

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 July 2015

Public Authority: London Borough of Merton

Address: Merton Civic Centre
London Road
Morden
SM4 5DX

Decision (including any steps ordered)

1. The complainant has requested from Merton Council (the "Council") information about the erection and dismantling of a particular traffic sign.
2. The Council provided the complainant with some information about the removal of the sign but stated that it does not hold information relating to the installation of the sign.
3. The Commissioner's decision is that the Council does not hold any further information falling within the scope of the request. Therefore, the Commissioner does not require the Council to take any steps.

Background

4. The complainant made a complaint to the Council relating to traffic signage on 31 July 2013. The Council responded to this on 22 August 2013 and advised the complainant his right to escalate his complaint to Stage 2 of the Council's complaint process. He was later advised his right to escalate it to the Local Government Ombudsman. Further correspondence was made between the Council and the complainant relating to his concerns.
5. The complainant's letter to the Council of 2 January 2014 contained his FOI request. However, this was not identified immediately by the Council which resulted in a delay in responding to the complainant.
6. The Commissioner has considered all arguments made by both the Council and the complainant although not all are referenced in this decision notice. The Commissioner has only considered the arguments

relating to the FOI request and not the complainant's other concerns against the Council.

Request and response

7. On 2 January 2014 the complainant wrote to the Council and requested information in the following terms:

"...documentary evidence of the name of the contractor or contractors hired by Merton Council who erected and dismantled the red information sign and the dates this was undertaken."
8. On 28 February 2014 the Council responded. It stated that it does not hold any records relating to the installation of the sign as it was erected in excess of ten years ago. However, the Council provided the details of when the sign was removed and who carried out the work.
9. On 2 April 2014 the Council received a complaint regarding the administration of the complainant's FOI request.
10. On 17 April 2014 the Council wrote to the complainant and apologised for the response arriving with him outside of the statutory timescale.
11. On 6 June 2014 the complainant wrote to the Information Commissioner's Office (the "ICO") about the Council's handling of his request for information.
12. On 16 June 2014 the ICO informed the complainant that he had not yet exhausted the Council's internal review procedure. He was advised to contact the Council again to ask to review its handling of his request.
13. On 23 June 2014 the Council received correspondence from the complainant about his concerns regarding the Council's record keeping and its administrative procedures.
14. On 14 July 2014 the Council responded to the complainant's concerns. It informed him that an internal review would only review the handling of his FOI request and would not address all of his raised issues.
15. On 22 August 2014 the complainant wrote to the Council and expressed his dissatisfaction with the Council's policy for storing archive records.
16. The Council responded on 1 September 2014 and provided the complainant with the website address for the Records Management Society of Great Britain which is now called the IRMS (Information and Records Management Society). The Council informed him that the

records management guidelines for local authorities have been updated by the IRMS.

17. On 29 September 2014 the complainant wrote to the Council and asked for "*written proof of documentary evidence*" that the council's review of its administrative processes has been implemented to the guidance and standards of the Local Government Association and the ICO.
18. The Council wrote to the complainant on 3 October 2014 and reiterated that it will follow 'best practice' standards. It advised him to address any further queries about the standards and how they are used to the organisations which set them.
19. On 10 November 2014 the complainant expressed his dissatisfaction of the Council's latest response.

Scope of the case

20. The complainant contacted the Commissioner on 10 November 2014 to complain about the way his request for information had been handled.
21. It was clarified with the complainant that the Commissioner will only be investigating whether further information is held falling within the scope of the request of 2 January 2014. The complainant had expressed his dissatisfaction with issues that are outside the ICO's remit. He specifically wishes the ICO to investigate whether the Council's policies and procedures on records management confirm with the Local Government Association guidelines.
22. The Commissioner's has advised the complainant that he cannot address these matters although he can investigate whether there is further information held relating to this FOIA request of 2 January 2014.

Reasons for decision

Section 1(1) – information not held

22. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.

23. In scenarios where there is a dispute as to whether a public authority holds any recorded information falling within the scope of a request the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
24. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any recorded information falling within the scope of a request (or was held at the time of such a request). Without evidence to suggest that the Council holds further information, this argument cannot carry weight.

The Complainant's position

25. The complainant has disputed the Council's claim that it does not hold further information that falls within the scope of his request.
26. The complainant argued that the Council's response letter did not clarify that the Council had researched its archives for his request for information. He considered its response to only speculate that the records would not be within the archives.
27. The complainant subsequently asked the Council to check its archives for the requested documents. He expressed his concern about the archive boxes which he believes should be marked clearly with its itemised contents and would prevent documents being lost or destroyed.
28. The complainant is of the view that the Council's administrative procedures are careless and negligent. He considers that this allows documents to be lost and un-traceable if required by the public.
29. The complainant made it clear that he wanted the Council to search its archive records again for the documents concerning his request and to have them released to him if the documents were found.
30. He suggested that the loss or destruction of the recording list for the archive records is in his view, "*maladministration*" and "*negligence*" by the Council. The complainant expressed his concern on the Council's record keeping and administrative procedures. He considers its procedure to be detrimental to the resolution of his request.
31. The complainant asked the Council for written confirmation of documentary evidence that a thorough review of its administration processes has been implemented to the satisfactory guidance and standards of the Local Government Association and the ICO.

32. The complainant subsequently requested the contact details of the IRMS. He considered this would enable him to gain information relevant to his request.
33. The complainant considers it to be in the public interest for the Council to maintain an adequate administration process for storing archive records. He informed the Council that he would contact the ICO for further information on the records management guidelines and that he would pursue his queries and concerns until this issue is resolved.
34. The complainant wrote to the ICO on 29 March 2015 and expressed his dissatisfaction with the Council's response. He clarified his requirement which is for the *"...council to be accountable in complying within the guidelines for operating a proper administration procedure."*

The Council's position

35. The Council explained to the complainant its retention schedule for records, which states that road sign information needs to be kept for seven years from the last action (the installation). Therefore the Council argued that it does not hold the information about who installed the sign and the date it was carried out.
36. The Council also explained that its audit and finance records are kept for six years from the end of the current year of their creation. Therefore it argued that these records will also no longer be held.
37. The Council added that as these records will have been destroyed according to the retention schedule they will not be held in the Council's archive. It said that the seven year retention period is common practice amongst records managers in local authorities and that it is the suggested retention period by the IRMS.
38. The Council confirmed that the record of this particular traffic sign's erection no longer exists. Therefore, the Council is unable to clarify exactly when the sign was put up. The Council has argued that it does not hold the information about who installed the sign and the date it was carried out.

The Commissioner's position

39. Following further investigations, the Council confirmed that a search was made on its system (*"the Confirm system"*) as information about signs would have been entered as an 'enquiry' on this system. It explained that if the sign had been erected prior to 1999, there would have been a paper record. However, the Council stated that no search was made for this as the paper records for signs dating back to that time have all been destroyed.

40. The Council confirmed that the search did not include personal computers as corporate records are not kept on them. It also confirmed that email records were not searched as records of the installation of a sign would not have been held on email. The Council said that its system was searched using the available information which was the road name and the category of work ('Street Furniture').
41. The Council explained that the information would have been held as manual records up to 1998 and on its Confirm system from 1999. It further explained that if the sign had been installed in 1999 or later, there would have been a record on its system which would not have been deleted. It added that a manual record prior to 1999 would have been archived in a document store and deleted after ten years.
42. The Council clarified that its manual records of work done prior to 1999 would have been destroyed by 2009/2010 in line with its retention practice. It said that at that time no separate record was kept of the information destroyed.
43. The Council explained its Retention and Disposal Policy which says that records will be kept in line with the retention schedule. Although, the Council added, the retention schedule does not specifically mention street furniture records, but practice within the team is to keep such records for ten years.
44. The Council said that there is no need to keep records of temporary signs for any length of time as there is no business need to record them as assets. It argued that there are no statutory requirements to keep the information.
45. Having considered the Council's responses to the Commissioner's investigations, the Commissioner is satisfied that on the balance of probabilities, the Council does not hold further information falling within the scope of the request.
46. The Commissioner understands the reasons why the complainant considers further information should be held, but the Commissioner can only consider what is held. It is outside the Commissioner's remit to determine if it should be held, and he cannot require a public authority to create the information under the FOIA.

Right of appeal

47. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

48. 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.
49. 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
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