

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2014

Public Authority: London Borough of Tower Hamlets

Address: Town Hall
Mulberry Place
5 Clove Crescent
London
E14 2BG

Decision (including any steps ordered)

1. The complainant has requested the council to disclose copies of all correspondence between Lutfur Rahman, various staff within the council, any PR firms specifically dealing with Lutfur Rahman and the council's press office over a two months period.
2. The council responded providing a link to some relevant information on the subject. It then later issued a further response confirming that it wished to rely on sections 31, 36 and 40 of the FOIA.
3. During the Commissioner's investigation the council released the requested information, with a small amount of personal data redacted under section 40 of the FOIA. The complainant had no complaint about the application of section 40 of the FOIA, but felt that further recorded information should be held. He also wished the Commissioner to consider how the request had been handled and to record any procedural breaches of the FOIA.
4. The Commissioner has decided that on the balance of probabilities the council does not hold any further recorded information. He has however reviewed how the request was handled and found that the council breached sections 10(1), 17(1), 17(2) and 17(3) of the FOIA in this case.

Request and response

5. On 31 March 2014, the complainant wrote to the council and requested information in the following terms:
6. "Could you please provide me with the following information:
 - Copies of all correspondence between Lutfur Rahman/his office/immediate staff and 'Champollion' PR firm (or any other PR firm dealing with him specifically).
 - Copies of all correspondence between Lutfur Rahman/his office/immediate staff and the council press office over the last 2 months."
7. The council responded on 2 May 2014. It stated that it needed more time to consider the application of exemptions to the requested information. It advised the complainant that this request was being considered in conjunction with a number of others it had received on the same subject and the council would be responding to them all at the same time. The exemptions under consideration were section 12, 40, 42, 36 and 43 of the FOIA.
8. As the complainant received no response he chased the matter up on 3 June 2014.
9. He chased the matter again on 9 June 2014.
10. The council responded on 13 June 2014 advising the complainant that he should receive a response the following week.
11. The complainant contacted the council again on 16 June 2014 and asked for a specific date to be provided.
12. The council responded in part on 23 June 2014. It provided the complainant with a link to some information that had been released. In relation to all other relevant recorded information, it advised the complainant that it was still considering the application of sections 12, 40, 42, 43 and 36 of the FOIA to this request and others it had received on the same subject. The council stated that it required yet further time to consider how these exemptions may apply and the public interest test.
13. The complainant requested an internal review on 23 June 2014.

14. The council issued a further response on 8 July 2014. No further information was disclosed and the complainant was informed that the council wished to rely on sections 31, 36 and 40 of the FOIA.

Scope of the case

15. The complainant contacted the Commissioner on 4 July 2014 to complain about the way his request for information had been handled. At this time the council had still not issued a full refusal notice in accordance with section 17 of the FOIA. However, by the time the Commissioner had reviewed the complaint, this had been issued on 8 July 2014.
16. The complainant raised various concerns with the Commissioner. He was unhappy with the repeated delays he had experienced, the council's failure to issue a fully considered response to this request and subsequently the council's failure to acknowledge or even carry out the internal review he requested on 23 June 2014. He was also later unhappy that the council had applied sections 31, 36 and 40 of the FOIA to this request.
17. Albeit delayed (which will be addressed in more detail below), a full refusal notice was eventually issued on 8 July 2014 and prior to any involvement by the Commissioner. When the Commissioner first considered this complaint and another the complainant had made against the council highlighting very similar issues, it was noted that no internal review had been carried out. Due to the persistent delays and the overall approach the council had taken with this request and others, the Commissioner decided to accept the complaint for formal consideration prior to the council's internal review procedure being completed.
18. During the Commissioner's investigation the council confirmed that the following information had been identified as falling within the scope of the complainant's request:
 - Emails of 10 February 2014 at 15:53, 15:58 and 16:36; and
 - a table with four headings – "Mayor's Priority", "Location", "Guests" and "Comments".

This information was then later released to the complainant with personal data redacted under sections 40 of the FOIA. Reliance upon sections 31 and 36 of the FOIA was withdrawn.

19. The complainant confirmed to the Commissioner that he had no complaint about the application of section 40 of the FOIA but remained dissatisfied that the council did not hold further correspondence to that listed above. He believed further correspondence should be held and requested the Commissioner to consider this issue further and any procedural breaches of the FOIA.
20. The Commissioner's investigation then focussed on these remaining issues. The remainder of this notice will explain the decision the Commissioner has reached on the complainant's outstanding concerns.

