

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2025

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

Decision (including any steps ordered)

1. The Commissioner's decision is that London Borough of Lambeth ('the Council') isn't entitled to rely on section 12(1) of FOIA (cost limit) to refuse to comply with the complainant's request for information about a consultation. However, the information it has identified that it does hold is exempt from disclosure under section 42(1) of FOIA, which concerns legal professional privilege.
2. The Council communicated some relevant information outside of the timescale required under section 10(1) of FOIA and its refusal notice didn't meet the requirements of section 17.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
 - Provide the complainant with a fresh response to their request that doesn't rely on section 12 of FOIA.
4. The Council must take this step 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. The complainant made the following information request to the Council on 14 June 2024:

“Documents and messages leading up to the decision announced on 12 June to extend the consultation on primary schools to 18 Aug. I particularly want to know, please, whether the Council considered the impact of prolonging uncertainty for families and staff.”
6. The Council responded on 22 July 2024. It advised that it had sought legal advice [about the consultation] and that this information is exempt information under section 42 of FOIA. The Council did, however, quote one line from the legal advice which was relevant to the request.
7. The Council invited the complainant to request an internal review if they weren't satisfied.
8. The complainant requested an internal review on 23 July 2024. The Council didn't provide one and the complainant submitted a complaint to the Commissioner on 6 October 2024.
9. On 28 January 2025, the Commissioner wrote to the Council for its submission, providing his customary 10 working day deadline for this.
10. The Commissioner didn't receive a submission and served an Information Notice on the Council under section 51 of FOIA, on 19 February 2025. This provided the Council a 30 calendar day deadline for providing its submission to the Commissioner.
11. On 26 February 2025, the Council provided the Commissioner with a response, but this addressed a series of questions that he hadn't asked. He referred the Council back to the Information Notice and his correspondence to it of 28 January 2025.
12. The Council didn't provide its submission within the Information Notice's statutory period and finally provided one on 28 March 2025.
13. The Council's poor engagement with the Commissioner in this case has been recorded for monitoring purposes.

Reasons for decision

14. In its final submission to the Commissioner, the Council advised it's now relying on section 12(1) of FOIA to refuse the request, in relation to any other relevant information it might hold.

15. This reasoning focusses on the Council's application of section 12(1) to the request.
16. In his published guidance on section 12, the Commissioner advises that, as a matter of good practice, a public authority should avoid providing the information found through any searches already conducted and then claiming section 12 for the remainder of the information. Instead, it should inform the applicant that section 12 is engaged for all of the request. The authority can then offer advice and assistance which should enable the applicant to make a fresh request, targeting the information which they are most interested in from that which could be provided within the limit.
17. However, due to the circumstances of this case the Commissioner will also consider the Council's application of section 42 of FOIA to the relevant information it identified that it does hold.
18. Finally, the Commissioner will consider procedural aspects of the Council's handling of the request and discuss other issues under 'Other matters.'

Section 12 – cost exceeds the appropriate limit

19. Under section 12(1) of FOIA, a public authority such as the Council may refuse to comply with a request for information if the cost of complying with it would exceed the appropriate limit of £450 or 18 hours work.
20. In their complaint to the Commissioner, the complainant said that they'd asked for information about the Council's decision to prolong a consultation.
21. The Commissioner confirmed to the Council what information was being sought, and he gave examples of where such information might be held. This might be, for example, in minutes of a Council meeting where the consultation and the effect of prolonging it was discussed, or in an email exchange between officers. The Commissioner instructed the Council to consider whether it might hold any other relevant information and to carry out appropriate searches.
22. In its final submission, the Council has said,

"I have asked a key officer involved in the Pupil Place Planning (PPP) consultation exercise to assist in identifying any additional information that may be held and suitable to share with the Applicant as per your email. An initial search of information held within his email box searching for PPP material from June 2024 to date which may contain relevant information. Search terms were "PPP" (as the subject matter acronym is typically used) for the period June 2024 to date, produced

in excess of 1700 items. We therefore consider that retrieval, extraction and review would exceed the limits set out at s12."

23. The dates between which the Council should be searching isn't from June 2024 to date. The Commissioner understands from his own research that the consultation on primary school places opened on 16 May 2024. The period covered by the request is therefore likely to be the limited number of months (or weeks) between May and 12 June 2024, when the Council will have become aware that the consultation period would need to be extended. Its figure of 1700 items is therefore totally irrelevant because it relates to a time period not covered by the request. And he's sceptical that the search term "PPP" couldn't be made more specific, for example by including, or also searching under "primary school."
24. In the Commissioner's view, this is a relatively straightforward request, and the Council has effectively now had three months to reconsider its response it. The Council hasn't presented a coherent case that section 12 is engaged, and the Commissioner therefore finds that it isn't.

Section 42 – legal professional privilege

25. Under section 42(1), information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.
26. The purpose of legal professional privilege (LPP) is to protect a person's ability to speak freely and frankly with their legal advisor in order to obtain appropriate legal advice. It recognises that individuals need to lay all the facts before their advisor so that the weaknesses and strengths of their position can be properly assessed. Therefore, LPP evolved to make sure communications between a lawyer and their client remain confidential.
27. There are two types of LPP – advice privilege and litigation privilege.
28. The Commissioner has viewed the information being withheld. It's email correspondence containing legal advice about the consultation in question, ie it's confidential communications between a legal team and client, which are covered by legal professional (advice) privilege.
29. The Commissioner agrees that the information can be categorised as legal advice that attracts LPP. The Council was therefore correct to apply section 42(1) of FOIA to it. However, section 42 is subject to the public interest; even though the information attracts LPP it may still be disclosed if there's sufficient public interest in its disclosure.

Public interest test

30. In its submission to the Commissioner, the Council has said that there's a strong public interest in maintaining the confidentiality of legal advice. This ensures that public authorities can seek and receive full and frank legal advice without the risk of disclosure. The Council has also said that protecting the confidentiality of legal advice supports effective decision-making by ensuring that legal risks are properly assessed and managed. It has concluded by stating that LPP is a fundamental principle of the legal system, and there is an inherent public interest in upholding this principle.
31. The Commissioner notes that First-tier Tribunal appeal cases have found that there needs to be "some clear, compelling and specific justification for disclosure... so as to outweigh the obvious interest in protecting communications between lawyer and client, which the client supposes to be confidential."
32. He acknowledges the complainant's interest in the consultation and why it was prolonged but in the Commissioner's view there are no special factors at play that outweigh the public interest in protecting communications between a lawyer and their client.
33. The Commissioner is satisfied that the balance of the public interest favours withholding it. LPP carries with it a very strong inherent protection due to the nature of the information that it covers, and the function that it plays in administering justice. Such arguments that there are for disclosure in this case aren't sufficiently strong to overturn that protection.
34. The Commissioner's decision is therefore that the Council is entitled to apply section 42(1) of FOIA to the withheld information and the public interest favours maintaining this exemption.

Procedural matters

35. Under section 10(1) of FOIA, a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
36. Under section 17(1) of FOIA, a public authority that's relying on an exemption to withhold information should provide the applicant with a refusal notice within the same timescale.

37. Under section 17(3), a public authority's refusal notice must detail the public interest considerations, where relevant.
38. The Council communicated some relevant information outside of section 10's statutory requirement and its refusal didn't comply with either of the section 17 requirements.

Other matters

39. As has been noted, in its response to the request the Council invited the complainant to request an internal review if they weren't satisfied. The complainant did, but the Council didn't provide a review – within the 20 working day recommendation, or at all. The Commissioner has also recorded this failing for monitoring purposes.
40. Finally, for the Council's future reference, as noted, the Commissioner has published [guidance on section 12 of FOIA](#) which he suggests the Council reviews. This details the sort of cogent evidence that the Commissioner would need, to find that this exemption is engaged.

Right of appeal

41. 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

42. 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.
43. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
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Wycliffe House
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