

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 January 2025

Public Authority: London Borough of Southwark

Address: 160 Tooley Street
Southwark
London
SE1 2QH

Decision (including any steps ordered)

1. The complainant has requested copies of any information held by the London Borough of Southwark (the council) and referring to RSM, LVTR and / or the Bridge SEN school during the period between 1 August 2022 and 28 December 2023.
2. The Commissioner's decision is that the council breached section 1 of FOIA.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - The Commissioner requires the council to provide a fresh response to the complainant's original request as per his findings in the relevant section of this decision notice and in accordance with the requirements of FOIA.
 - In its fresh response the council should specify what information is held, disclose any non-exempt information, and issue a section 17 refusal notice to refuse disclosure of any material the council considers to be exempt, clearly indicating to which part of the requested information this is being applied to.
4. The public authority must take these steps within 30 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 28 December 2023 the complainant made the following request to London Borough of Southwark (the council) for information under the FOIA:

"RSM, LVTR and Bridge SEN schools seeks copies of documents held by the Council in order to understand how the Council has analysed the services provided by these entities. Therefore we request disclosure of the following:

- 1. Copies of any documents (correspondence, telephone and attendance notes, internal memoranda, minutes and other records) held by Southwark Council that refers to RSM, LVTR, and / or the Bridge SEN school during the period 1 August 2022 to date."*

6. The council responded on 16 January 2024 and denied holding the requested information.

7. The complainant requested an internal review on 7 February 2024 asking for the following:

"We write to request an internal review relating to our FOI request of 28 December 2023 to which you responded on 16 January 2024. We are dissatisfied with the handling of our request for the reasons set out below.

We requested: Copies of any documents (correspondence, telephone and attendance notes, internal memoranda, minutes and other records) held by Southwark Council that refer to RSM, LVTR, and/or the Bridge SEN School during the period 1 August 2022 to date.

You indicated that no such information is held, which our client does not accept can be correct as LVTR has been providing personal and nursing care services and RSM has been providing accommodation for persons needing personal and nursing care within your area for approximately 14 years. We would therefore assume that Southwark holds records relating to LVTR and RSM such as, but not limited to:

- Records of numbers of Southwark residents that may receive care from either LVTR or RSM*
- Details relating to care placements*

- *Invoices relating to charges for LVTR or RSM services*
- *Inclusion of LVTR or RSM on a list of care providers approved by Southwark*
- *Copies of any contractual documentation that refer to LVTR or RSM*
- *Records of telephone discussions between LVTR or RSM staff and Southwark's staff*
- *Records of telephone discussions with third parties relating to LVTR or RSM*
- *Minutes of any meetings held between Southwark, LVTR or RSM*

We would also assume that Southwark would hold copies of records relating to Bridge SEN School such as, but not limited to:

- *Details of the types of special educational needs and disabilities that the Bridge SEN School can cater for*
- *Records of numbers of Southwark residents that receive educational provision at the Bridge SEN School*
- *Copies of any Statements of Special Educational Needs or Education Health Care Plans that may refer to the Bridge SEN School as the appropriate placement for an adult under the age of 25 (with any personal data or jigsaw identification redacted);*
- *Invoices relating to charges (if held)*
- *Records of telephone discussions between Bridge SEN School and Southwark's staff*
- *Records of telephone discussions with third parties relating to Bridge SEN School*
- *Minutes of any meetings held between Southwark and Bridge SEN School*

Given the length of time that LVTR and RSM have been supporting residents from the Southwark area it is reasonable to assume that some records relating to the services they provide would have been created since 1 August 2022 to date. Indeed, our client's own records show that there were communications to and from Southwark and LVTR, RSML and the Bridge SEN School from August 2022 onwards. Our client considers that the searches undertaken of Southwark's records to date have been insufficient and inappropriate. We contend that upon conducting a further detailed search, documents relating to each of LVTR, RSM and the Bridge SEN School will be located."

8. Following no response from the council, the complainant sent chaser letters on 4 March 2024, 5 April 2024, 18 April 2024 and 28 May 2024.