Reasons for decision

Is further recorded information held?

21. When the complainant was advised of the recorded information falling within the scope of this request (listed in paragraph 18 above) he questioned whether adequate searches had been undertaken by the council. He explained his past experiences with the council, its general approach to the handling of these requests and confirmed that he believed more correspondence between Lutfur Rahman and others stated in his request would be held. He also questioned whether the council had interpreted his request too narrowly.
22. The Commissioner made some enquiries to the council with regards to its interpretation of the request and the searches it had undertaken. The council confirmed that it interpreted the request and therefore the information the complainant required in the same way as the Commissioner and in line with the complainant's stated intentions. It explained that it understood the complainant required copies of all correspondence between Lutfur Rahman, his office, immediate staff, any PR firm dealing with Lutfur Rahman specifically and the council's press office over a two month period. The council confirmed that all relevant sources were checked thoroughly and again at the request of the Commissioner, as was the press office, any association with PR firms and relevant staff.
23. The council confirmed that it holds no further recorded information falling within the scope of this request. It suggested that it possibly holds correspondence of the nature specified which involves other staff members or other departments and other time periods but no further recorded information within the realms of the complainant's request.
24. The Commissioner is satisfied that on the balance of probabilities the council does not hold any further recorded information to that identified

in paragraph 18 above. He therefore requires no further action to be taken.

Procedural breaches

25. Section 10 of the FOIA states that a public authority must comply with its obligations under section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
26. 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 that information communicated to him.
27. It is apparent in this case that the council failed to comply with its duties set out in section 1(1) of the FOIA within twenty working days of the receipt of the complainant's request. The request was made on 31 March 2014 and the partial response, which provided a link to the complainant to some relevant information (therefore the council's compliance with section 1(1)(b)) was not issued until 23 June 2014. The Commissioner therefore finds the council in breach of section 10(1) of the FOIA
28. Section 17(1) states that a public authority which is to any extent relying on a claim that information is exempt information must, within the timeframe for complying with section 1(1) give the applicant a notice which –
 - (a) states that fact;
 - (b) specifies the exemption in question;
 - (c) states (if that would not otherwise be apparent) why the exemption applies.
29. Section 17(2) also states that if by the time when the notice under subsection (1) is to be given to the applicant, the public authority has not yet reached a decision as to the application of subsection 1(b) or (2)(b) of section 2 (the effect of the exemptions cited in Part II of the FOIA), the public authority must inform the applicant that this is the case and provide an estimate of the date by which the authority expects that such a decision will have been reached.
30. In addition section 17(3) states that if a public authority has claimed an exemption and extended the time for compliance in order to consider

the public interest test it must inform the applicant within a reasonable amount of time of its decision either in the notice under subsection (1) or in a separate notice.

31. In this case the council failed to issue its partial refusal notice within twenty working days of the receipt of the complainant's request and so breached section 17(1) of the FOIA. The request was sent by email on 31 March 2014 and so would have been received the same day. The council however failed to issue its partial refusal notice until 2 May 2014; 21 working days after the request was received.
32. The council also breached sections 17(2) and 17(3) of the FOIA. Section 17(2) requires a public authority to inform the applicant at the twenty working day timeframe that it requires additional time to consider the public interest test. The FOIA stipulates that the public authority must provide an estimate of the date by which it expects to have reached a decision.
33. It is apparent in this case that although the council informed the complainant that it required additional time to consider the public interest test, it did not provide an estimated date by which it expected to have completed this task. Instead the council informed the complainant that it would be completed 'as soon as possible' and this resulted in the complainant having to chase the council on three occasions for its response. The Commissioner therefore considers that the council breached section 17(2) of the FOIA in this case.
34. The Commissioner also considers the council took an excessive amount of time to consider the public interest test. He considers a 'reasonable amount of time' to equate to twenty working days. However, in this particular case the council took over nine weeks to complete this task. The Commissioner considers such delays to be clearly excessive and therefore in breach of section 17(3) of the FOIA.

Other matters

35. As stated above, the Commissioner decided to accept this complaint for full investigation prior to the council completing its internal review procedure for this request as a result of the delays the complainant had already suffered. However, the Commissioner would like to take this opportunity to remind the council of its obligations under the section 45 Code of Practice.
36. 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, and in no case should the total time taken exceed 40 working days. 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.

Right of appeal

37. 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

38. 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.
39. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF