

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 September 2012

Public Authority: London Borough of Tower Hamlets

Address: Town Hall
Mulberry Place
5 Clove Crescent
London
E14 2BG

Decision

1. The complainant has requested information about the commissioning of a report into recurrent unemployment, in a follow-up to a previous request for a copy of that report. The London Borough of Tower Hamlets has not responded to the request.
2. The Commissioner's decision is that The London Borough of Tower Hamlets failed to provide a response to the request within the statutory time limit of 20 working days, in breach of section 10(1) of the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Either, to comply with the requirements of section 1 of the FOIA, or to issue a valid refusal notice in accordance with section 17.
4. The public authority 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 pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 20 February, the complainant wrote to the London Borough of Tower Hamlets (the council) and requested information in the following terms:

"I have a few additional questions.

- 1. Please can you confirm who commissioned the report – for example, was it the Tower Hamlets Partnership 'Creating Sharing Prosperity Group'?*
- 2. Was the report distributed to members of the Creating Sharing Prosperity Group?*
- 3. What date was the report distributed?*
- 4. Who else would have seen the report at LBTH?*
- 5. Do any LBTH/THP minutes refer to this report?*
- 6. What were the actions in response to this report?*
- 7. Do you know the outcome?*
- 8. Can you confirm the total paid to SQW; including fieldwork, desk-based research and final report (payments may have been split)?*
- 9. Can you tell me the names of the researchers who carried out the work on behalf of SQW?"*

6. The council does not appear to have responded to this request.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way their request for information had been handled. The complaint is that no response has been received to the list of questions submitted by the complainant on 20 February 2012.
8. The Commissioner considers the scope of this case to be to determine whether, in failing to respond to the complainant's questions, the council has breached the requirements of FOIA.

Reasons for decision

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."

Request for Information

Section 8(1) provides that –

"In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested."

Time for Compliance

- (a) Section 10(1) provides that –
- (b) "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."

9. The Commissioner contacted the council on 26 March 2012 to ask it to respond to the complainant's request within 10 working days. A copy of the request was enclosed.
10. On 10 April the complainant wrote again to the Commissioner and confirmed that no response had been received and asked the Commissioner for further assistance.
11. The Commissioner wrote again to the council, on 13 April 2012, to confirm that the complaint had been accepted.

12. The council responded on 29 June 2012, saying:

"Further to our discussion on this particular matter, the only reference to the SQW report that [the complainant] refers to is at: [website address]¹

The report was commissioned in 2005, and no records are held with regards to the specific engagement of SQW.

I have a record of payment in March 2005 to SQW Limited for £14,628.75 which would correspond with the apparent date of engagement of the consultants.

Given that this occurred over 6 years prior to the request from [the complainant], there was no obligation on the Council to hold any additional information on the commissioning of this report, and the Council did not hold any additional information over and above what has been supplied at the time of [the complainant's] original request." [sic]

13. The Commissioner enquired whether this should be taken as meaning that no information is held with regard to the specific engagement of SQW and, consequently, that no information is held in respect of questions 1-7 inclusive, and question 9. The Commissioner agreed to forward the information about the record of payment, which is understood to be the information held in respect of question 8.
14. The council's response, of 18 July 2012, indicates that the complainant's email had been forwarded to colleagues in its Development and Renewal department, but that it was advised that the information was not held.
15. There is some doubt whether all the questions submitted by the complainant fall within the terms of FOIA, in that they may not necessarily be requests for recorded information held by the public authority. However, to the extent that the questions describe information which may be held by the council, or where the questions can be answered by disclosing information held, they will require a response which complies with the requirements of section 1 of FOIA.
16. The council has not provided the Commissioner with a direct admission that no response has been provided to these requests, but has confined itself to providing a small amount of peripheral information and a rather

¹ <http://moderngov.towerhamlets.gov.uk/mgConvert2PDF.aspx?ID=2574&T=10>

brief description of its handling of the complainant's 20 February email. Given that the council has not denied that it failed to provide a response, and has not produced any evidence to show that any response was sent, the Commissioner accepts the complainant's claim, that no response was received.

17. Noting that, in the case of question 8, the council has provided the Commissioner with some information about a sum paid to the consultants understood to have been commissioned to provide the report, it is clear that question 8, at least, is capable of being interpreted, and responded to, as a FOIA request. The complainant has given their view that answers to other questions, namely questions 1,2,3, and 5, might be found within the minutes of council meetings, specifically meetings of the Tower Hamlets Partnership and/or the Creating and Sharing Prosperity Group, and if the report was discussed in other council meetings those minutes might address question 6.
18. It is therefore clear that at least some of the complainant's questions are capable of being interpreted as FOI requests. Consequently, a response which complies with the requirements of section 1 of FOIA is required. The Commissioner is therefore satisfied that, in failing to provide the complainant with a response within 20 working days of receipt of the request, the council has breached section 10(1) of FOIA.

Other matters

Duty to provide Advice and Assistance

Section 16(1) provides that -

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."

19. The Commissioner notes that, in failing to engage with the complainant's correspondence, the council appears not to have recognised that they were making, or intending to make, a request for information, and has failed to provide advice and assistance which might have been reasonable in the circumstances. The Commissioner observes that the complainant's view, at paragraph 16 above, as to where information might be found, was not provided to the council. The provision of advice and assistance might have enabled those appropriate areas of search to be suggested to it.

Right of Appeal

20. 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

21. 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.
22. 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

Andrew White
Group Manager
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Wycliffe House
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