

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 2 March 2009

Public Authority: The London Borough of Camden
Address: Camden Town Hall
Judd Street
London
WC1H 9JE

Summary

The complainant sought copies of any signed funding agreements between the London Borough of Camden ("the Council") and Camden Association of Street Properties ("CASP") dating back to October 2004. The Information Commissioner ("the Commissioner") investigated and found the Council in breach of section 1(1)(a) and section 10(1) of the Freedom of Information Act 2000 ("the FOIA") for not initially confirming or denying whether the information was held. However, the Council subsequently informed the Commissioner that the information was not held. The Commissioner investigated this position and was satisfied that the information was not held. The Commissioner therefore does not require the Council to take any steps.

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 FOIA. This Notice sets out his decision.

Background to the request

2. CASP stands for "The Camden Association of Street Properties". It is a borough wide group which aims to represent the interests of Camden council tenants and leaseholders of properties that are not within the boundaries of a council estate.
3. The Council's Housing and Adult Social Care Directorate funds the work of the Council's Tenant Participation Team. For this purpose, it is allocated a budget known as "The Tenant Participation Budget". The money is used to cover support services to tenant groups, including CASP.

The Request

4. On 19 April 2007, the complainant wrote to the Council and requested information in the following terms:

"I...request to see all contracts [names of two CASP trustees] have entered into with Camden council from casps first AGM in October 2004 till present day".

5. The Council responded on 1 May 2007. It stated that the information was not held and explained that the complainant had the option of seeking an internal review if she was dissatisfied.

6. The complainant replied on 1 May 2007. She described the information she required in the following terms:

"I have recently put in a FOI request to Peter Williams for the funding agreement/contract/arrangement or whatever term one wants to call it, between Camden council and the trustees of Camden Association of Street Properties (CASP) from the period Oct 2004 – till present day".

7. The complainant then referred to a letter taken from the CASP website. The complainant stated that this demonstrated that the Council is providing funding to CASP. The complainant concluded that this meant the information she had requested was held and stated that she wished to appeal.
8. The Council completed an internal review on 16 May 2007. The review states that the panel members had reconsidered the request on 19 April 2007 and could confirm that the Council did not have any contracts with CASP or individual members of CASP. The Council stated that it was currently negotiating a Local Compact with CASP but it stated that if it was adopted it would constitute an agreement rather than a contract. The Council advised the complainant of her right to appeal to the Commissioner.

The Investigation

Scope of the case

9. On 21 May 2007, the complainant contacted the Commissioner to complain about the way her request for information on 19 April 2007 had been handled. The complainant asked the Commissioner to consider the Council's position that the information she had requested was not held.
10. Once investigation on the case had begun, the complainant clarified that she wished the Commissioner only to consider whether the Council held information of the description specified in her subsequent correspondence on 1 May 2007. This Notice therefore only concerns the Council's handling of the request made

on 1 May 2007. It should also be noted that the complainant clarified that she was only interested in signed funding agreements between the Council and CASP.

Chronology

11. On 22 July 2008, the Commissioner wrote to the complainant to set out his understanding of the complaint. The complainant responded on 23 July 2008 and provided some further information.
12. The Commissioner contacted the complainant again on 29 July 2008 to request some clarification concerning the information required. He pointed out that the complainant's request on 19 April 2007 had specified an interest in contracts between two named trustees of CASP and the Council whereas the complainant's subsequent email on 1 May 2007 had described the information sought as being any agreement, contract or arrangement between the Council and any of the trustees of CASP.
13. The complainant responded on the same day and stated that she wished the Commissioner to consider whether the Council holds funding agreements with any of the members of CASP.
14. The Commissioner replied to the complainant on 1 August 2008 and stated that in light of the clarification provided, the Commissioner's investigation would focus on the description of the requested information given in an email to the Council on 1 May 2007.
15. The Commissioner wrote to the Council about the complaint on 1 August 2008. He asked a number of questions to help him to consider whether the Council held any information relevant to the request.
16. The Council provided a response to the Commissioner on 15 September 2008. As well as responding to the questions posed by the Commissioner, the Council stated that it held a "partnership agreement" with CASP (as referred to in the internal review on 16 May 2007). The Council explained that a copy of this had been provided to the complainant and it also provided a copy of the agreement to the Commissioner.
17. On 22 September 2008, the Commissioner contacted the complainant to enquire whether the Partnership/Compact Agreement referred to had satisfied her request for information.
18. The complainant replied on 22 September 2008 and explained that the agreement provided had not satisfied her request. She stated that her request had been for the funding agreement which, she stated, was entirely different to the recent Compact Agreement. The complainant stated that she believed a signed funding agreement existed between the Council and CASP and it was this information she was interested in.
19. On 26 September 2008, the Commissioner telephoned the complainant to discuss what information she was seeking. The complainant explained that she

