

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 November 2017

Public Authority: London Borough of Newham
Address: Newham Dockside
1000 Dockside Road
London E16 2QU

Decision (including any steps ordered)

1. The complainant has requested the latest version of the London Stadium Operations Manual from the London Borough of Newham ("LBN"). LBN said that it did not hold the information for the purposes of the FOIA. It upheld this at internal review.
2. The Commissioner's decision is that LBN does not hold the requested information for the purposes of the FOIA.
3. No steps are required.

Request and response

4. On 16 December 2016 the complainant requested information of the following description:

'Please supply me with a copy of the latest version of the Operations Manual for the London Stadium which constitutes Appendix 1 of the stadium's Safety Certificate.

I believe London Borough of Newham to be holding this information since the note within clause 10 of the Safety Certificate states that, "The Operations Manual shall be forwarded to the Council".'

5. On 16 January 2017, LBN responded. It denied holding the information and explained that the document which suggested that it did would be amended.
6. The complainant requested an internal review on 17 January 2017. LBN sent him the outcome of its internal review on 15 February 2017. It

upheld its original position. It explained that the information in question was held by a third party and that it was regularly updated so that all parties that had access to it could see the latest document.

Scope of the case

7. The complainant contacted the Commissioner on 22 February 2017 to complain about the way his request for information had been handled. He disputed the LBN's position that it did not hold the information itself or that it was not held by a third party on its behalf.
8. The Commissioner has considered whether LBN holds the requested information for the purposes of the FOIA.

Reasons for decision

9. The Commissioner is satisfied that there is an Operations Manual and that LBN has access to it. The complainant asserts that LBN holds it for the purposes of the FOIA.
10. Section 3(2)(b) sets out one of the principles that establish whether the information is held for the purposes of the FOIA:

"For the purposes of this Act, information is held by a public authority if (b) it is held by another person on behalf of the authority."
11. LBN asserted the following:

"LS185 are the Safety Certificate Holders. They are a commercial organisation – a limited company entirely separate to LBN. They have made an application for a General Safety Certificate under the Safety at Sports Grounds Act 1975 and we issued it. Newham are the certifying authority. LS185 have an Operations Manual which they hold on their own data system which we have access to. This is a controlled document that is subject to constant review therefore it would be impracticable for the council to hold a copy of each update."
12. The key question, therefore, in this case is whether the requested information is held by the third party for its own purposes, or on behalf of LBN.

13. In her consideration of this point, the Commissioner has had regard for her own guidance "*Information held by a public authority for the purposes of the Freedom of Information Act*".¹
14. The guidance outlines a number of factors that would indicate that the information is held solely on behalf of another person, which include:
- *"the authority has no access to, use for, or interest in the information;*
 - *access to the information is controlled by the other person;*
 - *the authority does not provide any direct assistance at its own discretion in creating, recording, filing or removing the information; or*
 - *the authority is merely providing storage facilities, whether physical or electronic."*
15. As noted above, LBN has explained that although it issued the certificate in question – it said "Newham [meaning LBN] are the certifying authority" – it does not hold the requested operations manual for the purpose of the FOIA.
16. When asked about the extent of its access to the manual, it said:
- "The Council has access to a remote data server which is owned and maintained by LS185. We do not keep copies on our system. The documentation is live and constantly being reviewed, updated and amended. It would therefore make no sense for the Council to keep copies of individual files as they would become obsolete and we would be unaware. In this way it would be contrary to the purpose of the operations manual which is to put into place the necessary arrangements to ensure that the safety certificate is fully complied with. Out of date information would not allow Newham to fulfil its statutory duties in this regard. Officers can access the system, but generally they meet with the company's representatives and discuss any issues and amendments to their operating procedures, which they choose to take on board or not and update their documentation accordingly."

¹ <https://ico.org.uk/media/for-organisations/documents/1148/information-held-by-a-public-authority-for-purposes-of-foia.pdf>

17. When asked about the extent to which it could amend or otherwise alter the manual, LBN said:

"LBN do not hold, edit or amend any part of LS185's Operations Manual. Changes made are made solely by LS185 following reviews of operational issues."

18. It also explained that it had no contractual agreement with LS185. Further, it explained: "The Stadium is owned by E20 LLP, and operated by LS185. The London Borough of Newham (via it's [sic] wholly owned subsidiary Newham Legacy Investments) is a shareholder of that partnership along with the London Legacy Development Corporation... LS185 were the successful bidder for the contract to operate the stadium on behalf of E20."

19. The guidance also states:

"Factors that would indicate that the information is also held by the public authority include:

- *the authority provides clerical and administrative support for the other person, whether legally required to or not;*
- *the authority controls access to the information;*
- *the authority itself decides what information is retained, altered or deleted;*
- *the authority deals with enquiries about the information; or*
- *costs arising from holding the information are included in the authority's overall budget."*

20. Taking all the above factors into account and the arguments of both parties, the Commissioner is satisfied that LBN does not hold the information for the purposes of FOIA. It is clear that it has access to it and that it has a certification role in terms of safety. However, the Commissioner is satisfied that LBN has no control over access to the information; it does not have responsibility for amending the information; it does not decide what information goes in the manual; and it does not retain copies of it offline.

21. It is not held by LS185 on behalf of the Council, as defined by section 3(2)(b) of the FOIA, and the Council's assertion that it does not hold this information for the purposes of FOIA is correct.

22. The Commissioner can confirm, that where a third party is found to be holding information on behalf of a public authority, the authority is obliged to provide this information (unless an exemption applies),

directly to the applicant as opposed to directing him or her to the third party.

23. However, where a public authority has correctly stated that it does not hold the information for the purposes of FOIA, it is not required to obtain this information.
24. The Commissioner recognises that the complainant is strongly of the view that the information is held by LBN and that he is being denied access to it. The Commissioner notes that the phrase "forwarded to the Council" (an LBN phrase quoted in the request) does appear to suggest it is physically placed in the Council's possession. However, LBN has asserted that it intends to amend this for accuracy.
25. For the reasons set out above, the Commissioner finds that LBN does not hold this information for the purposes of the FOIA although it may have access to it. It is held by LS185 on its own behalf.
26. For the avoidance of doubt, the Commissioner has no remit to consider whether LBN is acting in accordance with its safety obligations.

Right of appeal

27. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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

Elizabeth Hogan
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF