

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 16 May 2007

Public Authority: Ealing London Borough Council
Address: Perceval House
14-16 Uxbridge Road
London
W5 2HL

Summary

The complainant requested information relating to the adoption of executive arrangements under the Local Government Act 2000 (LGA). She specifically requested certain details about the publicity in local newspapers and whether a formal resolution was passed under section 29 of the LGA. The public authority advised that it no longer holds the details of the publicity and that it was considering whether it held information concerning whether a formal resolution was passed under section 29 (3) of the LGA. Although the complainant provided clarification that she required information about a formal resolution under section 29 (1) of the LGA, following internal review, the public authority advised that it had been unable to identify any information concerning whether a formal resolution was passed under section 29 (3) of the LGA. Following the Commissioner's intervention, the public authority confirmed that it had passed a formal resolution under section 29 (1) of the LGA and supplied a copy of the relevant minutes. The Commissioner therefore considers that the public authority breached section 1 of the FOIA. He found no evidence to suggest that the requested details of the publicity are still held by the public authority and does not find any breach of section 1 of the FOIA in this regard.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (FOIA). This Notice sets out his decision.

The Requests

Request 1

2. On 1 December 2005, the complainant wrote to Ealing Council (the "Council") and requested various items of information concerning the provisions of the LGA including the following request:

"Section 29[a][b] requires that publicity about the executive arrangements are by notices published in 'one or more' local newspapers. In which journals and on what dates, were the executive arrangements publicised?"

Request 2

3. On 13 December 2005, the complainant wrote again to the Council and requested the following information:

"Was a formal resolution under section 29 [see (3)] passed by the full Council: if so – when?"

The complainant clarified during the Commissioner's investigation that by "[see 3]" she meant to refer to point 3 of her previous correspondence on 1 December 2005 which reads:

"Has the secretary of state allowed the Council, since 26 November 2001, to vary section 11 of the LGA 2000?"

4. The Council responded to request 1 on 9 January 2006. It stated that all statutory requirements had been met at the time and that records of advertisements had not been retained.
5. The complainant complained to the Council on 17 January 2006 on the grounds that she had not asked for copies of the advertisements, but details of the names of the journals and the dates when the advertisements were published in local newspapers.
6. Although the Council had offered to conduct an internal review in its response on 9 January 2006, the complainant complained directly to the Commissioner on 25 January 2006 when she received a letter from the Council on 18 January 2006 which stated that it did not appear that the complainant had made any additional requests under the FOIA. It appears that the Council failed to recognise that the complainant's letter of dissatisfaction on 17 January 2006 constituted a request for an internal review. The Commissioner also wrote to the Council to ask it to ensure that it conducted an internal review into the handling of request 1 and advised the complainant of the action taken on 3 February 2006.
7. The Council completed an internal review on 13 June 2006 in which it stated that it had been unable to uncover any further information about what dates the public notices had been published in local newspapers. The Head of Legal Services at

the Council explained that she had spoken to the Council Officer who had overseen the new structures to implement the LGA. She stated that he had provided his assurances that due process had been followed and that an extensive public consultation exercise had been conducted and all necessary notices published. The Council stated that it was unfortunate that paper files evidencing this had been mislaid.

8. Regarding request 2, it appears that the Council initially failed to acknowledge the request and, following a letter of dissatisfaction from the complainant on 14 February 2006, sought clarification on 21 February 2006 and 3 March 2006 concerning what information was outstanding. The clarification sought was only in respect to why the complainant continued to write to the Council following its response on 9 January 2006 to request 1 as the Council did not appear to have noted that the complainant had made a separate request on 13 December 2005.
9. The complainant clarified that she was seeking information on whether a formal resolution was passed by the full council under section 29 (1) of the LGA in a letter to the Council on 21 March 2006. When the Council did not acknowledge the letter, the complainant sent a duplicate on 30 March 2006. She specifically asked to be provided with a minute number and the year when the resolution was passed.
10. The Council responded on 6 April 2006 and advised that it was still checking whether a formal resolution had been passed under section 29 (3) of the LGA. It acknowledged receipt of the complainant's letter on 21 March 2006 as well as the duplicate letter on 30 March 2006.
11. The complainant provided further clarification to the Council on 11 April 2006 in which she reiterated the detail of the information sought. It is apparent that the complainant continued to send letters of clarification to the Council for some time in an attempt to clarify the precise terms of her request.
12. The Council completed an internal review on 13 June 2006 and informed the complainant that it had been unable to uncover any information concerning whether a formal resolution was passed under section 29 (3) of the LGA.