Scope of the case

9. Following lack of response to the request for internal review from the council the complainant contacted the Commissioner on 7 June 2024.
10. Specifically, the complainant disagreed with the council's response that no information was held for the reason that some prior communication has taken place between the council and the entities to which the request refers.
11. The complainant has also complained about the delay in the council's internal review response, which the Commissioner addresses in 'Other matters' section.
12. As part of the Commissioner's investigation the council provided a copy of the internal review response to the complainant on 22 November 2024, the content of which has been provided in 'The Council's position' section of this decision notice below. The council has also responded to the Commissioner's questions regarding whether the requested information was held.
13. The Commissioner considers that the scope of his investigation is to determine whether on the balance of probabilities the council holds information within the scope of the request and therefore complied with section 1 of FOIA.

Reasons for decision

Section 1 – information held/not held

14. Section 1 of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to them.
15. The public authority is not obliged to create or acquire information in order to satisfy a request.
16. The Commissioner's role when determining whether a public authority has or has not complied with section 1(1) of FOIA, is limited to determining whether it is more likely than not that the public authority has provided all the recorded information it holds. The Commissioner is not required to challenge the accuracy or the adequacy of the recorded information a public authority does (or, in some cases, does not) hold.

This is because the terms of FOIA only relate to the provision of information as it is recorded, regardless of its accuracy or validity.

17. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

18. Following the council's initial response of 16 January 2024, the complainant disputed that the information she requested was not held. The complainant said:

"Given the length of time that LVTR and RSM have been supporting residents from the Southwark area it is reasonable to assume that some records relating to the services they provide would have been created since 1 August 2022 to date. Indeed, our client's own records show that there were communications to and from Southwark and LVTR, RSML and the Bridge SEN School from August 2022 onwards. Our client considers that the searches undertaken of Southwark's records to date have been insufficient and inappropriate."

19. The complainant therefore contended that upon further detailed searches information within the scope of the request would be located.

The council's position

20. As already mentioned in this decision notice, in its response of 16 January 2024 to the initial request for information, the council stated that *'no such information is held'*.
21. In its submissions the council explained to the Commissioner what searches were conducted and methods used to establish whether information in the scope of the request was held.
22. These included electronic searches undertaken by key staff in the relevant services in the Children's and Adults' Services directorate, including Assistant Director of SEND, Head of Service for SEND, Project Management team, Client Finance, Personal Budget Services and the Schools Finance team.
23. The search terms used were relevant to the wording of the request, such as the company and individual's names. The council further explained that the information would be held on council devices only

such as laptops, iPads, phones – depending on the role of the staff member in either shared drives or personal (individual staff) drives.

24. The council further confirmed that no information within the scope of the request was held but then destroyed and explained the retention period policy relating to Special Education Needs and disability, as well as the financial information.
25. Following the Commissioner's communication as part of his investigation, the council provided its internal review response to the complainant on 22 November 2024, also providing a copy to the Commissioner.
26. In that response, the council said:

"In respect of our response to your initial request please be advised that placements with LVRT, RSM and/or Bridge SEN School are all made on an individual basis. In this respect, and combined with the low numbers involved, then any data/information held by the council is exempt from disclosure under section 40(2) of the FOI Act 2000 due to the mosaic effect."

27. In respect of information related to the Bridge SEN School, the council further added:

(...) "this is an independent organisation, not state maintained school and thus is its own Data Controller and our advice is that approach the Bridge SEN School and your clients directly for the information you are seeking."

28. The council also addressed the 'detailed and expanded original request' contained in the complainant's request for an internal review. The council considered this as a new request for information, nevertheless it decided to respond to it on the same occasion.
29. It advised the complainant that this part of the extended request would also be exempt from disclosure under section 40(2), specifying that:

"This would also cover specific invoices for payments for LVRT, RSM or Bridge SEN services due to the low numbers of individuals and the possibility of identification."

30. Finally, in relation to the part of the request considering payments, the council stated that this information is already publicly available on the council's website. It provided a link to that information and advised on how to extract information sought by the complainant. Consequently, the council did not uphold the complainant's request for an internal review.

