

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2019

Public Authority: London Borough of Enfield
Address: Thomas Hardy House
39 London Road
Enfield
Middlesex
EN2 6DS

Decision (including any steps ordered)

1. The complainant has requested copies of the minutes of the Mayor's Appeal Fund ("the Fund") trustees' meeting. The London Borough of Enfield ("the London Borough") stated that it did not "hold" the requested information for the purposes of the FOIA.
2. The Commissioner's decision is that the London Borough does not hold the information for the purposes of the FOIA.
3. The Commissioner does not require any further steps.

Request and response

4. On 15 May 2019, the complainant wrote to the London Borough and requested information in the following terms:

"Could I possibly see the minutes of the meeting of the London Borough of Enfield Mayor's Charity Appeal Fund on the 16th November 2017?"

5. The London Borough responded on 4 June 2019. It stated that the Fund was a separate legal entity. Whilst it admitted that it had access to copies of the requested information, it held such information on behalf of the Fund and not in its own right. It therefore argued that it did not hold the information for the purposes of the FOIA.

6. Following an internal review the London Borough wrote to the complainant on 28 June 2019. It upheld its original view that it did not “hold” the information.

Scope of the case

7. The complainant contacted the Commissioner 3 July 2019 to complain about the way his request for information had been handled.
8. When the Commissioner commenced her investigation on 3 October 2019, the complainant responded to note that the Fund had now provided him with a copy of the information he was seeking, but he still wished to contest the London Borough’s stance that it did not hold the requested information for the purposes of the FOIA.
9. If, as the London Borough contends, the Fund is a separate legal entity, not subject to the FOIA then any information it has provided could not have been provided under the FOIA. The Commissioner has therefore considered it appropriate to continue to test the London Borough’s arguments that it does not hold the information.
10. The Commissioner considers that the scope of her investigation is to determine whether the London Borough holds the requested information for the purposes of the FOIA.

Reasons for decision

11. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him.*

12. Section 3(2) of the FOIA states that:

For the purposes of this Act, information is held by a public authority if—

- (a) it is held by the authority, otherwise than on behalf of another person, or*

(b) it is held by another person on behalf of the authority.

Is the Fund a separate legal entity for the purposes of the FOIA?

13. The Fund is a registered charity.¹ It does not perform functions on behalf of the London Borough and nor does the London Borough direct what the Fund's priorities or activities should be.
14. Whilst all three of the Fund's current trustees appear to be serving councillors, there is no requirement for councillors or officers to be trustees. Those councillors or officers who wish to be trustees do so of their own volition and in their own time.
15. The London Borough also noted that it also performed a small amount of admin on behalf of the Fund and incurred some costs on the Fund's behalf. However it was keen to stress that these costs were minimal.
16. The Commissioner accepts the Fund is a separate legal entity from the London Borough. As it is a registered charity and not listed in Schedule 1 of the FOIA, the Fund is not a public authority for the purposes of the FOIA.

Is the information held by the London Borough on behalf of the Fund?

17. Whilst a public authority may have physical possession of certain information, it may not "hold" that information for the purposes of the FOIA. Information will not be "held" by a public authority if it only keeps that information on behalf of another person or legal entity.
18. The Upper Tribunal in *University of Newcastle upon Tyne v Information Commissioner and British Union for the Abolition of Vivisection* [2011] UKUT 185 (AAC), approved an earlier ruling by the First Tier Tribunal that:

"s.1 [of the FOIA] would not apply merely because information is contained in a document that happens to be physically on the authority's premises: there must be an appropriate connection between the information and the authority, so that it can be properly said that the information is held by the authority."

19. The question of whether information is "held" by a public authority for its own purposes will be determined by the facts in each case, but the

¹ <https://beta.charitycommission.gov.uk/charity-details/?regid=283320&subid=0>

Commissioner's guidance sets out a number of factors to be considered including whether:

- 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. The London Borough accepted that it did provide a small amount of administrative and clerical work to the Fund. It also accepted that it incurred a cost in holding the information within its systems – although it noted that this cost was minimal.
21. The London Borough was also keen to draw a distinction between its own position and that of Kirklees Council in *Hutchinson v Information Commissioner & Kirklees Metropolitan Council* EA/2017/0194. It stressed that it was individual councillors who acted as trustees of the Fund and the London Borough itself was not a corporate trustee.
22. In relation to the information it possessed, the London Borough noted that it did not have control over which members of the Fund had access to, or oversight of, the information and it referred any enquiries about the information to the Fund itself.
23. Finally, the London Borough noted that it did not receive any of the monies raised or distributed by the Fund. It also had no say as to how the Fund raised or spent those monies or, indeed, whether it raised or spent any money at all. It's internal review noted that:

"If the Mayor, for example, chose not to progress charity work the charity would simply be inactivated."

The Commissioner's view

24. Whilst the Commissioner notes that the boundaries between the Fund and the London Borough are not always clear, she is satisfied that the Fund is a separate entity and therefore the information which the London Borough holds is held *on behalf of* the Fund.

25. The decisions to undertake charity work, how to raise monies and how to distribute those monies are decisions made by the Mayor and not the London Borough.
26. The Commissioner also notes that the London Borough itself is not a corporate trustee of the Fund. Whilst some of the councillors are trustees, they do so of their own volition.
27. Whilst the Commissioner accepts there is a small amount of administrative crossover between the Fund and the London Borough, she does not consider that the "appropriate connection" between the information the complainant has sought and the functions of the authority.
28. The Commissioner is therefore satisfied that whilst the information be physically present on the London Borough's premises or within its IT systems, it does not "hold" the information for the purposes of the FOIA.
29. As the London Borough informed the complainant, within 20 working days, that it did not hold the requested information it has complied with its duties under section 1(1) of the FOIA.

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

Phillip Angell
Group Manager
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Wycliffe House
Water Lane
Wilmslow
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SK9 5AF