The Investigation

Scope of the case

13. On 14 July 2006, the complainant contacted the Commissioner to complain about the way her requests for information had been handled. The complainant specifically asked the Commissioner to consider whether the Council had

correctly responded to request 2. Although the complainant also referred to request 1, the precise nature of the complaint was not clear. The Commissioner

sought clarification and understood that the complainant wished the Commissioner to investigate whether the information requested in request 1 was held by the Council.

14. The Commissioner has not considered the Council's response to point 3 of the complainant's letter on 1 December 2005 concerning whether the Secretary of State had allowed the Council, since 26 November 2001, to vary section 11 of the LGA as the Council has responded to this request and it did not form a part of the complainant's complaint to the Commissioner. It is included in the Notice only because the complainant made reference to this request in request 2.
15. The complainant also raised other issues which have not been addressed in this Notice either because the Commissioner considers that they fall outside the scope of the original requests or because they are not a requirement of Part I of the FOIA.

Background

16. The Commissioner understood that request 1 related to section 29 (2) (b) of the LGA. The relevant section refers to the obligation on local authorities that have passed a resolution to operate executive arrangements to publish a notice which includes particular details in one or more local newspapers.
17. The Commissioner understood that request 2 related to section 29 (1) of the LGA which refers to a local authority's obligation to pass a resolution in order for the authority to operate executive arrangements.
18. During the investigation, the Council advised the Commissioner that it had understood that request 2 related to section 29 (3) of the LGA which provides that a local authority which has passed a resolution may not cease to operate executive arrangements unless, by virtue of any provision made under section 33 (5), the authority operate alternative arrangements.
19. Section 11 of the LGA specifies the various forms which the executive of a local authority may take.
20. The text of the relevant sections of the LGA may be found in the Legal Annex to this Notice.

Chronology

21. The Commissioner wrote to the complainant on 16 November 2006 and asked for clarification, namely whether the complainant wished to allege that the Council does hold the information requested in request 1. The complainant responded on 1 December 2006 and explained that the two requests she had made were inter-dependent in the sense that the answer to request 2 would indicate whether the Council should hold details of the publicity. The complainant advised that,

although she had not retained a copy of her original requests, she had never asked the Council for information on whether a formal resolution had been passed under section 29 (3) of the LGA.

22. Due to the fact that all of the Council's responses to request 2 appeared to concern section 29 (3), the Commissioner sought further clarification on 5 December 2006. The complainant maintained her position that she had not made a request to the Council on 13 December 2005 concerning whether a formal resolution had been passed under section 29 (3) of the LGA. Regarding request 1, the complainant referred to the Council's response on 9 January 2006 in which it had stated that all statutory requirements had been met at the time. The complainant argued that it would not be possible for the Council to state that all statutory requirements had been met at the time if it was not able to provide evidence that the notices had been published.
23. The Commissioner wrote to the Council on 8 January 2007 and set out the details of the complaint. The Commissioner advised that he understood that the Council's position was that the information requested by the complainant in request 1 had been held at one time but had been mislaid. He asked the Council to respond to a series of questions mainly concerning what checks had been made to ascertain whether the information is held and the Council's obligations according to its Records Management Policy.
24. The Commissioner also asked the Council to provide copies of the original requests by the complainant and, if it had received a request concerning whether a formal resolution had been passed under section 29 (1), to confirm or deny holding the information according to the duty under section 1 of the FOIA or provide evidence that it had done so already. In the event that the Council wished to assert that the information was not held, the Commissioner asked the Council to respond to the questions posed by the Commissioner.
25. The Council responded on 5 February 2007 and provided a bundle of correspondence. Regarding request 1, the Council explained that information concerning public consultation about the proposed executive arrangements is fully detailed in a letter written by the Chief Executive to the Department for Transport, Local Government and the Regions (DTLGR) dated 23 November 2001. It added, however, that it no longer holds details of the notices that would have been placed in a local newspaper about the executive arrangements. It stated that the Council's Democratic Services, Policy and Legal departments had carried out a thorough search of their paper and electronic holdings. The Council supplied a copy of its Records Management Policy and explained that there is no specific requirement to retain this type of routine information. It explained to the Commissioner that the purpose of the notice, and the Council's only statutory obligation, is to inform the public and once that has been done, the information may be destroyed. The Council stated that no similar information is held.
26. Regarding request 2, the Council advised that it had received a request for information from the complainant concerning whether a formal resolution was passed under section 29 (1) of the LGA but this was not until 30 March 2006. The

Council explained that in the complainant's letter on 13 December 2005, she had asked about a formal resolution under section 29 (3) of the LGA. The Council stated that, unfortunately, it had never attempted to deal with the distinction between section 29 (1) and section 29 (3) and did not answer the request on 30 March 2006. It confirmed that the formal resolution to adopt the executive arrangements was passed under section 29 (1) of the LGA on 20 November 2001 and that this had been recorded in minutes as minute 6 (2). It advised the Commissioner that it had recently communicated this information to the complainant, including a copy of the relevant minutes and a copy of the letter written by the Chief Executive to the DTLGR on 23 November 2001 which details the executive arrangements. It provided to the Commissioner a copy of its letter to the complainant on 5 February 2007.

27. The Commissioner contacted the Council by telephone on 8 February 2007 to discuss the response. The Commissioner asked if the Council could explain what the confusion had been regarding request 2. The Council stated that the complainant had originally requested information on section 29 (3), not section 29 (1). The Commissioner pointed out that it appeared from the correspondence that the complainant had sent numerous letters of clarification which did not appear to be ambiguous in relation to the request. The Commissioner stated that it appeared that the Council had not noted the content of the letters of clarification and the Council agreed with this point and accepted that it had not offered a good level of service in this instance.
28. The Commissioner sent an email to the Council on 9 February 2007. The Commissioner reiterated his request for copies of the original requests as the Council had not included these in the bundle of correspondence it had sent to the Commissioner.
29. On 9 February 2007, the Commissioner wrote to the complainant to ask whether the information sent by the Council on 5 February 2007 had satisfied request 2. The complainant responded on 13 February 2007 and advised that she had "rejected" the information. The Commissioner noted that the complainant appeared to be questioning the validity of the information that had been provided and whether the Council had acted according to the provisions of the LGA. The complainant alleged that the Council had been operating alternative arrangements since 27 November 2001. The complainant also asked the Commissioner to consider issues about the publicity which, in the Commissioner's view, fell outside the scope of the original request referred to in this Notice as request 1.
30. The Commissioner wrote to the complainant on 16 February 2007 and explained that he considered that she had raised matters falling outside the scope of request 1 and that the remainder of the complaint appeared to concern issues which cannot be considered by the Commissioner because they are not requirements of part I of the FOIA.
31. On 28 February 2007, the Council sent an email to the Commissioner and attached copies of the complainant's original requests.

32. Following receipt of copies of the original requests, the Commissioner wrote to the complainant on 8 March 2007 and sought further clarification. The Commissioner advised the complainant that the Council had stated that it had understood request 2 related to section 29 (3) of the LGA. The Commissioner explained that, following examination of the original request, it had been difficult to ascertain with certainty what the terms of the original request had been due to the fact that the request had been hand-written in black ink. The Commissioner further explained that at first, it had looked as if the complainant had written "section 29 [sec 3]" but he also thought it could be possible that the complainant had written "section 29 [see 3]", by which she had meant to refer to point 3 of her previous letter on 1 December 2005. The Commissioner provided copies of the original requests to the complainant and asked her to clarify what she had written.
33. In the meantime, the Commissioner wrote to the Council on 20 March 2007 to seek further clarification regarding request 1. The Commissioner referred the Council to its internal review on 13 June 2006 in which it had stated that paper files had been mislaid. The Commissioner asked the Council to explain whether the paper files referred to would have included the information requested in request 1. The Commissioner also asked the Council to elaborate on why it had described information relating to the notices as "routine" and therefore subject to destruction once published.
34. The complainant responded to the Commissioner's request for clarification on 19 March 2007. She wrote in the letter that, as she considered that the Council had not acted according to the LGA, she had concluded that no publicity was placed in the newspapers. She also confirmed that she had written "[see 3]" in request 2, by which she intended to refer to point 3 of her previous correspondence on 1 December 2005.
35. The Council responded to the Commissioner on 22 March 2007. It explained that there were extensive public consultations prior to the implementation of the new executive arrangements under Section 25 of the LGA. It clarified that none of the records about the public consultation contain the information requested in request 1 as the notices were published after the public consultation exercise had been completed. The Council stated that statutory notices about various aspects of the Council are published in the Ealing Gazette, the local newspaper, every single week, concerning controlled parking zones, public meetings, funding etc. and that these are routine items. The Council explained that routine records are destroyed when the service area considers them of no further use. The Council also advised the Commissioner that records which are destroyed as part of routine clearance are not listed on the Council's records management system either prior to, or following, disposal.
36. During a telephone conversation on 26 March 2007, the Commissioner asked the Council about the internal review on 13 June 2006 and why the Council had referred to files being mislaid. The Council clarified that the statement made in the internal review had been erroneous as no information had been mislaid. The Commissioner asked whether the Council could provide any kind of description about what kind of information it is likely to have held. The Council advised that

the general process for putting notices into newspapers would have involved Committee Services drafting a proof notice and sending it to the local newspaper, most likely via email. The newspaper would then have put the notice into its own type-face and sent it back to the Council for approval. Once approved, following payment to the newspaper, the information could be destroyed.

37. On 28 March 2007, the Commissioner completed an informal assessment of the complaint and provided a copy to the complainant and to the Council.
38. The complainant responded to the assessment on 13 April 2007 and advised that she remained dissatisfied. The complainant continued to allege that the Council was operating by an alternative arrangement which did not accord with the provisions of the LGA and questioned further the validity of the information that had been provided.

Findings of fact

39. The Commissioner has found that the complainant's request on 13 December 2005 did relate to section 29 (1). The complainant wrote "section 29 [see 3]", by which she meant to refer to point 3 of her previous correspondence on 1 December 2005.
40. The Commissioner has found that the Council acknowledged receipt of the complainant's letter on 21 March 2006 as well as the duplicate letter on 30 March 2006 in correspondence sent to the complainant on 6 April 2006.

Analysis

Procedural matters

41. Regarding request 1, although the complainant referred to section 29 (a) (b) of the LGA, she described that her request concerned the notices that the Council is obliged to publish under section 29 (2) (b). The Commissioner therefore understood that request 1 related to section 29 (2) (b) of the LGA. The relevant section refers to the obligation on local authorities who have passed a resolution to operate executive arrangements to publish a notice which includes particular details in one or more local newspapers.
42. As the complainant alleged initially that the Council did hold the information requested, the Commissioner conducted an investigation on that basis. At the beginning of the investigation, the Commissioner understood that the Council had held the information at one time, but that it had since been mislaid. This was based on the Council's internal review on 13 June 2006 which had referred to an extensive public consultation exercise and paper files which had been mislaid. Further to the Commissioner's request for clarification, the Council explained that the notices were published after the public consultation exercise and as such, there would not be any reference to when (or in which newspapers) the notices were published. When the Commissioner asked specifically why the Council had

referred to information being mislaid, the Council stated that this had been an error and that it continued to hold records of the public consultation exercise. The Commissioner therefore considers that the internal review by the Council lacked clarity because it referred to mislaid files (when in fact it now states that no files had been mislaid), and also to an extensive public consultation exercise, but did not explain that the records held on the exercise would not have included the information requested.

43. Although the Council cannot be precise about what information was held, it has briefly explained its procedure for putting notices into newspapers and outlined that essentially, the information that was held is likely to have comprised of email correspondence between itself and the newspaper(s) involved concerning the draft notice. It has explained the reasons why this information is considered to be routine and how its destruction accords with the Records Management Policy. The Commissioner asked a number of questions to ascertain that the Council had made adequate checks to ensure that the information is no longer held and found no evidence during the investigation to suggest that the Council still holds the information in request 1. Towards the end of the investigation, the complainant altered her position and concluded that the information was not held based on her belief that the Council had not acted in accordance with the provisions of the LGA.
44. Regarding request 2, the Commissioner understood that the request related to section 29 (1) of the LGA which refers to a local authority's obligation to pass a resolution in order for the authority to operate executive arrangements. The Commissioner has examined the original request and has noted the clarification provided by the complainant to the Commissioner concerning what she wrote. The Council has advised the Commissioner that it read the request as asking for information on whether a formal resolution had been passed under section 29 (3), however, the complainant has advised that she had actually written "section 29 [see 3]" not "[sec 3]", by which she meant to refer to point 3 of her previous letter on 1 December 2005. The complainant alleged that the Council had not responded correctly to request 2 because it had responded as if she had asked for information relating to section 29 (3) of the LGA and did not note her subsequent letters of clarification.
45. As the Commissioner had to seek clarification regarding the handwritten request before he could ascertain what had been written with certainty, it seems likely that the Council initially misunderstood the original request and read the request as relating to subsection 3 of section 29 of the LGA because of the complainant's handwriting. In the Commissioner's view, the complainant's reference to point 3 of her previous correspondence on 1 December 2005 was confusing and does not seem to bear any clear relevance to the complainant's description of what she had asked for in request 2. The complainant maintained throughout the investigation that request 2 did not relate to section 29 (3) of the LGA and as such, it appears to the Commissioner that the complainant intended to relate request 2 to point 3 of her previous request on 1 December 2005 in some way. The exact relationship between the reference to section 11 and request 2 remains unclear.

