

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2018

Public Authority: London Borough of Lambeth
Address: Olive Morris House
18 Brixton Hill
London
SW2 1RL

Decision (including any steps ordered)

1. The complainant has requested information on the budget for the London Borough of Lambeth Council's scheme to build a new town hall as well as details of housing acquisitions made by the developer. The Council provided some information and explanations to the complainant but he was concerned the Council had not provided the specific budget information asked for as well as any updates to the budget that had been made.
2. The Commissioner's decision is that the Council has provided sufficient information to satisfy the request and does not hold any further information within the scope of the request and has therefore complied with its obligations under section 1(1) of the FOIA.

Request and response

3. On 28 November 2016 the complainant wrote to the London Borough of Lambeth Council and requested information in the following terms:
 - *"Can you please provide me with a copy of the Lambeth council budget for the New Town hall that was approved in November 2013 when the decision was made to proceed with the project (together with the detailed back up). Can you please also provide me with any subsequent updates to this budget.*
 - *You state that the budget item for Acquisitions of £2.46M relates to land that the developer Muse is purchasing from Lambeth. Can*

you please provide me with the details of the properties/land that Muse is purchasing from Lambeth. If the land is then being leased back to Lambeth, can you please provide me with details of the leasing arrangements."

4. The Council responded on 23 January 2017 and stated that no information was held with the explanation that the project was being managed by Muse developments who would be appointing Galliford Try and they would set up a designated email address for enquiries.
5. A second response was sent on 23 February 2017 following some further investigations by the Council. In this response the Council provided a budget comparison with the position as of December 2016 and some commentary to explain the changes from 2013. With regard to the land leased back from Muse; the Council stated no land was leased back and payments are for long leases only.
6. The complainant requested an internal review on 11 March 2017. He argued that the Council had not provided the November 2013 budget and the request had asked for any updates to the budget. He believed this information existed as the documents he had been provided with showed the total budget as £104M but hoardings states £165M. The complainant also asked the Council to confirm what properties the acquisitions related to.
7. Following an internal review, the Council wrote to the complainant on 10 April 2017. It stated the 2013 budget was £55M rising to £60.2M and funded by £59.7M capital value. The Council explained the difference between the £104M cost to the Council and the £165M as a contribution from Muse in developing housing sites on long leases. The Council also named the properties on long leases.

Scope of the case

8. The complainant contacted the Commissioner on 3 July 2017 to complain about the way his request for information had been handled. He raised several areas of complaint, mainly:
 - The detailed budget signed off by cabinet in 2013 had not been provided and that the Council stating the budget was £55M was not sufficient;
 - The £55M is a contract sum between the Council and Muse and in any event would not be the budget signed off in 2013;

- The request asked for updates to the budget but the last update provided is April 2016. The complainant believes there have been updates to the budget since this date as ground works to the town hall commenced after the April 2016 budget figures.
9. The Commissioner considers the scope of her investigation to be to determine if any further information is held by the Council within the scope of the request.

Reasons for decision

10. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled (a) to be told whether the authority holds the information and (b) to have it communicated to him or her if it is held.
11. In response to the Commissioner's enquiries around the searches conducted to identify information within the scope of the request and the specific points raised by the complainant; the Council has provided additional explanations to the Commissioner.
12. The concerns raised by the complainant all relate to the first bullet point of the request which asked for a copy of the budget for the new town hall approved in November 2013 and any detailed back-up as well as any updates to the budget. The complainant did not feel that the Council simply stating the budget was £55M was sufficient and that there must have been an update since April 2016.
13. The Council has explained to the Commissioner that the total cost of the scheme has not changed since April 2016. In April 2016 the contract with the appointed developer (Muse) became unconditional, an appropriate contingency sum was included within the scheme and the costs of land assembly had already been incurred as of April 2016.
14. The Commissioner considers that this explanation from the Council is sufficient to explain why no further budget updates were provided to the complainant. It seems reasonable that if the contract became unconditional in April 2016 that there would not be any updates to the budget after this time, particularly in the period between April 2016 and November 2016 when the request was made to the Council. The complainant is of the view that costs have increased since April 2016 and states that the Council informed him that costs had increased due to ground conditions and that ground works commenced after April 2016 so it stands to reason the budget would have increased since April 2016.

15. The Commissioner accepts that even with an agreed budget there is the chance that unforeseen circumstances will occur which will result in fluctuating costs. However, the Council maintains the contract became unconditional in April 2016 and contained contingency sums to account for any such circumstances arising and, as such, there was no budget update at the time of the request. With no further evidence to the contrary the Commissioner accepts the explanations provided by the Council as reasonable and considers that no further information was held on this point at the time of the request.
16. Turning to the issue of whether the Council has complied with the request by providing the budget for the new town hall which was approved in November 2013; the Commissioner has reviewed the information provided to the complainant by the Council in the course of responding to the request and notes that a table was provided which set out the costs of the "Your New Town Hall" project. This was broken down into headings of "Projects Costs" and "Total Muse Contract" which contained the respective sub-headings of "Base Build Cost", "Development Costs" and "ICT and Contingency", "Land Assembly", and "Delivery Budget". For each of these sub-headings a figure was provided both for December 2015 and the revised budget of April 2016.
17. However, the complainant argues that this is not what he requested and although it shows the increase in the budget from 2015 to 2016 it is not the budget that was signed off by the cabinet in 2013. He argues that the Council now states the 2013 budget was £55M but this is in fact a contract sum between the Council and Muse and is not the budget.
18. In response to this point the Council explained that its cabinet agreed in November 2013 to approve the selection of the appointed developer to enter into a conditional development agreement and progress with planning towards an unconditional agreement. The bid made by the developer at that time was £55.5M and was itemised as:
 - Construction costs - £32.3M
 - Professional fees - £5.3M
 - S106 & CIL - £0.6M
 - Public realm - £0.8M
 - Development management fee - £2.0M
 - Fixtures, fittings and equipment - £8.0M
 - ICT - £4.5M

- Contingency - £2.0M
19. This breakdown was provided as part of the internal review request. The Council is still of the view that this information is sufficient to satisfy the information request as it shows the 2013 budget and provides detail of how this was made up with the breakdown. The Commissioner's main consideration has been to determine if this information can be said to be the 2013 budget, is solely the contract sum, or can be seen to be both of these things.
 20. The Council informed the Commissioner that one of the key objectives of the new town hall scheme was that it would "pay for itself". The proposed bid and conditional contract agreement met this objective.
 21. The Commissioner has considered the request, its wording, and the responses and explanations given by both parties. She is mindful of the fact that there is no obligation on the Council to provide a specific document to respond to the request but to provide the 2013 budget information and any detail that goes with this. The Council considers it has done this in providing the overall sum and the breakdown. The Commissioner would accept that this is sufficient to satisfy the request based on the assurances from the Council that this information is not only the itemised preferred bid but is also the budget information as the whole scheme was intended to be self-sufficient to the extent that no other costs would be paid outside of those agreed within the contract.
 22. As such the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any further information and has complied with section 1(1) of the FOIA.

Right of appeal

23. 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

24. 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.
25. 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

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