested information in the following terms:

“My Freedom of Information Request is for the written information and details regarding the CCTV record for the reported drug use in the dangerous secluded alleyway behind the courts at New Barnet Leisure Centre Complex. The times and dates reported that both incidents must have been clearly recorded by the CCTV are:

4:45pm Thursday 17/8/23 – 2 men

6:15pm Monday 21/8/23 – 3 men – the CCTV would have clearly seen the crac [sic] pipe being passed around.”

6. The public authority responded on 23 November 2023. It stated that it did not hold the information as the CCTV cameras were operated by a third party. It upheld this position following an internal review.

Reasons for decision

7. When there is a dispute over the amount of information a public authority holds, the Commissioner must decide whether it is more likely than not that the public authority holds no further information. A more detailed explanation of the process can be found in the Commissioner’s [decision notice support materials](#).
8. When a public authority receives a request for information, it must consider not only whether it holds any information itself, but also whether any relevant information may be held, on its behalf, by any external third party it has dealings with.
9. Whether information is held on behalf of a public authority will depend on the degree to which the public authority access or influence the information and the connection between the information and the public authority’s functions.
10. The public authority explained that it owns the leisure centre – which was why it had been previously able to provide the complainant with plans showing the location and fields of view of each CCTV camera.
11. However, the public authority pointed out that the leisure centre complex was operated by a private company: Greenwich Leisure Limited (GLL). GLL was the data controller for all footage captured by the CCTV cameras.

12. During the course of his investigation, the Commissioner asked the public authority for a copy of its contract with GLL – or at least the parts of that contract covering CCTV and the use of personal information.
13. The public authority noted that a redacted version of the contract was [already in the public domain](#) – with the relevant section clearly visible.
14. The Commissioner notes that section 71 of the contract does indeed specify that GLL (and not the public authority) will be the “data controller” for the personal information it holds (which would include any personal information captured within CCTV footage). It may only carry out processing of that information where “reasonably required” and it must abide by the Commissioner’s guidance on the use of CCTV.
15. However, the Commissioner also notes that section 71.4 requires GLL to report, to the public authority, within two business days, any subject access request (when a person asks for their own personal information) it receives or any complaint relating to the public authority’s obligation under data protection legislation. Section 71.5 requires GLL to provide “full cooperation and assistance” to the public authority in relation to any request or complaint arising under data protection legislation and gives the public authority the right to require information from GLL for the purposes of dealing with such a request or complaint.
16. The Commissioner drew these specific clauses to the public authority’s attention. The public authority responded to say that the clauses relate:

“to any situation whereby the service provider is acting as a Data Processor on behalf of the council. It refers to requests GLL may receive should it be processing council data. Where GLL is the Data Controller, as in this case, individuals would have to raise Subject Access Requests with them.”
17. When asked about how the public authority would deal with a subject access request made for information held by GLL, the public authority responded that:

“Should the council receive a Subject Access Request for information being processed on its behalf by a third party, then the council would request data from that third party in order to comply with the request (if unavailable in shared systems). In this instance, GLL is the data controller, not the data processor, so this would not apply.”
18. The Commissioner notes that the public authority has claimed that these clauses only apply in specific scenarios, but there is nothing in the wording of the clauses, or the definitions that, in the Commissioner’s view, restricts the use of these clauses to any particular type of scenario.

19. It may well have been the **intent** of the parties that these clauses would only be used in particular circumstances but the **effect** of their wording is much broader.
20. In the Commissioner's view, if someone were to make a subject access request, to the public authority, for images of themselves captured by cameras on land owned by the public authority, there is nothing to prevent the public authority from relying on the terms of the contract to require GLL to provide that footage to it. The fact that the public authority might prefer to advise the requester to make their SAR directly to GLL is irrelevant if another process exists. If the information would be caught by a SAR, it would be held on the public authority's behalf for the purposes of FOIA.
21. The Commissioner also notes that Section 70.3.2.1 requires GLL to maintain a full record of "all incidents relating to health, safety and security which occur during the term of this agreement." GLL must be prepared to make such records available for inspection by the public authority and must provide copies to the public authority "as and when requested."
22. If incidents of drug-taking had been recorded on the premises (and the Commissioner offers no opinion about whether they have or have not), the public authority, as the site owner, would have been able to require access to the records held by GLL. In the Commissioner's view, those records would include any CCTV footage GLL held.
23. As the owner, the public authority has an interest in ensuring that the leisure centre site is being used for the purposes of leisure and is not playing host to criminal activity. That provides the connection between the information and the public authority's functions.
24. The Commissioner is therefore satisfied that this sort of information would be held, by GLL on behalf of the public authority – even if it were also held by GLL for its own purposes.
25. The public authority does not seem to have established whether GLL did or did not hold any relevant CCTV footage (or other records of a "security incident") at the point the request was received. Given that such information would have been held on its behalf, the Commissioner considers it more likely than not that the public authority failed to establish what information it held at the point it responded to the request. It therefore failed to comply with its duties under section 1(1) of FOIA.
26. The public authority must now issue a fresh response to the request.

27. Given the passage of time that has elapsed since the request was first responded to, the Commissioner accepts that any CCTV footage or related records that did previously exist may no longer be held by GLL. The Commissioner may accept a further "not held" response from the public authority – but only if it can demonstrate that it has made reasonable enquiries of GLL to establish what records are still held.

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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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