

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2020

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

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Hackney ("the Council") relating to the Council's procurement of architectural services for specific lots within a framework. By the date of this notice the Council had not provided a substantive response to this request.
2. The Commissioner's decision is that the Council has failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response to the request in accordance with its obligations under the FOIA.
4. The Council 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 17 August 2020, the complainant wrote to the Council and requested information in the following terms:

"For your reference, the framework's full name is: Framework 2: Construction Based Consultancy, Building Surveying, Architectural, Employer's Agent, Planning, FM, Engineering, Daylight and Sunlight, Creative, Fire and Safety, Photographic

Its reference number is: DN331234

Its OJEU number is: 2018/S 066-146948

The person in charge of it at the council appears to be [name redacted].

Specific questions on Lot 5 Multi Disciplinary Building Architect Led Services:

1. *Can you confirm that you received 47 applications for this lot?*
2. *I understand that applicants were asked whether they wanted to amend their application for this lot, as the procurement process had temporarily been paused. Is it correct, and if so how many of the applicants altered their submission?*
3. *Of the 47 applications, how many were told they scored zero in at least six of the seven questions?*
4. *Of applications which received zero in at least six out of seven questions, were any subsequently remarked?*
5. *If question three was answered with a 'yes':*
 1. *How many of the applications which received zero in at least six out of seven questions were remarked?*
 2. *What was the average increase of the overall mark which these applications received upon being remarked?*
6. *If any application was given zero in six or more questions, but not remarked, does the council maintain that their original score was the correct one?*

7. *I understand the ten applications which received the greatest overall score were shortlisted for Lot 5. Can you confirm that this is correct?*
8. *If question three was answered with a 'yes':*
 1. *Did any application which was remarked subsequently received an overall score which was in the top ten out of 47?*
 2. *How many of the applications which were remarked changed rank out of 47?*
 3. *If any remarked application entered the top ten rank, what happened (i.e. were they then shortlisted? And was another applicant removed from the shortlist?)*

General questions on Framework 2:

9. *How many applications across all lots scored zero on half, or more than half, of the questions for the lot which they entered?*
 10. *How many applications have been remarked across all lots?*
 11. *Have any lots been retendered – or are there plans to retender any lots?*
 12. *How many queries or complaints have you received about marking applications for any lots on this framework?"*
6. The Council acknowledged the request on 24 August 2020. On 26 and 27 August 2020, the Council's information management department wrote to the complainant again to acknowledge the request.
 7. On 21 September 2020, as the complainant had not received a response to his request, he wrote to the Council again and requested an internal review. The Council did not respond.

Scope of the case

8. The complainant contacted the Commissioner on 22 September 2020 to complain about the Council's failure to respond to his request.

9. The Commissioner contacted the Council on 9 October 2020 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
10. The Commissioner also contacted the complainant on 9 October 2020 to explain that the Council had been given 10 working days from that date within which to provide a response to his request.
11. On 23 October 2020 the Commissioner wrote to the Council again, using an alternative email address, and asked it to provide a substantive response to the request. The Commissioner received an acknowledgement from the Council on the same date but did not receive a full response.
12. The complainant has provided evidence that he has received an acknowledgement from the Council but, by the date of this notice, had not received a substantive response to his information request.
13. The scope of this notice and the following analysis is to consider whether the Council has complied with section 10 of the FOIA.

Reasons for decision

14. Section 10 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.*
15. The Commissioner considers that the request in question fulfilled the above criteria and therefore constituted a valid request for recorded information under the FOIA.
 16. Section 10 of the FOIA states that responses to requests made under the Act must be provided, "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
 17. The Council did not provide a substantive response to the request within 20 working days of receipt. Therefore, the Commissioner's decision is that the Council has breached section 10 of the FOIA.

Right of appeal

18. 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

19. 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.
20. 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

Ben Tomes
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