46. Whatever the exact reason for the Council's misinterpretation of the terms of request 2, it is clear that the Council did not note subsequent letters of clarification. The Commissioner has understood that section 29 (3) of the LGA is distinct from section 29 (1) in that the former section deals with the possibility of a local authority operating alternative arrangements to the executive arrangements. The Commissioner believes that a request concerning a formal resolution is more likely to concern section 29 (1) of the LGA as this section refers specifically to a formal resolution while section 29 (3) does not and as such, the Commissioner considers that in accordance with section 1 (3) of the FOIA, it would have been reasonable for the Council to seek clarification. Indeed, the Council attempted to provide appropriate advice and assistance but because of the lack of attention that was paid to the complainant's letters of clarification, the attempt was ineffective and consequently the Council did not communicate under the FOIA information which it held in response to request 2.
47. Following the Commissioner's intervention, the Council supplied the information requested in request 2 to the complainant on 5 February 2007. The Commissioner understands that the complainant remains dissatisfied with the information because she has questioned the validity of the Council's actions. This appears to be based on the complainant's belief that the Council is operating alternative executive arrangements which are not in accordance with the provisions of the LGA. The complainant has been advised that this issue is not a requirement of Part I of the FOIA and as such, cannot be considered by the Commissioner.

The Decision

48. The Commissioner's decision is that the public authority dealt with request 1 in accordance with the FOIA. Although the complainant initially alleged that the Council did hold the information, the Commissioner has found no evidence that the Council still holds the information requested and is satisfied with the explanation provided by the Council that the information is not held. He therefore finds no breach of section 1 of the FOIA in this regard.
49. The Commissioner's decision in relation to request 2 is that the Council did not deal with the request in accordance with the FOIA. The Commissioner considers that it would have been reasonable for the Council to have sought clarification about the information required, but this appears to have been provided on 21 March 2006. Despite the complainant's clarification, the Council failed to communicate under the FOIA information which it held. As such, the Commissioner has considered that the Council breached section 1 of the FOIA although the Commissioner notes that the Council has now complied with the FOIA and supplied the information requested on 5 February 2007.

Steps Required

50. The Commissioner requires no steps to be taken.

Other matters

51. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

- The Commissioner notes that the Council responded to request 1 outside of the 20 working day limit set out in section 10 of the FOIA.
- The Commissioner also wishes to express concern about the length of time it took the public authority to conduct an internal review. The complainant first requested an internal review on 17 January 2006 in relation to request 1 but the Council did not complete an internal review until 13 June 2006, a length of time which is, in the Commissioner's view, unreasonable.

Right of Appeal

52. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 16th day of May 2007

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access under FOIA

Section 1(1) provides 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.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1) (a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1) (b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1) (a) is referred to as “the duty to confirm or deny”.”

Section 29 of the LGA

Section 29 (1) provides that –

“A resolution is required of local authority in order for the authority to operate executive arrangements”.

Section 29 (2) provides that –

“As soon as practicable after passing such a resolution a local authority must –

(a) secure that copies of a document setting out the provisions of the arrangements are available at their principal office for inspection by members of the public at all reasonable hours, and

(b) publish in one or more newspapers circulating in their area a notice which-

- (i) states that they have resolved to operate executive arrangements,
- (ii) states the date on which they are to begin operating arrangements
- (iii) describes the main features of the arrangements

- (iv) states that copies of the document setting out the provisions of the arrangements are available at their principal office for inspection by members of the public at such times as may be specified in the notice, and
- (v) specifies the address of their principal office.

Section 29 (3) provides that –

“A local authority which pass a resolution under this section may not at any subsequent time cease to operate executive arrangements unless, by virtue of any provision made under section 33 (5), the authority operate alternative arrangements in place of the executive arrangements”.

Section 11 provides that –

“The executive of a local authority must take one of the forms specified in subsection (2) to (5)”.

Section 11 (5) provides that –

“It may take any such form as may be prescribed in regulations made by the Secretary of State”.