

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 24 January 2012

Public Authority: The London Borough of Barnet
Address: North London Business Park
Oakleigh Road South
London N11 1NP

Decision

1. The Commissioner's decision is that the London Borough of Barnet (the council) has breached section 10(1) of the Act by failing to respond to the complainant's request promptly or at all, within 20 working days.
2. The complainant has requested information relating to the London Borough of Barnet's (the council's) maintenance and reconstruction of West Hendon Broadway including the legal claim it brought against Veolia Water and others for the reinstatement costs incurred.
3. The Commissioner's decision is that the London Borough of Barnet (the council) has breached section 10(1) of the Act by failing to respond to the complainant's request promptly or at all within 20 working days.
4. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - State which information it holds within the scope of the complainant's request and
 - Communicate the information it holds to the complainant and/or issue a valid refusal notice in respect of all or the parts of the information it intends to withhold in accordance with section 17 of the Act.
5. The council must take these steps within 35 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 (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 15 July 2011 the complainant wrote to the council and requested information in the following terms:

'As a request under the FOIA, please provide me with the following:

- 1. Any documents that identify the section of the highway that your principal engineer is referring to above¹.*
- 2. Any documents detailing or identifying any safety precautions implemented on the damaged section of West Hendon Broadway from 2005 to 2007.*
- 3. The amount of the council's claim against Veolia and the council's costs in that claim.*
- 4. The amount of Veolia's counter-claim.*
- 5. The amount that the council paid to Veolia on discontinuation of the claim.*
- 6. Whether the claim and counter-claim were settled "out of court".*

I have been advised that the costs of the reconstruction in 2007 were ultimately paid by Transport for London.

- 7. Could you advise me of the amount of the costs paid by TfL and provide me with all documents relating to them?*

On 14 July 2011, the council contractors commenced the repair of numerous defective sections of West Hendon Broadway, on the South-east bound carriageway, between Garrick Road and Park Road.

- 8. Could you send me all documents relating to the above work?*

The council's chief executive wrote to me on 21 April 2011, and he tells me that this matter has been reviewed by "an Assistant Director from an unrelated service area".

- 9. Could you send me all documents relating to this review?*

¹ A reference to West Hendon Broadway

If any of the above amounts are not yet finalised, please inform me of the amounts assessed so far. The information I have requested can be readily proved from invoices, accounting statements, correspondence and other documents, which are not in any way legally privileged, so you have no lawful or practical reason to withhold it.'

Scope of the case

7. On 25 August 2011 the complainant contacted the Commissioner to complain that his above request for information had not been responded to by the council.

Chronology

8. On 15 September 2011 the Commissioner contacted the council and requested an explanation as to why it had not responded to the complainant's written request. The council explained that this was because it was unaware of it and invited the Commissioner to provide a copy.
9. On 15 September 2011 the Commissioner sent the council a copy of the complainant's information request which it acknowledged in writing on dated 21 September. It said it had no record of receiving the original but would respond 'promptly and within the statutory period'.
10. On 21 September 2011 the council also wrote to the complainant acknowledging his request and promising to respond under the Act promptly and in any event within 20 working days from the date of receipt which it confirmed was 15 September 2011.
11. On 13 October 2011 the council contacted the Commissioner to explain that due to staffing problems there would be a delay in responding to the complainant's request.
12. On 20 October 2011 the council contacted the Commissioner by telephone to say that it would endeavour to respond to the complainant's request by 28 October 2011.
13. On 21 November 2011 the Commissioner contacted the council and asked whether it had responded (or when it would be responding) to the complainant's request.
14. On 7 December 2011 the council contacted the Commissioner in relation to a number of the complainant's outstanding information requests

(including the one which is the subject of this Decision Notice) and said that it had disclosed all the relevant recorded information it held.

15. On 9 December 2011 the Commissioner responded and reminded the council of its promise dated 21 September to respond to the complainant under the Act promptly and in any event within 20 working days.
16. In the absence of a response, the Commissioner chased the council on 6 January 2012 and on 17 January was advised by it that all information within the scope of the complainant's request had already been disclosed or would be disclosed shortly in response to his subject access request under the Data Protection Act 1998. However, the council has not informed the complainant (or the Commissioner) in writing whether it holds all of the information requested as required by section 1(1)(a) of the Act. Furthermore, it has not specifically communicated to the complainant which information it has disclosed, which information (if any) is not held and which information it held but excluded from disclosure under an exemption or exemptions under Part II of the Act.
17. The Commissioner considers that the council has breached section 10(1) of the Act by not responding to the complainant's request promptly or at all, within 20 working days or at all.

Reasons for decision

Section 1

18. Section 1(1) of the Act 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 the information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

Section 10

19. Section 10(1) of the Act provides that a public authority must comply with section 1(1) of the Act promptly and in any event not later than the twentieth working days following the date of receipt.
20. The complainant submitted his information request to the council initially on 15 July 2011 and subsequently via the Commissioner on 15 September 2011. The council has not provided a response to this

request. Consequently, the Commissioner finds that the Council has breached section 10(1) of the Act by failing to comply with its obligations under section 1(1).

Right of appeal

21. 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 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

22. 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.
23. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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