

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 February 2013

Public Authority: Royal Borough of Kingston upon Thames
Address: Guildhall
High Street
Kingston upon Thames
KT1 1EU

Decision (including any steps ordered)

1. The complainant requested information from the Royal Borough of Kingston upon Thames (the council) concerning minutes and copies of correspondence between the South London Connexions Sub-regional Unit and other London Boroughs in relation to the Connexions Information Advice and Guidance Service between particular dates. The council refused to provide the requested information and cited section 12(1) of the FOIA. The Commissioner considers that the council has failed to provide any evidence to him that the exemption at section 12(1) applies.
2. The Commissioner requires the council to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response under the FOIA that does not rely on section 12(1).
3. 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

4. On 5 October 2011, the solicitors on behalf of the complainant wrote to the council and requested information in the following terms:

'The Applicant requests all information (howsoever stored) held by or on behalf of the Royal Borough of Kingston ("the Local Authority") in relation to the issues below. Insofar as the Local Authority seeks to withhold relevant information, please confirm which exemption is being relied upon.

- 1. Minutes of all meetings between South London Connexions Sub-regional Unit ("the SRU") and the London Boroughs of Kingston, Bromley, Croydon, Merton, Richmond and Surrey ("the South London Boroughs) or any of them between 1 November 2011 and 11 July 2011 in relation to the Connexions Information Advice and Guidance Service ("Connexions Services") within the South London Boroughs.*
- 2. Copies of all correspondence, emails, notes, memoranda, and similar documents (either in hard copy or electronic format) passing between the SRU and the South London Boroughs (or any of them) in relation to the Connexions Services during the period from 1 December 2010 to 11 July 2011.'*
5. The council refused to provide the requested information on 16 February 2012, after a substantial delay. The refusal was on the grounds of cost under section 12 of FOIA.
6. An internal review of this refusal was requested on 14 March 2012 but no further response was received.

Scope of the case

7. The solicitors on behalf of the complainant contacted the Commissioner on 27 July 2012 to complain about the way the request for information had been handled.
8. Despite many written attempts by the Commissioner to obtain arguments from the council regarding its application of section 12 on 17 May 2012 (which was acknowledged), 27 July 2012, 17 October 2012, 7 January 2013 and phone calls on 19 December 2012 and 7 January 2013, the council did not engage with the Commissioner and there has been no further response to date.

Reasons for decision

9. Section 12 of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that

the cost of complying with the request would exceed the appropriate cost limit which, in this case, is £450 as laid out in section 3(2) of the fees regulations.

10. Regulation 4(3) of the Fees Regulations states that an authority, when estimating whether complying with a request would exceed the appropriate limit, can only take into account the costs it reasonably expects to incur in:
 - determining whether it holds the information;
 - locating the information, or documents containing it;
 - retrieving the information, or documents containing it; and
 - extracting the information from any documents containing it.
11. As the costs are calculated at £25 per person per hour for all authorities regardless of the actual cost or rate of pay, the limit will be exceeded if the above activities exceed 18 hours.
12. The Commissioner requested that the council provide a detailed estimate of the time it would take to provide the information with reference to the four activities set out in paragraph 10.
13. The Commissioner considers that the council has been provided with sufficient opportunity to provide its rationale for withholding the requested information. At the time the request was refused the council's calculations and arguments should have been in place and could have been provided to the Commissioner, especially in view of the late application of section 12.
14. The council has not provided the Commissioner with any information to enable him to evaluate whether the estimate of 20 hours was reasonable. Therefore the Commissioner has no choice but to conclude that the exemption is not engaged.

Section 10(1)

15. The Commissioner also considers that the council took far too long to respond to the request. The council did not respond until four months had gone by which was clearly not in line with the statutory time limit of 20 working days as contained at section 10(1) of the FOIA.

Right of appeal

16. 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

17. 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.
18. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF