

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

### **Decision notice**

**Date:** 23 October 2024

**Public Authority:** London Borough of Lambeth

**Address:** Town Hall  
Brixton Hill  
Lambeth  
SW2 1RW

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

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1. The complainant has requested from London Borough of Lambeth (the Council) information related to spending of £30,000 by the Council towards community improvement with regard to the redevelopment of Olive Morris House.
2. In the first instance the Council confirmed that it held the information within the scope of the request and responded by answering a question to then changing the response at a later stage.
3. The Commissioner's decision is that the Council has breached section 1 of FOIA through an incorrect application of it to the FOI request and section 10 by exceeding the time for its response.
4. The Commissioner does not require further steps.

#### **Request and response**

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5. On 18 December 2023, the complainant wrote to London Borough of Lambeth (the Council) and requested information in the following terms:

*"In regard to the redevelopment of Olive Morris House, local residents were repeatedly told that £30,000 would be provided for community improvements. Will Lambeth Council please inform me how that £30000 was spent?"*

6. The Council responded on 6 February 2024. It confirmed that it held the information within scope of the request and provided the following response:

*"The council and its development partner Muse previously agreed to set up a £30,000 Community Fund to be spent on items agreeing following a conversation between Ward Councillors and residents impacted by the construction of its Your New Town Hall project. The Community Fund was to be funded by equal contributions from the council and Muse."*

7. On 12 February 2024 the complainant requested an internal review of the response.

### **Scope of the case**

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8. Following lack of response to his request for an internal review, the complainant contacted the Commissioner on 21 March 2024 to complain about the way his request for information had been handled based on three grounds. Firstly, he was dissatisfied with the quality of the Council's response, namely that the response was irrelevant to the request. Secondly, the complainant criticised the Council for the length of time taken to respond his request and finally, he complained about the lack of the Council's response to his request for an internal review.
9. In the course of the Commissioner's investigation, the Council sent its revised response to the complainant on 26 August 2024.
10. Upon further communication, the complainant confirmed to the Commissioner that he remains dissatisfied with the way his request was handled by the Council, specifically the delay in responding to his request for information and response to his internal review request, as well as the quality and relevance of the information he received.
11. Having examined the evidence available to him in this case, the Commissioner concluded that the question whether the Council holds or has held more information at the time of the request is not in dispute.

12. However, the Commissioner considers that the scope of his investigation is to determine whether the Council responded in line with the FOIA requirements, specifically whether it correctly applied sections 1 and 10 of the act.
13. Also, the Commissioner decided to proceed with his assessment based on the FOIA legislation, as opposed to the Environmental Information Regulations (EIR), for the reason that the nature of the requested information and the response, in his view, were sufficient to do so in this case. However, the Commissioner comments further on the Council's lack of consideration to ensure an application of the correct regime in the 'Other matters' section of this decision notice.

## Reasons for decision

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### Section 1 – General right of access to information held by public authorities

14. Section 1 of FOIA states that: Any person making a request for information to a public authority is entitled–
  - (a) to be informed 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.
15. In this case the Council confirmed in its email to the complainant of 6 February 2024 that it held information within the scope of the request. It confirmed that:

*(...)“ the information requested is held by Lambeth Council. I have detailed below the information that is being released to you.”*
16. The Council then answered the question asked by the complainant in his request by providing information related to the subject of the request. It said:

*“The council and its development partner Muse previously agreed to set up a £30,000 Community Fund to be spent on items agreeing following a conversation between Ward Councillors and residents impacted by the construction of its Your New Town Hall project. The Community Fund was to be funded by equal contributions from the council and Muse.”*

17. It is not within the Commissioner's remit to comment on the accuracy of the information provided, which was part of the complaint raised by the complainant.
18. However, the Commissioner can and finds it necessary in cases such as this to assess whether public authorities meet their legal obligations through correct application of the legislation.
19. Based on the evidence available to him, the Commissioner considered that the nature of the response dated 6 February 2024 suggests that the information provided was recorded information already held by the Council but was given rather in the form of an explanation to assist the complainant, which, although helpful, does not fulfil the requirements of section 1.
20. Later, during the course of the Commissioner's investigation, the Council sent a revised response to the complainant by stating that:

