

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 October 2024

Public Authority: London Borough of Lambeth.
Address: Lambeth Town Hall
Brixton Hill
London
SW2 1RW

Decision (including any steps ordered)

1. The complainant has requested information from London Borough of Lambeth ("the council") relating to any policy it has on its officers entering private premises to issue fixed penalty fines for littering. The council said that no information is held by it.
2. The Commissioner's decision is that, on the balance of probabilities, the council was correct to say that no information is held by it for the purposes of section 1 of FOIA.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 11 September 2023, the complainant wrote to the council and requested information in the following terms:

“Subject of FOI request: The Lambeth Council policy on “Authorised officer[s] of the council” entering private premises uninvited to issue a fixed penalty notice (FPN) to a person who committed a Section 87 litter offence.

Scenario: An authorised officer of the council (AOC) saw someone (“the offender”), from a short distance away, commit a Section 87 offence and the offender then walked into private property. The AOC was on the other side of an A road and so took some 60 to 90 seconds or so to reach the site of the offence. For this scenario, it is not in dispute that the offence has been committed on a public highway. The offender was not aware of the presence of the AOC observing from a distance and there is no element by the offender of contrived retreat.

The AOC then enters that private premises without knocking on the door of that premises or waiting for any permission to enter that private premises. The AOC then walks some distance through that private premises to the rear of it and engages the offender about the offence, issuing a Section 87 FPN.

Question 1.

In the scenario described above, do you consider that your AOC has the legal powers to enter that private premises uninvited or without permission or acknowledgement of his presence to apprehend the offender.

Question 2.

If you do consider that your AOC has that power, where do you consider that power exists from, e.g. the Environmental Protection Act 1990, Police Reform Act 2002, common law or other power.

Question 3.

Has that power described specifically in this scenario ever been the subject of a challenge without legal action or a challenge that did involve legal action and what was the outcome.

Question 4.

Has the power ever been the subject of you seeking legal advice from lawyers who work for Lambeth Council or outwith the Council and what was the legal advice given.

Question 5.

Is the scenario of an AOC entering private premises without knocking on the door of that premises or waiting for any permission to enter that private premises to apprehend a Section 87 litter offender the subject of a policy of Lambeth Council.

Question 6.

Does the scenario detailed in Question 5 feature in the training of your AOCs. If so, what does that training detail by whatever means of training, whether written handouts, tutor speaking notes, educational notes, best practice advice, advice on legal issues, training videos, scenario discussions, role plays or other means of ensuring legal compliance or best practice."

5. The council responded on 18 December 2023. It said that no information is held by it falling within the scope of the request for the purposes of the Environmental Information Regulations 2004 ("the EIR").
6. Following an internal review, the council wrote to the complainant on 4 February 2024. It upheld its previous decision.

Scope of the case

7. The complainant contacted the Commissioner on 11 May 2024 to complain about the way their request for information had been handled.
8. During the course of the Commissioner's investigation, the council wrote to the complainant again on 21 August 2024. It amended its position to provide its response under FOIA, rather than under the EIR. However, it maintained its position that no relevant information is held by it for the purposes of section 1 of FOIA.
9. It also offered to provide assistance if any of the scenarios highlighted by the complainant related to specific incidents, and provided a link to information in relation to its ability to issue fixed penalty notices.
10. Whilst some of the parts of the request are questions rather than specific request for recorded information, following previous First-tier Tribunal decisions, where recorded information is held which can respond to a request, then this should be considered for disclosure.
11. The following decision notice therefore considers whether the council was correct to state that no information is held by it for the purposes of FOIA.

Reasons for decision

Section 1(1) – is further information held by the council

12. Section 1(1) of FOIA requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
13. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information/further information is held.
15. In such cases, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to search for relevant information, and will take into account any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

The complainant's position

16. The complainant has questioned whether the council's response (i.e., that no information is held by it) is correct.

The council's position

17. The council's position is that it does not have a policy in relation to the matters outlined by the complainant in his request. It therefore argues that it does not hold any information which can respond to the questions asked by the complainant in his request. It does not have such a policy in place, and therefore training materials etc would not be generated relating to this.
18. It confirmed that "officers in the relevant service area have reviewed the information request and confirm that no policy as requested by the Applicant is held."

19. It confirmed that its policies are normally held in a digital format. It said that it had therefore carried out searches on its intranet, using the keywords "FPN" and "s87", but that no policies falling within the scope of the request were found. This matches its position that it does not have such a policy in place.

The Commissioner's conclusion

20. The Commissioner has considered the arguments and evidence submitted by both parties.
21. Whilst the Commissioner recognises that the complainant considers that information will be held by the council falling within the scope of their request, the council has confirmed to the Commissioner that after carrying out adequate and appropriate searches it has been unable to locate any relevant information.
22. It has confirmed to the Commissioner that it does not have a policy of this nature in place. It therefore it considered that its searches would not locate such a policy, nor any training materials associated with such a policy in the first instance. Its searches confirmed that position.
23. The Commissioner notes the specific nature of the request and the questions asked by the complainant. He considers that the council's response that it does not hold such a policy, nor any training materials relating to such a policy, is persuasive.
24. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
25. On this basis the Commissioner has concluded that, on the balance of probabilities, no information falling within the scope of the complainant's request for information is held by the council.

Right of appeal

26. 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

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Ian Walley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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