

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 June 2017

Public Authority: Homes for Haringey
Address: River Park House
225 High Road
Wood Green
London
N22 8HQ

Decision (including any steps ordered)

1. The complainant has requested information from Homes for Haringey ("HfH"), an arm's length organisation of the London Borough of Haringey and a public authority in its own right for the purposes of the FOIA. The information comprised recommendations that were made by the Homes for Haringey Resident Scrutiny Panel ("RSP") into the activities of a particular organisation. HfH stated that it did not hold the information.
2. The Commissioner's decision is that, if the information is held, it is held on behalf of HfH by the RSP.
3. The Commissioner requires HfH to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant after contacting the RSP.
4. 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

5. On 6 October 2016, the complainant wrote to HfH and requested information in the following terms:

"Recent Fol enquiries have shown that [named individual] misled the [named organisation] when she denied that HfH had received the original recommendations of the Resident Scrutiny Panel reports into the [named organisation].... When we met you for our exit meeting on 24 February, you confirmed that you had received the full report. The full report contains the recommendations. Accordingly, we are now asking you for a copy of these recommendations under the Fol Act. We are not asking for the rest of the full report."

6. HfH responded on 10 November 2016. It stated that the recommendations sought by the complainant were contained in a published report, to which it provided a link.

7. On 11 November 2016, the complainant wrote to HfH and, by way of clarification, explained that it was seeking:

"... the original recommendations that never made it into that summary report but which were removed by the Chair, acting alone, before they reached the Board... the recommendations... apparently come from the original recommendations of the RSP report into the [named organisation]. So HfH did have access to those recommendations. And anyway [named individual] of the [London Borough of Haringey] has told us she has seen the full report and that includes these recommendations. Accordingly we would like to see them too now please."

8. HfH acknowledged the clarified request on 11 November 2016 but did not respond to it further.

9. On 22 November 2016, the complainant amended its request as follows:

"We would like to request the full report in its entirety, not just the recommendations, as the rest of the report is also naturally of interest to us and the wider public. We restricted our initial request so as not to burden you with the need to redact the rest of the full report. This is to confirm that we are hereby requesting the full RSP report in its entirety."

10. On 8 December 2016, HfH responded and denied holding the requested information.

11. The complainant requested an internal review on 15 December 2016. The internal review was carried out on behalf of HfH by the London Borough of Haringey ("the Council").
12. The Council sent the complainant the outcome of its internal review on 23 January 2017. It upheld HfH's original position.
13. There followed a further exchange of emails and on both 30 January 2017 and 1 February 2017, the Council reaffirmed HfH's position.

Scope of the case

14. The complainant contacted the Commissioner on 8 December 2016 to complain about the way the request for information had been handled.
15. The complainant asked the Commissioner to focus her investigation only on whether the recommendations that it had requested on 6 October 2016 were held, and not on the full report to which it had referred on 22 November 2016.
16. Accordingly the Commissioner has investigated whether HfH is correct when it states that it does not hold the recommendations.

Reasons for decision

17. Section 1(1) of the FOIA 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".

18. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
19. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

The background to the request

20. In this case, the Commissioner has established that the RSP was asked by HfH to prepare a report into the complainant organisation's activities after conducting an audit. This led to the publication of a summarised version on HfH's website.
21. The complainant believed that the RSP's full report on the audit would have contained recommendations, but that some or all of these recommendations were not included in the summarised version.

The complainant's position

22. The complainant put forward a number of arguments to support its belief that the information it had requested would be held by HfH.
23. It explained that, when preparing reports for HfH, the RSP would normally include recommendations.
24. The complainant said that it had been informed by a member of HfH that the then Chairman of HfH had "*had sight*" of a full report by the RSP which, the complainant believed, contained recommendations.
25. It is the complainant's understanding that the then Chairman of HfH subsequently removed the recommendations from the summarised, published audit report.
26. The complainant has also drawn the Commissioner's attention to various responses it had received from HfH's freedom of information team, including the team at the Council who conduct internal reviews on HfH's behalf.
27. In particular, in its response to an earlier, related FOI request, HfH on 19 December 2014 stated that "*the final report was published without the recommendations*" and applied exemptions under the FOIA to disclosing the "*report with recommendations*".
28. In addition, the Council stated in an email to the complainant on 30 January 2017 that "*HfH staff may have seen a hard copy [of the report] but they were not given a copy for their records.*"
29. In addition, as already referred to in the request, the complainant recalled a named individual at the Council to have stated at a meeting on 24 February 2016 that she had seen "*the full report.*"
30. Furthermore, the complainant believed that the recommendations it sought, although not included in the published, summarised audit report, may have been used in the preparation of a separate report

published on HfH's website during 2016, the 'Residents Engagement Strategy'.

Homes for Haringey's position

31. HfH has maintained that it does not hold the recommendations sought by the complainant.
32. It has explained that thorough searches have been made at both the HfH and Council offices, of both paper and electronic files, using various relevant search terms.
33. With regard to the question as to whether HfH ever saw the full audit report prepared by the RSP, the Council, in correspondence with the Commissioner, has stated that the former Chair of HfH was offered a copy of the report, which he then *"refused to accept [when] he clarified the requirements for the [HfH]"*.

The Commissioner's decision

34. The Commissioner considers that HfH's stance on whether or not it received, at any time, a copy of the RSP's full audit report containing the recommendations has been somewhat unclear.
35. After considering HfH's position, alongside the complainant's recollections of what has been said by various individuals at HfH and the Council, the Commissioner considers that it is likely that members of the Board of HfH held the information requested by the complainant at the time when the full audit report was presented to them. In particular, she considers that it seems unlikely that the full audit report was effectively rejected, and then summarised, without any consideration of its contents by HfH.
36. However, she accepts that this does not necessarily mean that HfH held the recommendations at the date of this request.
37. In view of the confusion that has arisen over the contents of the full audit report prepared by the RSP, the Commissioner has briefly considered its likely contents.

Did the RSP prepare an audit report containing recommendations?

38. The complainant has explained that it would be normal practice for the RSP to make recommendations to the Council when carrying out a review and preparing a report.
39. The Council has stated to the Commissioner in a letter of 27 April 2017: *"In the case of the [named organisation] report, this was an audit into*

the practices of the group, not a review and as such, the RSP were not required to make recommendations."

40. However, this arguably contradicts what the Council stated in the same letter: that the original report prepared by the RSP contained recommendations and that *"we are not aware that the recommendations were held by anyone other than the RSP."*
41. The HfH document entitled '[Named organisation] – Audit – Scope of audit – for the Resident Scrutiny Panel', ("the scoping document") which has been provided to the Commissioner, clearly instructs the RSP to provide *"a detailed confidential report outlining comprehensively the findings of the investigation along with recommendations."*
42. The scoping document goes on to explain that the Board of HfH additionally *"requires a summary report with no personalisation, names or any information that could identify individuals. The report should include key findings and recommendations, which will be made public."*
43. The Commissioner is satisfied that the RSP produced a full audit report for the Board of HfH, in line with that instructed by the scoping document, which would have contained recommendations.
44. The Commissioner accepts that HfH and indeed the Council have made extensive searches for the full audit report and for the recommendations themselves. Electronic searches have been conducted using search terms such as 'audit' and '[named organisation]' and searches have also been made of paper files. Neither the full audit report nor the recommendations themselves have been located from these searches.
45. Accordingly the Commissioner has gone on to investigate the ownership of the information requested by the complainant, and, specifically, whether it is held by another person on its behalf. This issue will be considered under section 3(2)(b) of the FOIA.

Section 3(2)(b) – information held by another person on behalf of the authority

46. Section 3(2)(b) of the FOIA states that, for the purposes of FOIA, information is held by a public authority if it is held by another person on behalf of the authority.
47. HfH has explained that it considers that the information, if still held at the time of the request, would have been held only by the RSP.
48. HfH and the Council consider that the RSP is an independent body and therefore not subject to the FOIA. The Commissioner has therefore

sought to determine whether, if the information were held by the RSP at the date of the request, it would have been held by it on behalf of HfH.

49. The Council has explained that the RSP is an independent body of residents which carries out reviews of the services delivered by HfH. The HfH and the Council can request the RSP to undertake reviews or audits. In this case, the RSP was commissioned by HfH by way of the scoping document to conduct an audit of [named organisation] and subsequently produce a report.
50. The Commissioner notes that the published, summarised version of the audit report states: *"This report summarises the key findings of the Scrutiny Panel's independent audit of the [named organisation]."*
51. The Commissioner is aware therefore that the audit was stated to be independent.
52. She is also aware that the Council considers that ownership of the audit lies only with the RSP.
53. Accordingly, the Commissioner has considered in more detail the terms under which the audit report was commissioned.
54. The scoping document explains that *"concerns and allegations have been raised to HfH about [named organisation] from a number of sources."*
55. It also states that the proposed audit is to be carried out with a view to the Board of Directors of HfH ("the Board") having *"confidence that any allegation is investigated fully and in advance of any further approval of funding."*
56. The scoping document asks the RSP to *"undertake an audit of [named organisation] in respect of allegations made, to produce a report which once finalised and approved by the Board a non-personalised summary will be made public."*
57. Finally the scoping document states that the Board wishes to consider *"the report"* at its meeting on 22 July 2014, with papers due to the Company Secretary by 11 July 2014.
58. In the Commissioner's view, it is clear that HfH commissioned the RSP to produce the full audit report. The stated purpose of the audit report was to address concerns which existed at HfH about the named organisation.
59. Specifically, the RSP was required to address six 'concerns and allegations' specified by HfH in the scoping document, and to answer 12

specific questions in order to address these six key concerns, in its full audit report.

60. The Commissioner has determined therefore that in answering the questions, and in addressing and reporting on the concerns, the RSP would have provided HfH with information. HfH required and presumably used this information in order to make decisions about the named organisation going forward; indeed, HfH took the decision to 'de-recognise' [named organisation] after receiving the full audit report.
61. In the Commissioner's view, this lends weight to the view that the ownership of the information within the report lies with HfH.
62. It is also clear that the RSP were required to deliver the full audit report to the Company Secretary of HfH in order that the Board could consider its findings before a summarised version was prepared.
63. The Commissioner is satisfied that HfH had a right of access to the full audit report, and indeed expected to be provided with it under the terms of the scoping document.
64. Accordingly, the Commissioner's decision is that the information in the audit report belongs to HfH and therefore, if held by the RSP, is held on behalf of HfH.
65. The Commissioner requires HfH to contact the RSP for a copy of the full audit report prepared in accordance with the terms of the scoping document, together with any recommendations contained in it or prepared alongside it. After determining whether the information is held or was held at the date of the request, HfH should then reconsider the complainant's request for the recommendations under the FOIA and issue a fresh response.

Right of appeal

66. 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

67. 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.
68. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF