

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 June 2018

Public Authority: City of London Corporation
Address: PO Box 270
Guildhall
London
EC2P 2EJ

Decision (including any steps ordered)

1. The complainant has requested from the City of London Corporation (COL) information relating to the ethnic background of the members of the Police Committee. COL provided some information to the complainant, but stated that the remainder was not held.
2. The Commissioner's decision is that, on balance of probabilities, COL does not hold information further to that already provided.
3. The Commissioner does not require COL to take any steps in order to comply with the FOIA.

Request and response

4. On 28 July 2017, the complainant wrote to COL and requested information in the following terms:

"1) How many current members of the Police Committee are from BME background

2) Over the period 2011-2016 How many members of the Police Committee are from BME backgrounds

- 3) *What, if anything, is being done to improve BME representation on this committee"*
5. COL responded on 14 August 2017. It stated that *"The City of London Corporation does not collect information on the ethnic background of its members, so we are unable to answer your first two questions."* In relation to the third question, COL provided an explanation of the actions undertaken accompanied by a web-link to some information relevant to the request.
 6. Remaining dissatisfied with the response received, the complainant requested COL to conduct an internal review. The complainant stated that *"It is reasonable to expect that a public authority would have information available on the ethnic profile of members of its committees. Indeed this will help the Corporation to meet their commitments under the Public Sector Equality Duty as well as other aspects of the Equality Act 2010. Such duties are to show due regard for the needs of people who share a protected characteristic in the Act including that of equality of opportunity. I am unsure how this can be achieved without the information I requested."*
 7. Following an internal review, COL wrote to the complainant on 28 September 2017. It upheld its original position with regard to the information the complainant had requested.

Scope of the case

8. The complainant contacted the Commissioner on 25 October 2017 to complain about the way his request for information had been handled.
9. In the course of the Commissioner's correspondence with the parties, the complainant confirmed that he considered the third question fully responded. However, he still disputed the response to questions one and two of his request.
10. The following analysis covers whether COL has identified and provided all of the requested information it holds that is within the scope of the first and second parts of the request above as per the FOIA requirements.

Reasons for decision

Section 1(1) – General right of access

11. Section 1 of the FOIA provides a general right of access to recorded information held by public authorities. Any person making a request for information to a public authority is entitled to be informed in writing by the public authority within 20 working days whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him unless a valid reason exists for not doing so under the legislation.
12. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information was not held and she will consider if the authority is able to explain why the information was not held.
13. For clarity, the Commissioner is not expected to prove categorically whether the information was held. She is only required to make a judgement on whether the information was held "on the balance of probabilities"¹.

The Complainant's position

14. The complainant believes that he is entitled to have access to the requested information and considers that COL should hold this information.

COL's position

15. As part of her investigation, the Commissioner wrote to COL requesting a submission in respect of a number of questions relating to the allegations raised by the complainant. The questions were focused on the COL's efforts to ensure that necessary searches were conducted in order to determine whether the requested information was held.
16. COL confirmed that despite being confident that it does not hold recorded information in relation to ethnic background of persons within the scope of the complainant's request, it complied with the Commissioner's requirements to conduct further necessary searches.

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

17. COL explained that it conducted extensive searches of repositories where it was considered this information would be located, had it been held. These searches consisted of electronic searches in its computerised systems using keywords such as "member", "ethnicity" and "BME", in addition to searches conducted in hard copy archives. The potential locations identified more likely to contain the requested information were:
- Human Resources Customer Relationship Manager (CRM) Database;
 - Records held by the Town Clerk's and Chief Executive's Office which supports the administration of the Police Committee, including Police Committee Clerk records; and
 - Archived records held by the City Corporation's archive service department, the London Metropolitan Archives.
18. It was confirmed by COL that *"none of these searches recovered any BME details of any current elected Member of the City Corporation, or elected Member serving on the Police Committee at the date of the request."*
19. Further, COL addressed the complainant's claim that COL is under a legal obligation to keep records on ethnic background of its staff, including members of the Police Committee. COL asserted that *"...there is no obligation for the City Corporation in its capacity as a police authority for the City of London area and City of London Police Force (nor as a local authority or port health authority) to collect this information from the democratically elected Members."*
20. In addition, COL explained that the Police Committee of COL is comprised of elected members and appointed external members. Having confirmed that COL has never held information about ethnic background of its elected members, COL clarified that *"the recruitment pack for the two external member appointments to the Police Committee...does include a voluntary and anonymous form for successful candidates to complete, which does include a question asking them to self-identify their BME background."* In light of this, the Council confirmed that it has received one return for a recruitment to the Police Committee 2017 and two from a recruitment round in 2013.

The Commissioner's conclusion

21. The Commissioner has considered COL's submissions on this matter. This has included consideration of the searches for recorded information that COL has undertaken, and the stated absence of any known business or statutory reasons for which the information should be held.

22. Having examined the COL's representations in this matter and in the absence of any evidence to the contrary, the Commissioner accepts COL's assurance that it has provided the complainant with all of the information it holds which meet the terms of his request – the limited information it holds described in paragraph 19 would not meet the terms of his request - and that it has not withheld any information.
23. The Commissioner notes that COL, in its response to the questions raised as part of her investigation, explained that it collected a limited amount of information in relation to the ethnic background of its members. That was done in the process of recruiting external members of the Police Committee.
24. However, the Commissioner accepts COL's argument that this information would fall outside the scope of the original request, which requested the total number of members of the Police Committee. Taking into account that the information about ethnic background was provided on a voluntary basis and covered only appointed members of the Police Committee and not elected members, this would not satisfy the request.
25. The Commissioner's decision is therefore that, on the balance of probabilities, COL complied with section 1 of the FOIA when stating that the requested information was not held.

Right of appeal

26. 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

27. 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.
28. 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

Ben Tomes
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