*"I can advise that the £30,000 Community Fund remains unallocated and unspent."*
21. In light of this response, it appears evident that the Council did not hold the requested information in recorded form at the time of the request and, as it is the Commissioner's opinion, such should have been its response to the complainant's original request, followed, if so chosen by the Council, by any further advice to assist the complainant.
22. Consequently, the Commissioner finds that the Council breached section 1 of FOIA by incorrectly applying the legislation.

## **Procedural matters**

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### **Section 10 - Time for compliance with request**

23. Section 10(1) provides that a public authority must comply with section 1 promptly and in any event no later than the twentieth working day following the date of receipt of a request for information.
24. In this case the complainant made his original request for information to the Council on 18 December 2023 to which the Council did not respond until 6 February 2024.
25. Consequently, the Commissioner finds that the Council has breached its obligations under section 10(1) of FOIA as it failed to respond within the required period of twenty working days from the day of the request.

## Other matters

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### Internal review response – time limit

26. FOIA does not prescribe a time limit within which public authorities must complete internal reviews. However, the Commissioner's guidance<sup>1</sup> explains that an internal review should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances.
27. Indeed, there is no legal requirement for a public authority to have an internal review process in place under the FOIA regime (this is different from the EIR<sup>2</sup>), although it is recommended as good practice under the Section 45 Code of Practice<sup>3</sup> (Code of Practice) and most public authorities choose to do so. This also includes the Council in this case which offered an internal review to the complainant if he was dissatisfied with the Council response to his request for information.
28. It follows therefore that, when an internal review process is offered to the requesters, there is an expectation that the public authority will adhere to the recommendations outlined in the Code of Practice.
29. As part of his complaint, the complainant expressed dissatisfaction with the length of time taken by the Council to respond to his internal review request which he made on 12 February 2024.
30. In fact, the Council did not respond to the internal review request until 26 August 2024, following repeated communication from the Commissioner.
31. The Commissioner finds this excessive and wishes to remind the Council about the importance of the timely response to internal review requests. He also wishes to point out that he will consider complaints where an internal review is delayed or remains outstanding after 40 working days of it being requested.

### General compliance with legal obligations and engagement with the Commissioner

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<sup>1</sup> <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/#20>

<sup>2</sup> [The Environmental Information Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2004/1084/contents/part-1/section-1)

<sup>3</sup> [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/201809/26_CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926.pdf)

32. The Commissioner wishes to comment further on the Council's general compliance with FOIA / EIR and engagement with his office.
33. As part of his investigation, the Commissioner asked the Council a number of specific questions including seeking clarification about the correct regime that the request should be considered. Although the request for information was made under FOIA, its nature and the context could be potentially relevant to EIR. However, to assist with that assessment the Commissioner needed further information from the Council.
34. Whilst the Commissioner attempts to restrict the information he requires to that which is necessary to reach a decision, he expects public authorities to provide comprehensive answers to all of his questions and to provide the necessary evidence to back up any assertions.
35. The Commissioner finds it concerning that, despite the investigation letter and two chaser letters sent to the Council, the Council chose not to engage with the Commissioner. Albeit in the circumstances of this case the Commissioner was able to reach a determination on this complaint based on the internal review response which was issued during the course of his investigation.
36. It is of further concern that the Council did not give sufficient consideration to the requested information when it initially responded to it in February 2024 to be able to deal with it in a correct manner.
37. The above concerns will be logged and used by the Commissioner when considering the overall compliance of the Council.
38. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. This intelligence will be used and assessed in line with the Freedom of Information and Transparency regulatory manual 2023.<sup>4</sup>

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<sup>4</sup> [FOI and Transparency regulatory manual 2023](#)

## Right of appeal

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39. 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)

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**SK9 5AF**