The Commissioner's findings

31. The Commissioner, in reaching his decision in this case, has taken account of the views put forward by the complainant. He has also considered the council's response to the Commissioner's enquiries and actions taken by the council to check whether it holds the requested information. The Commissioner has also had a sight of the communication exchange between the council and the complainant.
32. Having considered both responses of the council to the complainant, the initial response and the internal review response, the Commissioner finds them unclear and somewhat confusing.
33. Specifically, in its initial response the council confirmed that no information within the scope of the request was held, to then refer in its internal review to the specific aspects of the request as if the information or parts of it existed. However, the council did not confirm or deny whether it holds the requested information at any point of its internal review response and concluded its review by not upholding the complainant's appeal of the initial response.
34. The council, however, explained that any data/information it held relevant to the placements with LVRT, RSM and/or Bridge SEN School, due to its nature, i.e. 'mosaic effect' was exempt from disclosure under section 40(2).
35. The council also effectively refused to provide information relevant to the payments, confirming that this part of information was already available on the council's website. However, the council did not explicitly refuse the information nor did it cite any exemptions provided by FOIA to withhold information.¹
36. The Commissioner did not find it helpful that the council responded to the internal review request and provided a copy of it to the Commissioner at the same time and only when asked for its submissions. The reason being that the submissions focused on the council's initial response based solely on section 1 and the consideration whether the requested information was held or not, and not on what it appears to be a revised response and apparent change of the council's position from the original one in which the council withheld some of the

¹ [Information accessible to the applicant by other means \(section 21\) | ICO](#)

information citing section 40(2) and refused the remainder without applying any exemption.

37. The Commissioner also wishes to comment on the council's conclusion that the complainant's request for an internal review consisted of a new request for information.
38. Having considered the wording of the original request for information against the wording of the internal review request, the Commissioner finds that the intention of the latter was merely to clarify it and explain in more detail what was requested in the original request. Therefore the Commissioner does not agree that a new request for information was made as part of the request for an internal review.
39. In light of this response, it appears that the council did hold at least some of the requested information in recorded form at the time of the request. It is the Commissioner's opinion that such should have been the response to the complainant's original request, followed by either a full disclosure of the requested information or, where the council deemed the information exempt, by the appropriate application of the exemptions to the specific parts of information, as prescribed by FOIA.
40. Consequently, the Commissioner finds that the council breached section 1 of FOIA by incorrectly applying the legislation. Specifically, he finds the council's internal review response both ambiguous as to what information within the scope of the request is actually held and contradictory to the initial response.
41. The Commissioner therefore requires the council to provide a fresh response to the complainant's original request in accordance with the requirements of FOIA.

Other matters

Internal review response – time limit.

42. FOIA does not prescribe a time limit within which public authorities must complete internal reviews. However, the Commissioner's guidance² explains that an internal review should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances.

² <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/#20>

43. Indeed, there is no legal requirement for a public authority to have an internal review process in place under the FOIA regime (this is different from the EIR³), although it is recommended as good practice under the Section 45 Code of Practice⁴ (Code of Practice) and most public authorities choose to do so. This also includes the council in this case which offered an internal review to the complainant if she was dissatisfied with the council's response to her request for information.
44. It follows therefore that, when an internal review process is offered to the requesters, there is an expectation that the public authority will adhere to the recommendations outlined in the Code of Practice.
45. As part of her complaint, the complainant expressed dissatisfaction with the length of time taken by the council to respond to her internal review request which the complainant made on 7 February 2024.
46. In fact, the council did not respond to the internal review request until 22 November 2024, following communication from the Commissioner during his investigation.
47. The Commissioner finds this excessive and wishes to remind the council about the importance of the timely response to internal review requests. He also wishes to point out that he will consider complaints where an internal review is delayed or remains outstanding after 40 working days of it being requested.

³ <https://www.legislation.gov.uk/uksi/2004/3391/regulation/11>

⁴ 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

48. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

49. 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.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Gosia Kostrzewa
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF