

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 September 2019

Public Authority: London Borough of Hackney
Address: Hackney Town Hall
Mare Street
E8 1EA

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Hackney ("the London Borough") concerning the reason why CCTV was installed at a particular site. The London Borough responded, answering his question but explained that it held no further recorded information other than what was initially provided to the complainant.
2. The Commissioner's decision is that based on the balance of probabilities, the London Borough has provided all of the information it holds within the scope of the request. However by responding after the 20 working day deadline, the London Borough has breached section 1(1) and section 10(1) of the FOIA.
3. The Commissioner requires no further steps to be taken by the public authority.

Request and response

4. On 22 August 2018, the complainant wrote to the London Borough and requested information in the following terms:

"I would like to know the reason why CCTV was installed in [address redacted], in particular in relation to [address redacted], which was installed in 2017. Copies of any reports, assessments or recommendations in relation to this"

5. The London Borough responded on 8 October 2018. It provided some explanation to the complainant's request but also denied holding some of the information.
6. The complainant requested an internal review on 10 October 2018, he clarified his request by asking further questions within his contact to the London Borough.
7. Following an internal review the London Borough wrote to the complainant on 20 December 2018. It answered the further questions posed in the complainant's contact and also stated that according to its records minutes were not recorded in the meeting it held regarding the decision to install CCTV, but it also provided a more accurate list of the incident reports.

Scope of the case

8. The complainant contacted the Commissioner on 28 January 2019 to complain about the way his request for information had been handled.
9. The complainant explained that within the London Borough's response to him, it refers to "its records". So, the complainant is concerned that it can advise that it holds no further information within the scope of his request but can refer to its records.
10. The Commissioner notes the complainant's concern and understands that this appears to be confusing while the London Borough has said it does not hold information within the scope of the request.
11. The Commissioner considers that the scope of this investigation will focus on whether the London Borough has handled the request in accordance with the FOIA. Specifically, the scope of this investigation is to determine whether the London Borough was correct in stating that it does not hold any further information within the scope of the complainant's request.

Reasons for decision

Section 1 of the FOIA – General right of access

12. 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.*

13. The Commissioner has sought to determine whether the London Borough holds the information which the complainant has asked for in his request of 22 August 2018. To make this determination, the Commissioner applies the civil test which requires her to consider the question in terms of 'the balance of probabilities'. This is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.
14. The Commissioner has investigated whether the London Borough holds recorded information relevant to the complainant's request by asking the London Borough questions about the searches it has made to locate the information which the complainant seeks and questions about the possible deletion/destruction of information which might be relevant to the complainant's request.
15. The London Borough has advised the Commissioner that it has now carried out searches of all of its existing paper sources and relevant electronic records in order to locate any further information specified by the complainant in his request.
16. Within this, the London Borough has explained that it has not expected to find any information relating to any meetings or recommendations made, as the decision was made during a meeting that minutes are not routinely recorded, so it stated that it knew there were no minutes or notes held.
17. In terms of finding out if there had been any destruction of records, the London Borough had explained that as the information never existed, due to the meeting not being recorded, it would not have destroyed or deleted any information within the scope of the complainant's request.
18. Amongst her enquiries, the Commissioner asked the London Borough to explain whether there are any statutory requirements or business purpose for it to record and hold the information requested and whether it had held any information at any point that fell within the scope of the complainant's request.
19. The London Borough responded to advise that there is no statutory requirement for it to record the requested information. The London Borough said that there was a meeting to discuss the installation of CCTV in the specific area but it was not recorded nor were minutes of the meeting recorded.

20. The Commissioner also asked whether there is a need to evidence the decision making process for the specific installation of CCTV.
21. The London Borough further explained that there is no business need for this type of information to be recorded. The London Borough advised that the Anti-Social Behaviour ("ASB") and Estate Safety Manager *"has the authority to make decisions like this on the basis of available evidence without recording in any formal documented manner"*.
22. The Commissioner notes that the London Borough's response to the complainant's request changed slightly in its internal review response. In its initial response to the complainant, it advised that there were 10 incidents prior to the installation and 14 afterwards however in its internal review response it listed only nine incidents along with dates.
23. To understand the reason why the amount had decreased in the London Borough's internal review response, the Commissioner asked if there was a reason why the London Borough changed its answer to this question. The London Borough responded to say the reason is not clear, but explained that ASB incidents are recorded among other incidents and there are no distinct fields to record the type of incidents plus there is not a unique reference for the location. Therefore the London Borough advised in its submissions to the Commissioner that the initial search may have identified incidents which were not at the precise location or strictly ASB incidents.
24. The Commissioner is satisfied that on the balance of probabilities, the London Borough has disclosed all of the information it holds within the scope of the complainant's request. She has based this on the explanations provided by the London Borough in its responses to her and to the complainant.

Section 10 of the FOIA – Time for compliance

25. Section 10(1) of the FOIA states 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.
26. The complainant submitted his request on 22 August 2018 and received a response on 8 October 2018, 33 working days later.
27. The London Borough therefore breached sections 1(1) and 10(1) by failing to respond to the request within 20 working days.

Other matters

28. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one; the section 45 code of practice¹ sets out, in general terms, the procedure that should be followed.
29. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
30. The complainant requested an internal review on 10 October 2018, which was acknowledged by the London Borough in writing on 11 October 2018. However the London Borough provided its internal review response on 20 December 2018, 51 working days after the complainant's request for an internal review.
31. If the London Borough finds the internal review process for a particular request to be particularly complex, it should inform the complainant and *"provide a reasonable target date by which they will be able to respond to the internal review. It is best practice for this to be no more than an additional 20 working days, although there will sometimes be legitimate reasons why a longer extension is needed."*
32. The Commissioner notes that the London Borough has received a number of requests for information from the same complainant, however, based on the response it gave to the internal review, she does not find that this would be a complex issue and the London Borough should have provided its internal review response sooner than it did.

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

33. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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
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