ico. Information Commissioner's Office

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **22 October 2014**

Public Authority: **Westminster City Council**
Address: **City Hall**
64 Victoria Street
London
SW1E 6QP

Decision (including any steps ordered)

1. The complainant has requested the council to disclose information relating to the "Churchill Gardens Regeneration Project". The complainant received the requested information but felt the council delayed sending this to him and overall was dissatisfied with how the council handled his request.

2. As the complainant received the requested information, the Commissioner's investigation has been limited to looking at how the council handled the request and whether the council breached any sections of the FOIA.

3. The relevant sections of the FOIA in this case are 1, 10 and 16. The Commissioner has reviewed how the council handled the request and he has found no procedural breaches of sections 1, 10 or 16 on this occasion.

4. He requires no further action to be taken.

Request and response

5. On 24 February 2014, the complainant wrote to council and requested information in the following terms:

1. "Who in the Council has instigated the "Churchill Gardens Regeneration Project" and on what grounds, and with what terms of engagement, including timescale?

2. What and who established a brief for the project and why have enquiries for this legitimate information been met with a total block?

3. Were any residents of Churchill Gardens Estate consulted prior to the council determining its decision as to what is deemed necessary – as indicated in the description for the South Area Forum.

4. What is the budget allocated for the contract.

5. Was the selection of external 'consultants' selected under competitive tender? and if not why not?

6. What is the Brief, and terms of reference given for appointed architects and landscape designers described as Levitt Bernstein?"

6. The complainant received no response from the council so he repeated the above request by letter on 18 March 2014.

7. The council responded on 26 March 2014. It provided a response to questions three and five, directed the complainant to a document named the 'Statement of Decision' which it believed answered questions one, two and six and informed the complainant that the budget allocation (question four) was exempt from disclosure under section 43(2) of the FOIA.

8. The complainant requested an internal review on 3 April 2014. The complainant only raised concerns about the council's response to question six. He stated that the 'Statement of Decision' was not the information he requested and could not understand why the council had failed to provide the information he required.

9. The council responded to this request for internal review on 14 May 2014. In respect of question six, it accepted that it could have made it more clear whether it holds the requested information or not in its initial response of 26 March 2014. The council confirmed that it does not hold a single brief or terms of reference document which was given to the architects following their appointment. It stated that is does hold a Statement of Decision from Cabinet Members and explained in its initial response that the information contained in this document provided a summary of the project brief.

10. The complainant wrote to the council again on 21 May 2014. He stated that he remained dissatisfied and found it difficult to believe the council does not hold the requested information.

11. The council responded on 13 June 2014. It stated that it was satisfied that its earlier response of 21 May 2014 appropriately summarised the council's position in respect of the information request he had made.

12. The complainant submitted a formal complaint to the council on 14 June 2014.

13. The council responded again on 27 June 2014. It terms of the complainant's request, it stated again that it does not hold a single brief that the council had issued to Levitt Bernstein following its appointment. It however enclosed a copy of the tender documentation which was sent to all consultants bidding for the role which was later given to Levitt Bernstein, believing this may assist the complainant.

Scope of the case

14. The complainant contacted the Commissioner on 27 June 2014 to complain about the way his request for information had been handled.

15. At this point the Commissioner understood that the complainant had still not received the information he requested and it was this issue he wished the Commissioner to pursue. However, at the beginning of the investigation the complainant clarified that he had now received the requested information. He confirmed that the information he required from the outset was the tender documentation he received from the council on 27 June 2014 and his complaint is the delay he experienced in receiving it. He believes the council deliberately withheld this from him for political reasons and it is this issue the complainant requires the Commissioner to consider.

16. The Commissioner explained to the complainant that there was no evidence that the council had deliberately withheld any recorded information it holds from him. The way the complainant's request was handled was due to how the council interpreted his request and the Commissioner will address this in more detail in the next section of this notice. The Commissioner informed the complainant that as he is now in receipt of the information he required and there is no evidence of any deliberate attempts to withhold recorded information from him, the Commissioner's investigation is limited to considering how the council handled the request and whether there have been any procedural breaches of the FOIA.

Reasons for decision

17. The Commissioner will first consider the council's interpretation of the request and whether this was an objective interpretation, as this will then determine whether there have been any procedural breaches of the FOIA in this case.

18. As stated above, this notice is considering question six of the complainant's request, which was worded as follows:

    "What is the Brief, and terms of reference given for appointed architects and landscape designers described as Levitt Bernstein?"

    The council interpreted this request to mean any recorded information it holds which details the brief, terms of reference or instructions given to the appointed architects, Levitt Bernstein, *after* its appointment to the role.

19. Given the wording used by the complainant in this element of the request, the Commissioner considers this is a reasonable interpretation and on the face of it there was not more than one objective interpretation or reading of this request (if there is more than one objective interpretation of a request, this then requires the public authority to provide advice and assistance under section 16 of the FOIA, which the Commissioner will address further on in the notice). The wording "given for appointed architects…" suggests the complainant required the instructions or terms of reference given to Levitt Bernstein once they were selected.

20. The tender documentation (which is what the complainant required) is the documentation that was supplied *prior* to Levitt Bernstein's appointment and to all interested consultants wishing to bid for the work. The Commissioner considers the council was correct to consider that this recorded information was not within the scope of the wording of the complainant's request. The council's response of 27 June 2014 stated it provided the tender documentation to try and be helpful and to try and satisfy the complainant's requirement not because it considered this recorded information to be within the scope of his request.

21. Turning now to whether there have been any procedural breaches of the FOIA, the Commissioner will first consider sections 1 and 10.

    Section 1(1) 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 the information communicated to him."

Section 10(1) of the FOIA states:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

22. Although the council stated that it breached section 1 of the FOIA in its internal review response, the Commissioner does not agree. The council's duty under section 1 is to confirm whether it holds the information specified in the request and to communicate it to the applicant (unless it is exempt from disclosure under one or more exemption cited in Part II of the FOIA).

23. The council interpreted the complainant's request to be any recorded information it holds which details the terms of reference, brief or instructions given to the appointed architects Levitt Bernstein. At the time it first responded to this request (26 March 2014) it considered that the document named 'Statement of Decision' contained information of the description specified in the request and provided a link to the complainant from which this information could be extracted. The Commissioner therefore considers the council met its duties under section 1 of the FOIA.

24. It only became apparent after this response was issued that the document was not what the complainant required. At the time it first responded, it interpreted the request in a particular way and this was reasonable and communicated what recorded information it held at this time which fell within this reasonable interpretation of the request.

25. As the tender documentation is not within the scope of the council's interpretation of the complainant's request and the Commissioner considers there is no other objective reading of it, there was no requirement to provide it to the complainant any sooner that it was and so there is no breach of section 1 of the FOIA in this respect.

26. Section 10 concerns the time taken to respond to the complainant's request. It is noted that the complainant first requested the information by letter on 24 February 2014. However, the council has confirmed that it did not receive this letter. It only became aware of the complainant's request when this was repeated on 18 March 2014.

27. As there is no evidence available to suggest that the complainant's letter of 24 February 2014 was received by the council, the twenty working day timeframe commences from the date the complainant's letter of 18 March 2014 was received by the council.

28. It is clear that the council responded to the request on 26 March 2014. This was well within the twenty working day timeframe prescribed by section 10 of the FOIA and so there is no procedural breach of the FOIA here.

29. Turning now to section 16 of the FOIA, this states:

    "It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."

30. If there is more than one objective reading of a request, a public authority should contact the applicant to seek further clarification as to exactly what information it is they require. It should also provide advice and assistance to the applicant where necessary to enable them to frame their request appropriately to reflect the information it is they require.

31. There are other ways a public authority is obliged to provide advice and assistance but these are not relevant to this case. Section 16 of the FOIA would only be a requirement in this case if it was decided that there is more than one objective reading of the complainant's request. The Commissioner has already decided that there is not (as outlined in paragraph 19 above) and so there was no requirement to provide advice and assistance in this case. It therefore follows that there also no breach of section 16 of the FOIA here.

Other matters

32. The Commissioner notes that the council took just over 20 working days to respond to the complainant's request for internal review. The complainant wrote to the council on 3 April 2014. If this was received by the council by 7 April 2014 (This is an estimate. The Commissioner does not know the exact date it was received but he assumes that a two working day timeframe from postage is reasonable.), it should have responded to this request for an internal review by 9 May 2014 (taking into account the three bank holidays during this period).

33. The Commissioner notes that the 20 working day timeframe can be increased up to a maximum of 40 working days. However, he only expects responses taking over 20 working days to be in those cases where there is voluminous recorded information or it relates to complex issues. Neither is relevant here.

34. Although there is no statutory time set out in the FOIA within which public authorities must complete a review, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review, in no case should the total time taken exceed 40 working days and only more than the initial 20 working days should be taken in complex or voluminous cases. Where it is apparent that determination of the complaint will take longer than the target time, the authority should inform the applicant and explain the reason for the delay. The Section 45 Code of Practice contains comprehensive information on how an internal review should be conducted.

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Right of appeal

35. 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: 0300 1234504
    Fax: 0870 739 5836
    Email: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.

37. 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 ……

Rachael Cragg
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