

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 July 2019

Public Authority: London Borough of Hillingdon
Address: Civic Centre
High Street
Uxbridge
Middlesex
UB8 1UW

Decision (including any steps ordered)

1. The complainant has requested information on the London Borough of Hillingdon's ("the Council") reliance on the Local Government (Access to Information) Act 1985 to withhold specific information.
2. The Commissioner's decision is that the Council inappropriately relied on section 21(1) in the first instance whilst later creating a spreadsheet to provide the requested information.
3. The Commissioner finds a procedural breach of section 17(1) in not providing a refusal notice within 20 working days.
4. The Commissioner therefore does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

5. On 8 October 2018, the complainant wrote to the Council and requested information in the following terms:

"Please supply the following information for the past 36 months.

How many times in meetings has the council cited to withhold information, "paragraph 3 of Part 1 of Schedule 12A to the Local Government (Access to Information) Act 1985 as amended.

What were the specific meetings in which this term was used to withhold information please supply dates and time with the annotation on what were the areas of concern in which the citation was used e.g. personal information, housing, expenses, commercial contracts, etc.”

6. The Council responded on 20 November 2018 with a refusal notice in reliance of FOIA section 21 – Information accessible to applicant by other means. It stated that the requested information is available on its website.
7. Following an internal review the Council wrote to the complainant on 20 December 2018. It stated that it maintained its position that the information requested could be found on its website and therefore section 21 had been appropriately applied.

Scope of the case

8. The complainant first contacted the Commissioner on 19 November 2018 to complain about the delayed response to his request. He contacted the Commissioner again on 10 January 2019, following receipt of the Council’s response and internal review, to complain about the way his request for information had been handled. The complainant explained:

“All I am doing is attempting to get information on mistakes and the extent of which fall under legal compliance by Hillingdon council. The trouble I am encountering is deliberate obstruction by those responsible for those very mistakes!

I trust now you will reconsider this case as an example of obstructive behaviour and deliberate misleading my [sic] the information holder.”

9. The Commissioner considers the scope of her investigation to be the application of section 21(1) to the requested information.

Reasons for decision

Section 21 – information accessible to the applicant by other means

10. Section 21(1) of FOIA states that information which is reasonably accessible to an applicant otherwise than under section 1 is exempt information.

11. Section 21 provides an absolute exemption. This means that if the requested information is held by the public authority, and it is reasonably accessible to the applicant by other means, it is not subject to the public interest test.
12. In response to the request the Council stated that all decisions made by Councillors are published on the Council's website, including those decisions related to the statutory provision cited in the request. Consequently the Council relied on section 21 as it considered the information to be reasonably accessible to the complainant. The Council provided only a link to the Council website without further guidance to access.
13. The complainant was unhappy with the Council's response and in requesting an internal review, explained at length why the Council had responded differently to his request when compared with other applicants. He stated:

"This is a wholly unacceptable response as it simply states the council has published the information on the website, go and look there. This is unhelpful and unprofessional at best, but under the circumstances this could be construed as being deliberately and unreasonably vexatious with prejudicial obstruction by the Legal Department of a council of a perfectly reasonable request that is underlined by the fact that previous requests where the council has cited a section 21 or information was available on the site, the council gave clear directions to the relevant pages as was previously done in the following FOI samples on whatdotheyknow.com."
14. In its internal review the Council explained:

"I have today checked the Council's website and confirm that each time any Council meeting relies on Paragraph 3 of Part 1 of Schedule 12A to the Local Government (Access to Information) Act 1985 (as amended) this is clearly stated in the agenda and minutes. Therefore, you are able to readily establish from the Council's website each and every occasion where this provision has been relied upon."
15. The complainant and the Council have differing views on the interpretation and application of the cited legislation, however, this is outside the scope of the Commissioner's investigation.
16. The Commissioner has accessed the agendas and minutes of the meetings held on the Council's website. However, she had the benefit of the Council explaining the steps to locate this information. She therefore accepts that the requested information may be accessed from the website, however she does not agree that this is "reasonably accessible" as the process is by no means straightforward and is laborious.

17. Further to the Commissioner's experience in this regard she asked the Council if the information was held by the Council separately from the website and could be provided within the cost of compliance as set out in "The Freedom of Information and Data Protection (Appropriate Limit and Fees) regulations 2004".
18. In response the Council accessed its systems and created a spreadsheet of the information requested for the complainant.
19. Notwithstanding this, the complainant commented on the Council's website:

"Moreover, the management and internal and external search engine optimisation implementation of the site are the responsibility of the London Borough of Hillingdon. As such any deficiencies in the ability to search the site effectively are the responsibility of council, that is why the practice of supplying links to the relevant pages by LBH officers is standard practice.

The problem here was by simply searching the site it would have been extremely difficult to ascertain the extent or a reasonably accurate picture of use [of Paragraph 3 of Part 1 of Schedule 12A to the Local Government (Access to Information) Act 1985 (as amended)]"

20. The complainant explained his view to the Commissioner that the Council:

"...conflated the person with the request and chose a petulant approach instead of rendering the information in a manner which would be supplied to any other person. I monitor FOI requests made to a number of councils including Hillingdon and in respect of a number of my requests made there has been clear contempt and obstruction used until it was realised by [a named officer] that he was on unstable ground."
21. The Commissioner notes the complainant's comments, however, she has seen no evidence that the complainant's request has been treated differently by the Council.
22. The Council remains of the view that the information requested is reasonably accessible on its website and in this regard the Commissioner must disagree. She accepts that the agendas and minutes are reasonably accessible. However, the particular, specific detail on the use of Paragraph 3 of Part 1 of Schedule 12A to the Local Government (Access to Information) Act 1985 (as amended) is not reasonably accessible to collate from the website.
23. The Commissioner notes that it is not the duty of a public authority to create information to provide to a complainant. However, as the

information was held and could be compiled easily she is satisfied that the Council acted on her advice.

24. The Commissioner finds that the Council inappropriately relied on section 21(1) to refuse the request in its initial response.

Procedural issues

25. The complainant submitted his request on 8 October 2018. The Council did not respond and did not confirm on which exemptions it was relying until 20 November 2018.

Section 17 – Refusal of a request

26. Section 17(1) of the FOIA provides that if a public authority wishes to refuse a request it must issue a refusal notice within the 20 working day time for compliance, citing the relevant exemption(s).
27. The Commissioner considers that the Council has breached section 17(1) in handling this request by failing to issue its refusal notice citing section 21(1) within 20 working days.

Other matters

28. The Commissioner wishes to point out that she will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft [Openness by design strategy](#) to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her [Regulatory Action Policy](#).
29. The Commissioner would also advise that she does not encourage academic or disproportionate decision notices where matters may sensibly be resolved informally.

Right of appeal

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

31. 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.

32. 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

Susan Hughes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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