- had not been satisfied with the Compact Agreement provided because it was a different type of agreement to a funding agreement. She stated that the Compact Agreement deals with how the two parties are going to work together. The Commissioner pointed out that the agreement did refer to funding arrangements and the complainant acknowledged this but explained that it did not give particulars about the funding such as how much, what are the conditions etc.
20. The complainant also discussed the possibility with the Commissioner that CASP had been grant funded by the Council, although the Council had told her that it was “holding the funds” for CASP. Although the complainant expressed doubt about how the Council had funded CASP, she did say that she was sure that CASP had received a lot of money from the Council and this led her to believe that there would have been a signed funding agreement between them.
 21. The Commissioner explained to the complainant that he had initially believed that her request extended to letters or other information about the funding but the complainant advised that her interest was limited to any *signed* funding agreements only. The complainant stated that she would provide some further details to the Commissioner in order to explain her reasons for believing that a signed funding agreement was held.
 22. On 30 September 2008, the complainant sent an email to the Commissioner with an attached document providing further details on the background to the complaint and details concerning why the complainant believed that the information was held.
 23. On 6 October 2008, the Commissioner wrote further to the Council. The Commissioner explained that the scope of his investigation was limited only to signed funding agreements between the Council and CASP. He posed a number of questions to help him to understand the funding arrangements and to assess what information was held by the Council.
 24. The Council responded on 20 October 2008. It explained to the Commissioner that the Compact Agreement was not, in any case, information that was held at the time of the complainant's request. This agreement was signed in December 2007. The Council also responded to the other questions posed by the Commissioner.
 25. The Commissioner wrote further to the Council on 30 October 2008 to make some further enquiries concerning the funding arrangements and the Council responded to the Commissioner on 24 November 2008.
 26. On 12 December 2008, the Commissioner wrote to the Council to clarify a number of points and he received a response from the Council on 19 January 2009.
 27. The Commissioner sent an email to the Council on 20 January 2009 to clarify a couple of outstanding points and the Council responded on 4 February 2009.
 28. Having considered the Council's responses, the Commissioner provided a copy of his assessment of the complaint to the Council and the complainant on 4

February 2009. The assessment concluded that the Commissioner had found no evidence that the information requested by the complainant was held or had ever been held.

29. The complainant responded on 5 February 2009 and stated that she did not accept the conclusion reached by the Commissioner. The complainant stated that she believed that the Council had misled the Commissioner and that it did in fact hold the information she had requested.

Analysis

Procedural matters

30. The full text of the legal provisions of the FOIA referred to in this part of the Notice have been set out in the Legal Annex at the end of this Notice.
31. The complainant's initial request was made on 19 April 2007. However, whilst purporting to seek an internal review of the first request, on 1 May 2007, the complainant provided a description of the information she was seeking that differed from the description she had provided on 19 April 2007. However, the Council did not recognise this and proceeded to complete an internal review concerning only the request made on 19 April 2007.
32. The Commissioner considers that the complainant's correspondence on 1 May 2007 actually represented a new request and ought to have been treated as such. This request was overlooked by the Council so it failed to respond within 20 working days. This was a breach of section 10(1) of the FOIA. As the Council subsequently made it clear to the Commissioner once his investigation was underway that this information was not held, the Commissioner considers that the Council did not comply with its obligation under section 1(1)(a) to state that the information requested on 1 May 2007 was not held.
33. The complainant has alleged that the Council did hold the information she requested on 1 May 2007. If this was the case, the Council would be in breach of its obligations under both section 1(1)(a) to state whether information is held and 1(1)(b) to communicate information that is held to the applicant. In order to help the Commissioner to consider the complainant's complaint, the Commissioner sought to establish the details of the funding arrangements between CASP and the Council dating back to 2004 and he has set out his findings below.

Funding in 2004

34. The Council explained to the Commissioner that in 2004, funding for CASP was provided by Camden Federation of Tenants and Residents Associations ("CFTRA") who funded a number of different organisations. CFTRA received funding from the Council's Tenant Participation Budget. This money was provided to CFTRA by the Council via a grant. As money was not provided directly to

CASP from the Council at this time, there would not have been any signed funding agreement between the Council and CASP.

Funding in 2005/06

35. During this year, the Council began to fund CASP directly rather than through the grant to CFTRA. The Council explained to the Commissioner that it did not provide a grant to CASP for this year and it has checked its records to ensure that this was the case. The Council explained to the Commissioner that it does not hold any records that would reveal the process involved for providing funding to CASP for this year because any such records would have been destroyed in accordance with the Council's Records Management Policy.

Funding in 2006/07

36. During this year, the Council agreed a budget to fund specific CASP activities. Agreement for the funding took place after a meeting between CASP officers, the Tenant Participation Coordinator and the Assistant Director for Housing Management at the Council. Following verbal agreement at the meeting, the funding arrangements for this year were set out in a letter from the Tenant Participation Coordinator to CASP in February 2006. This arrangement did not involve providing a grant to CASP to spend. Rather, when CASP needed funding, it would contact the Council to gain its prior agreement. This would usually involve quotes from CASP being sent to the Council via email for larger items of expenditure prior to payment although this would not be necessary for smaller items. In all cases, CASP needed to be able to present evidence of its expenditure.

Funding in 2007/08

37. In this year, CASP officers and representatives of the Council once again met to agree a budget for specific CASP activities in the same way that they had done in the previous year. The Tenant Participation Coordinator at the time wrote to CASP in April 2007 to confirm the budget for specific CASP activities. Claims for expenditure were made in the same way as described in the previous year.
38. In December 2007, the Council and CASP formalised these arrangements by way of a signed Compact Agreement, a copy of which has been provided to the complainant.

Searches for the information

39. The Council advised the Commissioner that it had searched all computer files relating to CASP which are held by the Tenant Participation Team. This team does not hold any paper files relating to CASP. The Council also advised the Commissioner that other relevant departments had been consulted about the request. The Council consulted a member of staff who was the Assistant Director for Housing Management in 2006. The Council has stated that there are no other members of staff available for consultation on what happened prior to 2006 because those staff members have now left the Council's employment. The

Council has also consulted the Principal Accountant for the Housing and Adult Social Care Directorate as well as CASP itself. The Council advised the Commissioner that it believes it has never held the information requested by the complainant. It stated that if any relevant records relating to CASP had been held, they would have been electronic and no records of deleted electronic records are kept.

Complainant's reasons for believing a signed funding agreement is held

40. The complainant provided to the Commissioner a copy of an email dated 3 August 2005 from the Council to the secretary of CASP. The relevant part of this email reads as follows:

"We have made an initial assessment, and we do have available funds in the Tenant Participation (TP) budget to meet some of your requirements. At present we are meeting a number of CASP's costs from this budget which includes mail outs, travel expenses, refreshments, and meeting rooms, which over the last year have been approximately £15,000".

41. The complainant believes that the reference to "last year" refers to the period from CASP's first general meeting in October 2004. The Council advised the Commissioner that it was not able to confirm whether this was the period being referred to. Nonetheless, the Commissioner does not share the complainant's view that this information represents evidence that any signed funding agreement between the Council and CASP existed.

42. The complainant also provided to the Commissioner a copy of an email from the Council's complaints and Information Manager dated 30 January 2006 containing the following text:

"The Council reviews and monitors all organisations that it funds (such as CASP/CFTRA etc). Members of these organisations are expected to follow the individual terms of their agreement and code of conduct with the Council".

43. The complainant believes that this email suggests that there was a signed funding agreement between CASP and the Council which set out terms and conditions concerning the funding. The Commissioner does not consider that this is evidence of such an agreement however. Given the date, the Commissioner assumed that the reference to "agreement" here was likely to refer to the funding arrangements that were confirmed in the Tenant Participation Coordinator's letter to CASP in February 2006. The Council confirmed that it believed that this was the case.

44. The Commissioner considered the details of the Council's funding arrangement with CASP going back to 2004 and he was satisfied that based on the arrangements described there appears to be no obvious reason that would point to the conclusion advanced by the complainant that the Council must have signed a formal agreement with CASP and that this information was held by the Council when it responded to her request. The Commissioner was satisfied that the Council had demonstrated that it had made appropriate searches and taken other

appropriate steps, including consulting CASP itself, to check that it did not in fact hold the information and that it had never been held. Although the complainant asserts that the information in question was held, it was not the Commissioner's view that the complainant had provided compelling evidence in support of this and no evidence was presented to the Commissioner during his investigation that would suggest that the information was held or had ever been held.

The Decision

45. The Commissioner's decision is that the Council did not deal with the request for information made on 1 May 2007 in accordance with the FOIA because:
- It failed to state whether the information was held in accordance with its obligations under section 1(1)(a) of the FOIA within 20 working days following the date of receipt of the request. The Council therefore breached section 10(1) of the FOIA.
 - It did not state whether the information was held in accordance with its obligations under section 1(1)(a) until the Commissioner's investigation had begun and it therefore breached section 1(1)(a) of the FOIA.
46. However, the Council subsequently clarified that the information was not held and the Commissioner is satisfied that the Council did not breach section 1(1)(b) by failing to provide to the complainant information that was held.

Steps Required

47. The Commissioner requires no steps to be taken.

Right of Appeal

48. 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 2nd day of March 2009

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

General Right of Access

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

Time for Compliance

Section 10(1) provides that - “Subject to subsections (2) and (3), 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.”