

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 November 2024

Public Authority: London Borough of Wandsworth
Address: The Town Hall
Wandsworth High Street
London
SW18 2PU

Decision (including any steps ordered)

1. The complainant requested documents, guidelines, policies and procedures relevant to the Emerging Needs Pathway (ENP) from London Borough of Wandsworth (the council). The council provided some information in response to the request but said that it did not hold information in relation to some parts of the request.
2. The Commissioner's decision is that, on the balance of probabilities the council does not hold further information within the scope of the request and has therefore complied with section 1(1) of FOIA.
3. The Commissioner does not require the council to take any further steps in relation to this complaint

Request and response

4. On 18 January 2024 the complainant made the following request for information under the FOIA:

(...) "I would like to request the following information:

- *Guidelines that Emerging Needs Pathway in Wandsworth follows*
- *Internal and External policies and procedures that Emerging Needs Pathway in Wandsworth applies or that refer to Emerging Needs Pathway*

- *Any other external or internal documents that Emerging Needs Pathway uses or applies in its operations*
 - *Any documents that would present Organisation chart or split of responsibilities between various departments and sections of Child Services in Wandsworth*
 - *Policy and Guidelines (internal and external) that are followed by EHCNA team (Special Needs Assessment Service) in Wandsworth”.*
5. The council responded on 24 January 2024. It provided links to information in relation to parts one and two of the request. It denied holding any information with regard to part three and provided some explanation in relation to parts four and five.
 6. The complainant requested an internal review on 5 February 2024 as she was dissatisfied with the response received.
 7. The council responded on 15 February 2024 where it essentially confirmed its original position. It confirmed that it had provided all the information that the council held within the scope of the request.

Scope of the case

8. The complainant contacted the Commissioner on 8 April 2024 to complain about the way her request for information had been handled. Specifically, the complainant told the Commissioner that she disagreed that the council did not hold any more information that it already sent in response to the request for information.
9. As part of her complaint, the complainant was also dissatisfied with the fact that the council did not specify any exemptions.
10. Before specifying the scope of his investigation in relation to this case, the Commissioner finds it necessary to clarify the application of exemptions in the context of FOIA and specifically in the circumstances of this complaint.
11. Having examined the available evidence it does not appear that at any point the council refused to provide information within the scope of this request. Instead it stated that, in relation to some parts of the request, information is not held and in which case no exemption could be applied. Should the council have stated that it holds information within the scope of the request but refused to provide it, then the council would need to apply an appropriate exemption and explain the reasons for withholding information. This does not appear to be the case in the circumstances of this complaint.

12. Consequently, the Commissioner considers that the scope of his investigation is to determine whether, on the balance of probabilities, the council responded in line with the FOIA requirements, specifically whether it acted in accordance with section 1 of the act.

Reasons for decision

Section 1 – information held/not held

13. Section 1 of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to them.
14. The public authority is not obliged to create or acquire information in order to satisfy a request.
15. The Commissioner's role when determining whether a public authority has or has not complied with section 1(1) of FOIA, is limited to determining whether it is more likely than not that the public authority has provided all the recorded information it holds. The Commissioner is not required to challenge the accuracy or the adequacy of the recorded information a public authority does (or, in some cases, does not) hold. This is because the terms of FOIA only relate to the provision of information as it is recorded, regardless of its accuracy or validity.
16. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

17. The complainant disputed that the information she requested was not held. The complainant said:

"Wandsworth Council did not provide information I requested or did not transparently state that information exists or not; in some instances it claimed that information did not exist, when it is reasonable to believe that information exists. Wandsworth did not state any exemptions used."

18. The complainant contended that the information should be held to ensure transparency in the council's operations and how it spends public money. She told the Commissioner:

"Throughout communication with council I found them acting without transparency. They failed to clarify what is the internal split of responsibilities in that process within council, and where council's responsibility ends and Health department starts. They continually fail to provide information about relevant decisions taken by council to approve public spending for autism pathway (Emerging Needs Pathway and Wandsworth Autism Advisory Service). I asked whether relevant council's committees decisions regarding autism pathway I found on Wandsworth council's website apply, but I was told that these were changed and no new decision were provided. Note that these were also not shared with me in response to FOIA. I was advised that internal changes do not require approvals. It is unclear how public money are managed and who holds responsibilities as Wandsworth council seem to maintain that these are undocumented or documents were withheld."

The Council's position

19. As previously stated in paragraph 7 of this decision notice, the council provided links to information in relation to parts one and two of the request. It denied holding any information with regard to part three and provided some explanation in relation to parts four and five.
20. In response to the complainant's internal review request, the council reiterated that it provided all the information that it held within the scope of the original request. The council said that:

(...) "the Council's Childrens Services department have confirmed that we have already provided you with all the information that the Council holds relevant to your request regarding Emerging Needs Pathway in our previous responses to you dated 24/01/2024, 25/01/2024 and 29/01/2024."

It further added:

"We've clarified that the primary policy links to the NICE guidelines and also provided you with a link to the Health Authority, who remain responsible for clinical decision making regarding diagnosis and, who will be able to provide you with any documentation that they may hold. All other documentation relating to SEND and inclusion including SNAS can be found on the local offer and we provided you with this link in our original response."

21. In response to the Commissioner's investigation, the council confirmed that all the requested information that was held was provided to the complainant. The council further explained the searches it carried out in order to determine whether the requested information was held.
22. This involved consultations with the relevant teams and searches of shared databases as well as email communications by key words.
23. The council confirmed to the Commissioner that any information, if held, would be stored in electronic form and that no information within the scope of the request had been destroyed. It further confirmed that there was no business purpose for which the requested information would be held.

The Commissioner's findings

24. Before explaining his decision, the Commissioner finds it necessary to address the parts of the complaint concerning requests for clarification or comments which go beyond the Commissioner's remit.
25. FOIA can only look at information that is held by a public authority and there is no requirement for further information to be created to respond to a request for information. A public authority cannot provide information that it does not hold.
26. The Commissioner, in reaching his decision in this case, has taken account of the views put forward by the complainant. He has also considered the council's explanation provided in response to the Commissioner's enquiries and actions taken by the council to check whether it holds the requested information. The Commissioner has also had a sight of the communication exchange between the council and the complainant, including responses between 24 January 2024, 25 January 2024 and 29 January 2024 already mentioned in paragraph 22 of this decision notice.
27. He acknowledges the complainant's dissatisfaction with the responses from the council, and that she strongly considers that the information she requested ought to be held. However, while the complainant may believe information must be held, the Commissioner has found no evidence which would indicate that the council holds the requested information or has held it at the time of the request.
28. The Commissioner is satisfied that the council was consistent in its responses to the complainant and in its submissions to the Commissioner, including an explanation about the searches carried out, when saying that the part of the requested information was not held and that whatever information was held, it was provided to the complainant.

29. In respect of the complainant's dissatisfaction with the council's transparent confirmation whether requested information is held or not, the Commissioner notes that in relation to parts one and two the council provided links to information within the scope of the request and so by implication confirming that the information is held. In respect of part three of the request, the council stated that the information is not held. Finally, the council provided narrative response to parts four and five of the request, which it then, in further communication to the complainant further explained the meaning of the information also confirming that there is no other information that it can provide in response to these parts of the request.
30. The Commissioner is of the view that the council did effectively confirm whether the requested information is held or not in relation to each part of the request. However, he would advise the council that for clarity and avoidance of any doubt, as well as in line with the requirement of section 1(1)(a), public authorities should state clearly whether the requested information is held or not, before proceeding with disclosure.

Conclusion

31. Based on the above consideration, the Commissioner finds that, on the balance of probabilities, the council does not hold any further information beyond that already disclosed to the complainant and therefore it complied with the requirement of section 1 of FOIA.

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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.

Gosia Kostrzewa
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