

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 April 2016

Public Authority: London Borough of Ealing
Address: Perceval House 5NE
14-16 Uxbridge Road
Ealing
W5 2HL

Decision (including and steps ordered)

1. The complainant has requested from the London Borough of Ealing various information concerning an application for a sexual entertainment venue licence.
2. To date the London Borough of Ealing has not provided a response to the complainant under the FOIA.
3. The Commissioner's decision is that the London Borough of Ealing has breached sections 1 and 10 of the FOIA by failing to respond to the complainant's request within 20 working days.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation;
 - Respond to the complainant's request dated 30 October 2015 under the FOIA.
5. The public authority must take these steps within 35 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

6. On 30 October 2015 the complainant wrote to the London Borough of Ealing (the Council) and requested information in the following terms:

"Below is a request for information under Part 1 of The Freedom of Information Act 2000.

Background

This request relates to an application for a sexual entertainment venue (SEV) licence submitted to the London Borough of Ealing ("Ealing Council") by Craig Robert Field, Director, Blaze's Club Limited. The application, which was dated 20th October 2014, related to premises referred to in the application as "Blaze's Gentleman's Club", 620 Western Avenue, Acton W3 0TE.

As a number of objections were received in response to the application, Ealing Council arranged for the application to be heard at a meeting of its Licensing Sub Committee on 28th January 2015. At that meeting, which was open to the public, the Licensing Sub Committee, heard representations from the applicant, the applicant's representative, Stephen Gilchrist, Director/Chairman of Saunders Law Ltd., two objectors, Dr Robert Gurd, representing Hanger Hill East Residents' Association, and Mr Graham Fowler, a local resident, both of whom had submitted written representations opposing the application, and other parties present at the meeting, including members of the Metropolitan Police Service (MPS) (Ealing) Licensing Team. The Sub Committee also considered written representations from Loomba Properties (Jersey) Ltd. opposing the application, the details of which were included in the Licensing Officer's report that was before the Sub Committee. At the conclusion of the meeting, the Chair of the Sub Committee, Councillor Lauren Wall, announced that it was the decision of the Sub Committee to refuse the application. The Chair then summarised the reasons for refusing the application, before closing the meeting (see attached minutes of the meeting). The various parties referred to in the preceding paragraph are, hereafter, referred to, individually and collectively, as the "interested party" and "interested parties", respectively.

Summary of Request for Information

The information to which this request refers can be summarised, as follows:

A request to provide –

1. A copy of any Decision Notice and/or Decision Letter sent to all or any of the interested parties detailing the decision by Ealing Council's Licensing Sub Committee ("the Sub Committee"), to refuse the application, including the reasons for the decision, and the applicant's right of appeal.

2. If no Decision Notice and/or Decision Letter was issued –

(a) a copy of any written communication (or a summary thereof) informing all or any of the interested parties of the Sub Committee's decision; or

(b) if the decision was communicated orally –

(i) the names of the parties privy to the communication(s); and

(ii) the gist of the communication

3. Information relating to any proposal(s) and/or offer by Ealing Council to rehear the application either as originally submitted, or as a revised and/or amended application to be resubmitted.

4. Whether, following approval by the Sub Committee of an application for a premises licence on the same day as the SEV application was refused, a premises licence been issued and, if not, the reasons for not issuing the licence.

REQUEST FOR INFORMATION

With reference to the foregoing, the information specifically requested is, as follows:

Decision Notice and/or Decision Letter

1. Was a formal Decision Notice and/or Decision Letter sent to –

(a) The applicant and/or his representative; and/or

(b) The interested parties who submitted written representations and/or made oral representations?

2. If the answer to 1(a) and/or (b) is yes, please provide –

(a) a copy of the Decision Notice and/or Decision Letter (suitably redacted, if necessary); and/or

(b) a summary of the Decision Notice and/or Decision Letter.

3. If providing a summary of the requested Decision Notice and/or Decision Letter, please include details of –

(a) the reasons given by the Sub Committee for refusing the application; and

(b) the applicant's legal right to appeal the Sub Committee's decision, as set out in the Decision Letter and/or Notice.

4. If no formal Decision Notice and/or Decision Letter was sent to the applicant and/or his representative and/or any other interested party or parties, was the Sub Committee's decision communicated orally and/or in writing to these and/or any other interested party or parties, including all or any of Ealing Council's elected representatives (councillors)?

(a) If communicated in writing (including email), please provide –

(i) a copy of the relevant communication (suitably redacted, if necessary); and/or

(ii) a summary of the contents of that communication.

(b) If communicated orally please provide the names, and/or job titles of –

(i) The parties to the communication; and

(ii) The gist of the words spoken.

Rehearing the Application

5. Did Ealing Council and/or any of its officers and/or elected members inform, advise or otherwise instruct all or any of the interested parties that the application, or an amended and/or revised version thereof, would be (re)heard by Ealing Council's Licensing Sub Committee or any other Ealing Council body?

6. If yes to question 5 –

(a) what reason(s) for (re)hearing the original and/or amended and/or revised version of the application were given to:

(i) the applicant and/or his representative; and/or

(ii) any other interested party or parties?

(b) when was it proposed, that the application, as amended or otherwise, should be (re)heard

7. If no, to question 5, was the applicant informed that he would have to –

(a) Resubmit the application;

(b) Make a new application; and / or

(c) Take any other measures in relation to the application for it to be (re)considered by the Council's Licensing Sub Committee and/or Licensing Panel?"

7. The Council responded on 30 October 2015. It acknowledged the request and stated a response would be sent within 20 working days.
8. In the absence of a response the complainant wrote to the Council again on 28 November 2015.
9. The Council replied on 30 November 2015 stating that a draft response had been prepared but not approved. It said that once it had been approved it would be sent to the complainant.
10. The complainant wrote to the Council again on 1 December 2015 stating that he was looking forward to receiving the response by the end of the week.
11. In the absence of a response the complainant wrote to the Council on 18 December 2015

Scope of the case

12. The complainant contacted the Commissioner on 13 December 2015 and 21 January 2016 to complain that the Council had failed to respond to his request for information dated 30 October 2015.
13. The scope of the Commissioner's investigation is therefore limited to the Council's failure to respond to the complainant's request.

Chronology

14. The Commissioner wrote to the Council on 17 February 2016 and stated the complainant was still waiting for a response to his request dated 30 October 2015.
15. The Council responded on 17 February stating that it would endeavour to provide the complainant with a full response by 24 February.
16. In the absence of a response the Commissioner wrote to the Council again on 9 March 2016 and stated that should it not reply to the complainant by return he would draft a Decision Notice.
17. The Council apologised for the delay in responding on 10 March 2016 and stated that it was chasing the matter with the service area as a 'priority'.
18. As at the date of this Decision Notice the Council has not responded to the complainant's request dated 30 October 2016.

Reasons for decision

Section 1 of the FOIA - General right of access to information

19. Section 1(1) provides 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'.

Section 10 of the FOIA - Time for compliance with request

20. Section 10(1) provides that;

'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'.

21. In the present case the Council has not responded to the complainant's request dated 30 October 2015 within 20 working days or indeed at all.

Accordingly, the Commissioner finds that the Council has breached sections 1 and 10 of the FOIA.

22. The Commissioner requires the Council to respond to the complainant's request under the FOIA.

Right of appeal

23. 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

24. 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.
25. 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