

Freedom of Information Act 2000 (FOIA) Decision Notice

Date: 13 November 2020

Public Authority: London Borough of Bromley
Address: Civic Centre
Stockwell Close
Bromley
BR1 3UH

Decision (including any steps ordered)

1. The complainant requested a SEND inspection report. The Council stated that it did not hold the requested information, albeit that it did not respond within the statutory time for compliance.
2. The Commissioner's decision is that the Council does not hold the requested information. However the Commissioner finds that the Council failed to respond to the request in accordance with sections 1 and 10(1) of FOIA.

Request and response

3. On 12 January 2020 the complainant requested the following information from the Council:

Please take this email as a formal request under the Freedom of Information Act 2000 to request the full Bromley SEND inspection report published by Ofsted and the CQC on 23.12.19.

4. The complainant noted that the Council had published the Report letter but said that this did not constitute the full report. In the complainant's opinion it effectively precluded a clear analysis and understanding of the Council's SEND team's performance independently of the performance of the CCG.
5. The complainant received an automated response on 12 January 2020 but did not receive anything further. He sent a reminder to the Council on 20 May 2020.

6. At this stage the Council advised that it had no record of the request of 12 January 2020, but undertook to provide a substantive response as soon as possible.
7. The Council sent a further response to the complainant on 21 May 2020, advising that it had not been able to ascertain what had happened to the request of 12 January 2020. The Council also stated that it only held a report that had been published on Ofsted's website. The Council confirmed that it did not hold any further or more detailed versions of this report.
8. The complainant contacted the Commissioner on 4 August 2020 to complain about the way the Council had handled his request. The Commissioner advised the complainant to request an internal review, which he did on 11 August 2020.
9. The Council advised the complainant on 14 August 2020 that an internal review had taken place, and upheld its original response that no further information was held. The Council also undertook to conduct an internal technical investigation to ascertain what had happened to the original request of 12 January 2020.
10. The Council issued a further response on 8 September 2020. It advised that it had interrogated its email and gateway servers, and had concluded that the request of 12 January 2020 did not reach the Council's FOIA co-ordinators. The Council explained that it had made a change to its systems which resulted in some emails and logs being lost. However the Council stated that this was a one-off incident as opposed to a systemic failure. It apologised for the delay in responding to the request.

Scope of the case

11. The complainant confirmed on 10 September 2020 that he remained dissatisfied with the way the Council had handled his request. The complainant accepted that the Council did not hold any further information, but was concerned that it may have deliberately failed to respond to his request until he sent a chaser on 20 May 2020.
12. In light of the above the Commissioner's investigation focused on the time taken to respond to the request.

Reasons for decision

Section 1: general right of access **Section 10(1): time for compliance**

13. Section 1(1)(a) of FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.
14. Section 10(1) requires that the public authority comply with section 1 promptly, and in any event no later than 20 working days after the date of receipt of the request.
15. In this case the complainant submitted his request via the Council's online request form and was duly sent an automated acknowledgement on the same day. Therefore it is not disputed that the request was received by the Council on 12 January 2020.
16. The Commissioner asked the Council for a detailed explanation as to why it failed to respond within 20 working days.
17. The Council explained to the Commissioner that when a request was submitted via the online form, it was usually forwarded automatically to the mailbox of the department selected on the form. However, that did not happen in this case, and by the time the Council conducted its internal review, the original form had been deleted in line with the Council's 6 month retention policy. Therefore the Council was unable to ascertain why the original form had not been forwarded. The Commissioner has seen no evidence to suggest that the Council deliberately ignored or otherwise failed to respond to the complainant's request.
18. Since the Council did receive the complainant's request on 12 January 2020, its substantive response of 21 May 2020 clearly exceeded the statutory time for compliance of 20 working days.
19. In light of the above Commissioner records that the Council failed to comply with section 10(1) in respect of section 1(1)(a) of FOIA. However, since a substantive response has now been issued the Commissioner does not require any further steps to be taken.

Other matters

20. The Commissioner expects public authorities to have robust procedures in place to ensure that requests are logged and progressed as promptly as possible. The Commissioner asked the Council how it intended to prevent this incident recurring.
21. The Council advised that it had recently procured a new case management system to handle information requests, and it was intended that request forms would be sent directly into this system. The Council also explained that it would reconcile the number of auto-replies against the number of cases logged in the systems to ensure that there were no "lost" requests.
22. The Commissioner appreciates that these measures do not assist the complainant in this case, who had to wait several months for a substantive response to his request. However the Commissioner is reassured that the Council has taken action to improve its procedures. Therefore the Commissioner would not expect to see this happen again.
23. In addition, the Commissioner noted that the complainant in this case was an individual, therefore she was concerned as to what had happened to the complainant's personal data as included in the request. The Council confirmed that there was no record of any correspondence being sent relating to the complainant's request. Therefore there was no evidence of any inappropriate disclosure of that personal data.

Right of appeal

24. 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 123 4504
Fax: 0870 739 5836

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

25. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
26. 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

Sarah O'Cathain
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF