

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2022

Public Authority: London Borough of Barnet
Address: Hendon Town Hall
The Burroughs
Hendon
London
NW4 4BG

Decision (including any steps ordered)

1. The complainant has requested information about the London Borough of Barnet's (the Council) submissions to the Environment and Traffic Adjudicator (ETA)¹ in regards to a hearing about a parking charge notice. The Council initially refused the entire request under section 32(2)(a) and section 40, however, during the course of the Commissioner's investigation the Council revised their position and provided recorded information within scope of parts one and two of the request, and refused part three of the request under section 32(1)(a) by virtue of section 32(4)(a).
2. The Commissioner's decision is that the Council has correctly applied section 32(1)(a) to part three of the request. The Commissioner notes that the Council has now provided the complainant with a fresh response in relation to parts one and two of the request and therefore he does not require any steps to be taken.

¹ <https://www.londontribunals.gov.uk/eat>

Request and response

3. On 18 June 2021, the complainant wrote to the Council and requested information in the following terms:

On 21 April, under reference 2210107511, the parking adjudicator recommended that you cancel a PCN which was issued to a disabled motorist whose blue badge had been stolen.

Please disclose the following information in an electronic format:

1. Whether or not you accepted the adjudicator's recommendation.
 2. If you did not accept the adjudicator's recommendation, a copy of the statement of reasons you provided for this.
 3. A copy of any submission you made to the adjudicator prior to 21 April.
4. The Council responded on 19 July 2021. It stated that it held the requested information however it was relying on the exemption at section 32(2)(a) of FOIA to withhold it. The Council explained that the information was exempt from disclosure by virtue of being contained in a document placed in the custody of a person conducting an inquiry or arbitration. The Council stated that any information not captured by section 32(2)(a) was refused under section 40.
5. The complainant wrote to the Council on 19 July 2021 to request an internal review. The complainant stated that the Council's interpretation of section 32(2) was incorrect and that the exemption was only applicable to arbitrations governed by the Arbitration Act 1996, which the complainant argued the ETA is not. The complainant also disagreed with the Council's application of section 40, stating that the data subject voluntarily entered their personal data into the public domain when they appealed the parking ticket to the adjudicator.
6. Following an internal review the Council wrote to the complainant on 23 August 2021. It upheld its original position regarding section 32(2)(a) and explained that the ETA fall under the definition of inquiry as prescribed in FOIA at section 32(4)(c), as they conduct hearings under the Traffic Management Act 2004. The Council upheld its original response regarding the application of section 40.

Scope of the case

7. The complainant contacted the Commissioner on 14 September 2021 to complain about the way their request for information had been handled. The complainant made their complaint in the following terms:

"I do not accept that a parking adjudicator is conducting an "inquiry" for the purposes of section 32. That provision is plainly intended to cover statutory inquiries such as those under the Inquiries Act, the Charities Act, the Merchant Shipping Act and so on. Parking adjudicators resolve disputes between two parties, ie motorists and local authorities, and cannot be characterised as similar to the statutory inquiries which section 32(2) envisaged."

8. The Commissioner wrote to the complainant to clarify whether they wished the Commissioner to investigate the Council's application of section 40. The complainant confirmed that they did.
9. The Commissioner wrote to the Council in respect of its reliance on section 32(2)(a) and 40 and requested a copy of the withheld information. The Commissioner noted that the information caught by part one of the request appeared to be in the public domain, as the ETA Statutory Register stated that the Council had not accepted the recommendation to cancel the PCN.
10. During the course of the investigation the Council revised its position and stated that the information sought by part three of the request was withheld under section 32(1)(a) by virtue of the definition of "court" provided at section 32(4)(a) of FOIA.
11. With regard to part one of the request, the Council explained that the information available on the ETA Statutory Register² about whether the Council had accepted the adjudicator's recommendation to cancel the parking charge notice was wrong, and that the Council had accepted the recommendation and cancelled the notice. The Council added that it did not have any powers over the record management at the ETA.
12. In light of the Council's explanation, Commissioner recommended that the Council issue a fresh response to the complainant providing a response to part one of the request, which therefore negated the

² <https://www.londontribunals.gov.uk/about/registers-appeals>

requirement to respond to part two³ as this is conditional on the answer to part one. The Council accepted the Commissioner's recommendation and, as of the date of this notice, has issued a fresh response to the complainant.

13. The Commissioner therefore considers the scope of this case to be the determination of whether section 32(1)(a) has been correctly applied by the Council to refuse part three of the request.

Reasons for decision

Section 32 – Court records, etc

14. Section 32(1) of FOIA states that

(1) Information held by a public authority is exempt information if it is held only by virtue of being contained in—

(a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,

(b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or

(c) any document created by—

(i) a court, or

(ii) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.

15. Section 32(4)(a) of FOIA states that:

(a) "court" includes any tribunal or body exercising the judicial power of the State

16. In their response to the Commissioner's investigation the Council stated that they were incorrect to rely on section 32(2) and were instead relying on 32(1)(a). The Council offered comprehensive arguments to support their position that the ETA, as part of London Tribunals, are "exercising the judicial power of the state... determining a statutory appeal" and directed the Commissioner to paragraph 28 in the ruling in

³ 2. If you did not accept the adjudicator's recommendation, a copy of the statement of reasons you provided for this.

Makda, R (on the application of) v The Parking Adjudicator [2010] EWHC 3392 (ADMIN)⁴ in which the Parking Adjudicator is described to be performing “an important yet very difficult judicial function.”

17. The Commissioner is satisfied that the ETA meets the definition of “court” at 32(4)(a) of FOIA as it is a tribunal that exercises the judicial power of the state under the Traffic Management Act 2004⁵.
18. There are two main tests in considering whether information falls within this exemption. First, is the requested information contained within a relevant document – for example one filed with a court in relation to a particular cause or matter? Secondly, is this information held by the relevant public authority only by virtue of being held in such a document?

Is the information contained in a relevant document for the purposes of proceedings in a particular cause or matter?

19. The withheld information in this case is the Council’s bundle of documents submitted to the ETA for the purposes of a tribunal hearing.
20. From the evidence he has seen, the Commissioner is satisfied that the information withheld by virtue of section 32(1)(a) is contained in a document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter ie proceedings for appealing a parking fine issued under the Traffic Management Act 2004.
21. The request itself is for “A copy of any submission you made to the adjudicator prior to 21 April” which, by definition, meets the description of a document filed with, or otherwise placed in the custody of, a court.

Is the information held only by virtue of being contained in such a document?

22. Having reviewed the material, the Commissioner considers that the information is held by the Council only by virtue of being contained in their appeal bundle. Therefore the Commissioner is satisfied that the information sought by part three of the request falls within the scope of section 32(1)(a) and the Council was entitled to rely on 32(1)(a) to withhold the information.

⁴ [Makda, R \(on the application of\) v The Parking Adjudicator \[2010\] EWHC 3392 \(Admin\) \(29 November 2010\) \(bailii.org\)](http://www.bailii.org/uk/ew/cas/oct2010/makda.html)

⁵ <https://www.legislation.gov.uk/ukpga/2004/18/contents>

23. The Commissioner also notes that the complainant has not sought to challenge this element of the Council's refusal.
24. As section 32 of FOIA is an absolute exemption, there is no requirement to consider whether there is a public interest in disclosure.

Right of appeal

25. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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
Senior Case Officer
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