

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2021

Public Authority: London Borough of Waltham Forest
Address: Waltham Forest Town Hall
Forest Road
Walthamstow
E17 4JF

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Waltham Forest (the Council) seeking information about previous FOI requests made to it about Ascham Homes. The Council responded to the request by directing the complainant to the What Do Know website and explained that it did not hold any further information about the previous requests. The complainant contacted the Commissioner about the Council's handling of her request.
2. Having considered this complaint the Commissioner has concluded that the Council breached section 11 of FOIA by initially failing to provide the complainant with the requested information in hard copy.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the Council on 20 August 2019:

'Please will you provide me with the following: -

1) Copies of all FOIA disclosures sent by the council to requesters relating to Ascham Homes during its tenure.

2) On 21 June 2015, a requester wrote to Ascham Homes and requested information in the following terms. "Please provide me with a copy of your contract with your contractor(s) who carried out the kitchen and bathroom programmes from 2010- 2015."

The requester subsequently referred the case to the ICO on the grounds of non-compliance (see below link). I require a copy of the FOIA disclosure sent to the requester that was logged by the ICO under the case reference number: FS50591304.

https://ico.org.uk/media/action-weve-taken/decisionnotices/2016/1623782/fs_50591304.pdf

I would like the above information to be provided to me in paper format and sent to the following address as per below...'

5. The Council responded by email on 18 September 2019, albeit it explained that a hardcopy would also be posted to her. In relation to question 1 the Council directed the complainant to the following link and in doing so explained that it had thoroughly checked its records and there were no other requests retained on file:

https://www.whatdotheyknow.com/body/ascham_homes

6. In relation to question 2, the Council explained that having checked the link to the decision notice referred to in the request it noted that *'the ICO respond that Ascham Homes sent this information to the requester which is in this case we believe to be you. The council can't locate the information sent previously and are thus unable to resend.'*

7. The complainant contacted the Council on 18 September 2019 and asked it to conduct an internal review of this response. She explained that she found the Council's response to question 2 to be rather confusing. She therefore asked the Council to address the following points:

- 1) What is your retention policy for FOIs and is it published anywhere?
- 2) She asked the Council to qualify its comment that she was the requester in the ICO case FS50591304.

- 3) She argued that the Council had failed to fulfil its section 1 obligations because it had not confirmed whether or not it held the information falling within the scope of her request.
8. The Council informed her of the outcome of the internal review on 18 October 2019. The Council explained that having conducted a further search for information it was satisfied that it did not hold any FOI disclosures sent by it to requesters relating to Ascham Homes during its tenure. The Council also confirmed that it did not hold any information that relates to the complaint that was the subject of the decision notice FS50591304. The Council explained that this was in line with the retention policy for such information and directed the complainant to a link setting out this policy.

Scope of the case

9. The complainant contacted the Commissioner on 3 February 2020 in order to complain about the Council's handling of this request. The Commissioner established with the complainant that her specific grounds of complaint were:
 1. The Council failed to acknowledge receipt of her request.
 2. The Council failed to comply with section 11 (means of communication) of FOIA because it initially responded to her request via email and only provided her with a hard copy response on 18 October 2019.
 3. She was dissatisfied with the outcome of the internal review because the Council had failed to explain how it knew she was the requester in the ICO complaint FS50591304 if it no longer held any information regarding requests relating to Ascham Homes.

Reasons for decision

Complaint 1

10. FOIA does not place any obligations on public authorities to acknowledge receipt of FOI requests. Therefore, even though the Council failed to acknowledge receipt of the request this does not mean that the Council breached the requirements of FOIA.
11. Nevertheless, the Commissioner considers it good practice for public authorities to acknowledge receipt of requests. The Commissioner is aware from her investigation of other complaints concerning the Council that it has taken steps to ensure that all FOI requests it receives will be acknowledged. The Commissioner welcomes this development.

Complaint 2

12. Section 11 of FOIA allows a requester to express a preference for having the information communicated by a particular means, including a preference to have the information provided in hard copy. The public authority must make the information available by the preferred means so far as reasonably practicable.
13. The Council explained to the Commissioner that in the initial response to the complainant of 18 September 2019 it stated that:

'Please find response to your recent FOI enquiry, I will put a hardcopy in the post to you today'
14. However, the Council explained to the Commissioner that unfortunately the hard copy was not posted to her as indicated and it offered its apologies for this. It explained that every effort is made to ensure that FOI requests are dispatched in the format requested wherever possible. The Council explained to the Commissioner that during the course of the internal review it was noted that the original request had asked for the response be posted and this was dispatched by first class post on 17 October 2019.
15. The Commissioner finds that by failing to comply with the complainant's request for the information to be disclosed to her in a hardcopy format the Council breached section 11 of FOIA. In reaching this conclusion the is not aware of any reason why it would have been unreasonable for the Council to initially provide the information in hard copy.

Complaint 3

16. The Commissioner asked the Council to explain how, if it had not retained any information relating to the 21 June 2015 complaint to her office (reference FS50591304), it had determined that the complainant in this present case was the same individual who made the June 2015 complaint.
17. The Council explained that in response to the Commissioner's inquiry it had sought clarification of this point with the service areas. The Council confirmed that no recorded information was held which could verify whether the complainant was the same individual who made the 2015 complaint. However, the Council explained that the attribution of the 2015 complaint to the complainant was as a result of a communication error.
18. At the time that the present FOI request was received the service area within the Council sent an email to the Council's Information Officer asking:

'Can you confirm that [name of complainant] is the requester, we also do not hold this information, would you have the information supplied?'

19. The Information Officer responded as follows:

'Yes [name of complaint] is the one who asked for all this information'

20. The Council explained to the Commissioner that the service area took the response to be that the Information Officer was confirming that the complainant was the requester in 2015. However, the Service area now recognised that this response could have just been confirming that that the complainant was the requester of the FOI request in 2019. The Council explained that the service area expressed its apologies for the error. The Council emphasised that the fact remains that the Council does not hold the information that the complainant requested.

21. In terms of its obligations under FOIA, the Commissioner notes that the complainant has not sought to dispute the Council's position that it does not hold the information sought by question 2 of her request. The Commissioner also considers that the above response by the Council adequately clarifies this situation (albeit she can fully understand the complainant's confusion surrounding this issue and why she sought clarification of it as part of her internal review request). The Commissioner is therefore satisfied that the Council has complied with its obligations in terms of section 1(1)(a) of FOIA which simply obliges it confirm or deny whether it holds requested information; it has already (accurately) confirmed to the requester that it does not hold information falling within the scope of the second question of her request.

Right of appeal

22. 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

23. 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.
24. 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

Jonathan Slee
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