

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 5 January 2024

**Public Authority:** Hackney London Borough Council  
**Address:** Town Hall  
Mare Street  
London  
E8 1EA

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Hackney London Borough Council ('the Council'), relating to an innovation application and a third-party demonstration.
2. The Commissioner's decision is that, on the balance of probabilities, the Council has not identified all the information it holds within the scope of question 2 of the request. The Council has not conducted adequate searches to determine whether it holds information within the scope of this part of the request.
3. For the parts 3-9 and 1 of the request, the Commissioner is satisfied that the public authority has either provided all the information it holds (although it does not hold some of the information) or the information would (if it were held by the Council) be exempt under section 21 of FOIA because the complainant already has this information. The Commissioner has also decided that question 10 is not a valid request for information and the Council is not expected to respond to this question under FOIA.
4. The Council also failed to provide information within the scope of the request within 20 working days and has therefore breached section 10(1).
5. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.

- Issue a fresh response to question 2, following further searches based on the findings set out at paragraphs 43-47.
6. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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7. On 9 May 2023, the complainant wrote to the Council and requested information in the following terms:

"1) Can you confirm that the LBH Market Services were successful in securing funding: to engage innovators to design a trading application that can apply to multiple markets? And that LBH leads a consortium of markets teams to support the shaping and testing of this proposal through a series of workshops. As was announced at the LMB meeting of the 24<sup>th</sup> February 2021?

2) Can you please provide a copy of the supporting documents and applications submitted by the LBH to the relevant recipient, to successfully lead the 'project' named 'Public Market Challenge'.

3) Can you confirm that LBH market services presented the initiative to 'Create a scalable and transferrable digital service that creates a single gateway for trader licensing applications and that allows traders to access trading opportunities across London's public markets by making it easier to register across multiple sites and boroughs.' As an innovation?

4) Can you confirm that prior to the provision of our demonstration, the LBH Market manager asked that the demo includes the Market Pass and the facility provided to the traders to find work opportunities and apply for a license from a single point of access?

5) Can you confirm that such a demo took place on the 21 of February 2020 and that the Market Pass functionality and purpose were discussed at length?

6) Can you confirm that following the demo we asked for feedback and that it was never provided?

7) Can you confirm that two of the LBH Market Services team members have used the Market People Platform in previous employment, one for

several years and that both have recommended the platform to the LBH Market Services?

8) Following the demo, can your Market Services confirm having received links and login details to test the services provided on our demo platform?

9) Can your market services confirm having received links to claim the free listing of their market operation on our platform allowing traders to apply for a license from a single point of access? (Similar links were also sent to the London Boroughs of Camden, Kensington and Chelsea, and Lambeth long before the challenge took place).

10) Can your market services now explain what was innovative in the Public Market Challenge that was not covered by the services we provide?"

8. The Council responded on 17 May 2023. It stated that it did not hold any of the requested information.
9. Following an internal review, the Council wrote to the complainant on 18 May 2023. It stated that it was upholding its original decision.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 24 July 2023 to complain about the way their request for information had been handled.
11. After the Commissioner started his investigation, the Council provided some information within the scope of the request. The complainant confirmed to the Commissioner that they were now satisfied with responses for question 5 and 8, but the remaining questions still required further investigation.
12. The Commissioner considers that the scope of his investigation is to consider, on the balance of probabilities, whether the Council holds any further information within the scope of questions 1, 2, 3, 4, 6, 7 and 9. The Commissioner will also be considering if any remaining information is reasonably accessible to the complainant.

### **Reasons for decision**

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### **Section 8 - request for information**

13. Section 8(1) of FOIA defines a valid request for information under FOIA as a request which:
  - (a) is in writing,
  - (b) states the name of the applicant and an address for correspondence, and
  - (c) describes the information requested.
14. Section 84 of FOIA defines "information" as "...information recorded in any form".
15. Therefore, in order to constitute a valid request for information under FOIA, not only must the complainant's request satisfy the criteria in section 8 of FOIA, but it must also be a request for recorded information.
16. Having reviewed the request made, the Commissioner is not satisfied that the question asked at point 10 is a valid request for information. The question is not asking for recorded information, but is rather asking the Council to compare two different things and provide its opinion. The Council is not expected to provide a response to this part of the request under FOIA, as this part does not comply with section 8.

## **Section 1 – information held**

### **Section 21 –reasonably accessible**

17. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to them.
18. Information is exempt from disclosure if it is accessible to the applicant by other means.
19. Section 21 is an absolute exemption which means there is no requirement to carry out a public interest test if the requested information is exempt.
20. Unlike most exemptions, the circumstances of the requester can be considered, as the information must be reasonably accessible to the particular requester.
21. In this case, the complainant and their company arranged the demonstration mentioned in questions 4-6 and 9. Any information the Council holds would therefore also be held by the complainant or their company. The evidence the complainant has provided to the

Commissioner would indicate that they do in fact already possess information that would fall within the scope of these parts of the request. The Commissioner is not persuaded that the Council is likely to hold anything that the complainant does not already possess and which is therefore reasonably accessible to them.

22. The Council has agreed that links were provided (question 9), though not accessed. Again, the complainant would have provided this information and so would have a copy. It is not clear what further information the Council could hold that would fall within the scope of this part of the request.
23. The Commissioner also notes that the complainant was the person who asked the Council for feedback based on the demonstration and would have been the recipient of any such feedback.
24. The Council has stated that it has not found any records that would demonstrate that feedback was provided, but it has also not found evidence that feedback was sought.
25. The complainant appears to accept that feedback was not provided, but argues that it was sought.
26. The Commissioner does not need to resolve this matter. Either feedback was sought – in which case the complainant would have a copy reasonably accessible to them – or it was not sought – in which case no recorded information could exist, let alone be held by the Council.
27. The same applies to any feedback: either it was provided to the complainant (in which case they would have a copy) or it was not provided, in which case it could not exist or be held by the Council.
28. For the above reasoning, the Commissioner is satisfied that this information requested at points 4-6 and 9, is either not held by the Council or is reasonably accessible to the complainant.
29. In relation to questions 1 and 3, the complainant has provided the Commissioner with information which answers the requests sent by the complainant. The information clearly states that the Council was successful in securing funding and presented the initiative quoted at question 3.
30. Based on the above explanation, the Commissioner is satisfied that the recorded information that deals with questions 1 and 3 is also reasonably accessible to the complainant.
31. Finally, the Commissioner turns to questions 2 and 7.

32. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
33. The Commissioner requested any evidence from the complainant which demonstrated that the requested information was held by the Council. The complainant did provide evidence to suggest that the Council should hold information relating to question 2.
34. The Council advised the Commissioner that for questions 2, the project in question was actually led by the Greater London Authority and therefore it had not need to submit an application. The Council explained it did undertake searches of its electronic storage and email account for the requested information, but no information was held.
35. The Council advised it used the complainant's name as a search term and 'Market people platform' when conducting its searches. It confirmed it was not aware of any information being deleted or destroyed.
36. In relation to question 7, the Council advised that three staff members attended the demonstration in question. Two of the three staff members had since left the Council, one of the staff members being a lead contact in this matter. The Council confirmed that it had conducted a search on the email accounts and storage devices of these two officers. This had located a small amount of information which had been provided.
37. The Council also explained that it was aware that two of its employees had discussed their experiences of the complainant's product, but this had been done verbally.
38. The Council concluded that no further information was held within the scope of the request. It confirmed that if the requested information was held, it would be expected to be held in an electronic format.
39. The Commissioner is satisfied that the searches conducted to locate information within the scope of question 7 were proportionate. The Council searched the email account and storage devices of the staff who had previously used the system. The Council also used the search terms of 'market people platform'. As the request at point 7 is asking about two members of staff who previously used market people platform and the Council has confirmed that these are the staff who have now left, the Commissioner is satisfied that if the information was held, it would be held in the staff email account or storage devices.

40. The Council did not locate any additional information which fell into the scope of the question, nor did the complainant provide any evidence to suggest that further information was held.
41. Having considered this matter and the evidence provided by the complainant, the Commissioner is satisfied, on the balance of probabilities, that the Council addressed question 7 in its revised response and does not hold any further recorded information within the scope of this question.
42. The Commissioner will now consider the searches conducted by the Council for question 2. He has reviewed the evidence provided by the complainant alongside the response provided by the Council.
43. The complainant provided the Commissioner with copies of meeting minutes which clearly state that, contrary to what the Council has said, it was the lead for the innovation project in question<sup>1</sup> The minutes state that; "Hackney have been successful securing funding [from the Resilience Fund] to engage innovators to design a trading application that can apply to multiple market [sic]."<sup>2</sup> This suggests to the Commissioner that the Council is likely to hold further information within the scope of the request.
44. Whilst the Commissioner acknowledges that some searches have been carried out, he considers these searches are not sufficient to satisfy him that no further information is held.
45. The Council's search terms were too narrow to locate all information within the scope of this part of the request. The Commissioner notes that the Council did not use terms such as "Resilience fund", "funding application" or "public market challenge" to search for information – despite these clearly being relevant to the events and processes covered by the requests.
46. The Commissioner is therefore not satisfied that, on the balance of probabilities, the Council has complied with its obligation under section 1 of FOIA in respect of question 2. The Council must now issue a fresh response to that part of the request. It must determine whether any further information is held and, if so, disclose it or issue a refusal notice.
47. If the Council, having carried out those further searches, still wishes to maintain that it does not hold any further information, the

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<sup>1</sup> [lmb\\_minutes\\_16\\_june\\_21\\_1.pdf \(london.gov.uk\)](#)

<sup>2</sup> [lmb\\_feb\\_21\\_minutes\\_final.pdf \(london.gov.uk\)](#)

Commissioner will expect it to be able to provide details of the further searches it has undertaken. He will also expect it to be able to explain its role in respect of the Mayor's Resilience Fund and why it was different to that stated in the documents quoted above.

## **Procedural matters**

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### **Section 10 – time for compliance**

48. Section 1(1) of 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.”

49. Section 10(1) of FOIA states that a public authority must comply with section 1(1) promptly and “not later than the twentieth working day following the date of receipt”.

50. From the evidence provided to the Commissioner, the Council did not provide information within the scope of the request, within the 20 working day timeframe. The Council therefore breached section 10(1) of FOIA.



## **Other matters**

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51. The Commissioner would like to take this time to remind the Council that substantive responses to the Commissioner should be provide in a timely manner.
52. The Commissioner would also like to remind the Council that it is required to provide comprehensive submissions about why it is satisfied that it does not hold particular information. Where a request contains multiple parts, the Commissioner expects a comprehensive explanation in respect of each individual part that the Council is claiming it holds no relevant information for. Where he seeks further explanation, the Commissioner expects the Council to provide that explanation promptly.

## Right of appeal

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53. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

54. 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.
55. 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 .....**

**Roger Cawthorne**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**