

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 May 2009

Public Authority: London Borough of Enfield
Address: Civic Centre
Silver Street
Enfield
EN1 3XJ

Summary

The complainant submitted a series of requests to the public authority which were mainly focused on housing issues relating to the 'Edmonton Partnership Initiative' regeneration project and as a consequence of the responses received made several complaints to the Information Commissioner ("the Commissioner"). On 13 July 2006, the complainant requested information following the suspension of the Director of Housing. The complainant alleged that the public authority failed to respond to this request. Following intervention by the Commissioner, the public authority disclosed some of the information requested and confirmed that it did not hold other information, a position which the Commissioner upheld. The Commissioner investigated and found that the public authority breached sections 1(1)(a), 1(1)(b), 10(1) and 17(1) of the Act in respect of the delay and refusal notice but does not require the public authority to take any action.

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 (the "Act"). This Notice sets out his decision.

The Request

2. On 13 July 2006, the complainant wrote to the public authority requesting the following information:
 - ii) "Were there any allegations of anything inappropriate or underhand w.r.t. ALMO or other stock transfer?"
 - iii) "Will the [named official] continue to get paid in full during suspension? If yes, why should council taxpayers foot the bill?"

- iv) "What steps council [sic] is taking to ensure that activities which led to suspension are well monitored to prevent recurrence?"
3. These requests were prefaced by another which the Commissioner is investigating separately.
4. As the complainant has made a series of requests and complaints regarding the Edmonton Partnership Initiative to the public authority since early 2004 there is a great deal of correspondence between the two which displays the inability of the parties to reach a settlement on the issues. Not all of these pieces of correspondences are relevant to the complaints made to the Commissioner and so are not recorded here.

The Investigation

Scope of the case

5. On 12 October 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. Due to the interrelated nature of the complaints it has been difficult to extrapolate the specific thread of complaint usually associated with freedom of information requests. This has been further complicated by the public authority's attempt to deal with the requests in the normal course of business and not follow the specific steps related to freedom of information requests. The complainant was unable to isolate a specific complaint but simply wished the commissioner to investigate the fact that the requests had allegedly been ignored, or at least, not substantially answered.
6. The Commissioner is considering the outcomes to parts ii), iii) and iv) of the request made on 13 July 2006.
7. The Commissioner is satisfied that part iv) of the request relates to steps taken to ensure that activities that led to this particular alleged suspension are well monitored to prevent recurrence and therefore the scope of the requested is limited to this and does not include information relating to the routine checks the public authority refers to in paragraph 15.

Findings of fact

8. An 'ALMO' is an arms length management organisation set up by a local authority to manage and improve all or part of its housing stock. The company is owned by the local authority and operates under the terms of a management agreement between the authority and the ALMO.
9. As a result of submissions from the complainant, the Commissioner identified six different complaints between the parties requiring their own investigation. This has generated a substantial amount of cross referenced and interrelated correspondence.

Chronology

10. As stated above, due to the involved and related nature of the complaints involving these parties, there is a large volume of correspondence. The Commissioner does not consider it necessary or beneficial to detail each of these communications but has instead chosen to highlight those relevant for consideration in this case.
11. The interrelated nature of the complaints and correspondence has led to confusion as to which of the numerous requests had been answered. The Commissioner was not helped by the complainant being unable to clearly identify which requests had been dealt with.
12. The initial request was made on 13 July 2006. The Commissioner was unable to identify a specific response provided to the complainant prior to his intervention.
13. In a letter dated 20 March 2008 the public authority informed the complainant that they held no recorded information relating to 'any allegations of anything inappropriate or underhand with regard to ALMO or other stock transfer'. Furthermore, by letter dated 14 August 2008, the public authority confirmed that there were in fact no allegations of anything inappropriate or underhand with regard to ALMO or other stock transfer.
14. On 14 August 2008 the public authority informed the complainant that the authority's conditions of service make provision for staff to be suspended on full pay pending investigation of allegations which if substantiated could result in disciplinary action being taken. In a letter dated 12 March 2009, the public authority disclosed the relevant recorded information which was an extract from its Disciplinary Policy.
15. The letter of the 14 August 2008 from the public authority to the complainant also stated that there were no steps the authority needed to take to ensure that activities which led to suspension are well monitored to prevent recurrence. The letter did however confirm that the authority undertake the normal range of governance checks, balances and audits that any large organisation would be expected to take as well as investigating information received from a variety of sources to ensure probity in transactions.

Analysis

Request ii)

16. The Commissioner is aware, from reading the correspondence between the parties, that the complainant has made allegations 'with regard to ALMO or other stock transfer'. The Commissioner is satisfied that the complainant was not seeking information relating to allegations made by himself. However, the public authority should not have assumed this and should have refused to disclose the

information under section 21(1), as there was information of the description specified but this information was reasonably accessible to the complainant. In failing to cite section 21(1) it breached section 17(1) in not supplying a refusal notice stating that the information was exempt.

17. The Commissioner is satisfied that no information other than that referred to in paragraph 16 is held. If other allegations were made it would be reasonable for the complainant to expect that information were held in a recorded form. However, the public authority has confirmed that no other allegations were made and the complainant has offered no specific evidence to the contrary therefore on the balance of probabilities it is reasonable to accept that no other recorded information is held by the public authority.
18. Any written question put to a public authority is technically a freedom of information request as recorded information could exist which answers the questions. The Act does not require public authorities to answer questions generally, only if they already hold the answers in recorded form. The public authority provided an answer to the question in the spirit of providing advice and assistance. However, this was only communicated to the complainant following intervention by the Commissioner and over 20 months after the date of the request.

Request iii)

19. Recorded information exists which provides an answer to the question posed by the complainant. This was confirmed to the complainant in a letter dated 14 August 2008 and the information was disclosed on 12 March 2009. However, this disclosure was only made following intervention by the Commissioner and over 32 months after the date of the request.
20. Given that the public authority has standard procedures which make provision for payment during suspension, and that it therefore has a duty as an employer to fulfil its contractual obligations, the Commissioner is of the view that this provides an answer to the second part of this request.

Request iv)

21. The Commissioner is satisfied that the scope of the request is limited to steps taken to ensure that activities that led to this particular alleged suspension are well monitored to prevent recurrence, as per paragraph 7, and that information is not held. The public authority has confirmed that the suspension was not linked to allegations of anything inappropriate or underhand 'with regard to ALMO or other stock transfer' and therefore there were no steps the authority needed to take to ensure that the activities which led to the suspension are well monitored to prevent reoccurrence. The complainant has offered no specific evidence to the contrary therefore on the balance of probabilities it is reasonable to accept that no recorded information is held by the public authority.
22. Again, any written question put to a public authority is technically a freedom of information request as recorded information could exist which answers the

questions. The Act does not require public authorities to answer questions generally, only if they already hold the answers in recorded form. The public authority provided an answer to the question and supplementary information in the spirit of providing advice and assistance. However, this was only communicated to the complainant following intervention by the Commissioner and over 2 years after the date of the request.

The Decision

Request ii)

23. The Commissioner's decision is that the public authority did not deal with this part of the request in accordance with section 1(1)(a), section 10(1) and section 17(1) of the Act, in that it did not inform the complainant that no recorded information, other than that already in possession of the complainant and therefore accessible by other means, was held within the statutory time limit.

Request iii)

24. The Commissioner's decision is that the public authority did not deal with this part of the request in accordance with section 1(1)(a), section 1(1)(b) and section 10(1) of the Act, in that it did not inform the complainant that recorded information was held, or disclose that information within the statutory time limit.

Request iv)

25. The Commissioner's decision is that the public authority did not deal with this part of the request in accordance with section 1(1)(a) and section 10(1) of the Act, in that it did not inform the complainant that no recorded information was held within the statutory time limit.

Steps Required

26. The Commissioner requires no steps to be taken.

Right of Appeal

27. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 7th day of May 2009

Signed

**Gerrard Tracey
Deputy Commissioner**

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

Legal Annex

Freedom of Information Act 2000

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.”

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”