

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

### **Decision notice**

**Date:** 12 November 2014

**Public Authority:** London Borough of Tower Hamlets

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

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

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1. The complainant has requested from the London Borough of Tower Hamlets ("the Council") information relating to the declaration of election results, the storage of ballot boxes and suspected fraudulent ballot papers.
2. After investigation, the Information Commissioner has found that the information sought by the complainant is not held by the Council for the purposes of FOIA. The Commissioner's decision is that the Council is entitled to rely on section 3(2)(a) of the FOIA.
3. The Commissioner requires the public authority to take no steps.

### **Request and response**

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4. The complainant wrote to the Council and made three information requests 2 June 2014, 2 July 2014 and 8 July 2014. These are set out in Annex A.
5. The Council responded to each request individually. It stated that

*"The Freedom of Information Act 2000 does not list any person appointed under the Representation of People Act 1983. The Electoral Registration Officer, Returning Officer and any other person appointed*

*under the Representation of the People Act are not subject to the provisions of the Freedom of Information Act.*

*The information that you request falls under the remit of the Returning Officer, and although relevant data may be held on Council managed recording systems, it is not data subject to the FOI Act.*

*This response therefore constitutes a refusal under the FOI Act”.*

6. Upon receipt of its response, the complainant asked the Council to conduct an internal review. The Council dealt with all three requests under the same internal review which was sent to the complainant on 11 August 2014. It upheld its previous decision.

## **Scope of the case**

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7. The Commissioner accepted a complaint from the complainant on 11 September 2014. The complainant specifically complained about the way his request for information had been handled.
8. The Commissioner has had to consider whether the Council was correct to determine that the information requested was not held for its own purposes and therefore falls outside the definition of information held for the purposes of FOIA under section 3(2).

## **Reasons for decision**

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### **Is the requested information held by the Council for the purposes of the FOIA?**

#### **Section 3(2) – information held by a public authority**

9. Section 1 of FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.
10. Section 3(2) sets out the criteria for establishing if information is held for the purposes of FOIA:

*“For the purposes of this Act, information is held by a public authority if*  
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- (a) it is held by the authority, otherwise than on behalf of another person, or*

*(b) it is held by another person on behalf of the authority"*

11. The Commissioner interprets the phrase "*otherwise than on behalf of another person*" to mean that a public authority holds information for the purposes of the FOIA if it is held to any extent for its own purposes. Therefore, in this case the only circumstance in which information would not be held by the Council by virtue of section 3(2) would be where it is held only on behalf of the Returning Officer, and not to any extent for the Council's own purposes.

### **The Council's position**

12. The Council confirmed that in relation to each request it would not have any reason to deal with the information. It further confirmed that the requested information relates solely to the powers and duties of the Returning Officer and it is not a Council Function. It stated that should the information be held, the Council has no reason to hold the requested information for its own purposes.
13. The Council explained that although relevant data may be held on the Council's managed system, the information is not held for the Council's own purposes and therefore it is not data subject to the FOIA.

### **The Commissioner's view**

14. The Commissioner must note that a Returning Officer is not a public authority subject to FOIA. Therefore information produced/received by the Returning Officer is out of scope of FOIA.
15. However if the information is held by the Returning Officer, it is possible that it can also be held by the Council<sup>1</sup>. The question is therefore whether the Council has any reason to hold the requested information for its own purposes.
16. As set out at paragraphs 12 and 13, the Council has explained that if the information was held, it is not held for the Council's own purposes. The Commissioner also acknowledges that the Council has confirmed that the requested information relates solely to the powers and duties of the Returning Officer.

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<sup>1</sup> [http://ico.org.uk/~media/documents/decisionnotices/2012/fs\\_50416752.ashx](http://ico.org.uk/~media/documents/decisionnotices/2012/fs_50416752.ashx)

17. The Commissioner has decided that if the information was held, the Council does not hold the information for its own purposes. In coming to this conclusion, the Commissioner has referred to his own guidance<sup>2</sup> which states the following:

*"We recognise that the offices of the Returning Officer and of the Electoral Registration Officer are separate to the functions of local authorities. Information held by a local authority on behalf of these two officers is not currently covered by the Freedom of Information Act".*

18. The Commissioner is satisfied that the information requested relates solely to the powers and the duties of the Returning Officer and is consequently not held by the Council for the purposes of FOIA.

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[http://ico.org.uk/for\\_organisations/freedom\\_of\\_information/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/definition\\_document\\_local\\_authorities.pdf](http://ico.org.uk/for_organisations/freedom_of_information/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/definition_document_local_authorities.pdf)

## Right of appeal

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19. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. 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.
21. 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**

## **Annex A**

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### **Request made on 2 June 2014**

- "1. At what time did the Returning Officer declare the results of the European, Mayoral and local council elections?*
- 2. When was it originally planned to make these declarations?*
- 3. What were the reasons for the delays?*
- 4. If caused by disputes about the number of votes cast etc. what were these disputes, who made the complaints and how were they resolved?*
- 5. What other reasons were there for the delays?*
- 6. Were any elected council figures allowed inside the counting staff areas, if so, whom?*
- 7. were there any complaints made about candidates or their agents or political parties interfering with ballot boxes or papers in the counting hall?*
- 8. What rules did the Returning Officer issues or is bound by law by concerning handling of the ballot papers in the ballot counting hall?*
- 9. Were these fully complied with?"*

### **Request made on 2 July 2014**

- "1. What records does LBTH have on the storage of ballot boxes after the 22<sup>nd</sup> May 2014 elections?*
- 2. What do those records show about the whereabouts of ballot boxes after the closes of polls on 22<sup>nd</sup> May 2014?*
- 3. What do those records show about the exact whereabouts of the ballot boxes and ballot papers at Mulberry. Close or elsewhere?*
- 4. Why is LBTH ignoring the advice of the Electoral Commissioner concerning Returning Officers complying with Freedom of Information?"*

### **Request made on 8 July 2014**

- "1. How many suspected fraudulent ballot papers were identified by the Returning Officer, his staff or other participants in the elections of 22<sup>nd</sup> May 2014?*

*2. How many such suspected fraudulent papers were (a) deemed by the RO to be valid and (b) referred to the police and (c) not include in the count but not referred to the police?*

*2. How many suspected fraudulent ballot papers were there in the Mayoral Elections, how many were referred to the police, how many accepted as valid and how many not accepted as valid and not referred to the police?*

*3. How many of the suspected fraudulent ballot papers were (a) postal ballot papers and how many (b) ordinary ballot papers and (c) others e.g. proxy votes?"*