

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 January 2024

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

Decision (including any steps ordered)

1. The complainant made a number of requests over a period of time for information regarding issues associated with Victoria Recreation Ground/ New Barnet Leisure Centre Complex. London Borough of Barnet (the Council) answered each point in turn and provided links to relevant information.
2. The Commissioner's decision is that:
 - The Council should have cited section 21(1) of FOIA for the information already in the public domain.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation. Issue a fresh response which includes appropriate advice and assistance outlined in the Commissioner's guidance below.
4. The Council must take this step 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

5. On 27 March 2023, the complainant wrote to the Council and requested information in the following terms:

"I request the extra annual amount payment and listing of the new responsibilities made to GLL/Better by Barnet Council in relation to GLL/Better's Victoria Recreation Ground's New Barnet Leisure Centre Complex (NBLCC). The said extra management responsibilities concerns the MUGA (Multi Use Games Area) and surrounding area.

There should be no problem finding this extra payment and responsibilities as it was said to be negotiated and paid from July/August 2019. Therefore, it is not part of, and cannot be claimed to be 'lost' in the original contract.

This extra annual payment for this contractor's additional work is in relation to it being reported in 2019 that Barnet Council had failed to recognise the Local Authority's Planning, Development and Community responsibilities to manage this NBLCC Courts area.

We were told of scant details of the proposed by email 28 March 2022. We have written for clarification, but as usual our correspondence has been ignored, including any acknowledgement."

6. The Council provided information on 17 April 2023 including links to the Contract Award Decision and the contract in question.
7. The complainant wrote to the Council on 4 June 2023 and stated:

"Formal Complaint concerning my Freedom of Information Requests/Responses Nos 9462688, 8357831, 8275029, and 8275128.

Please be aware that in being honest, open, and transparent the reply and information sent to address this Complaint will be part of a much larger Case seen elsewhere, beyond Barnet Council, about the MUGA courts area, New Barnet Leisure Centre Complex, Victoria Recreation Ground, London Borough of Barnet. The refusal to address, or ignore any point questioned, as happened before, will be noted further afield."

8. The Council responded on 14 July 2023 under its most recent reference 9462688 (from its last response of 17 April 2023) responding to each point in turn.

Reasons for decision

9. In the absence of a specific exemption not to provide the complainant with all the information requested, the Commissioner has concluded that the Council should have cited section 21(1) of FOIA in this particular case.
10. Under section 21(1) of FOIA, information is exempt from disclosure if it's already reasonably accessible to the applicant.
11. The complainant has argued that the Council have made it difficult to access information and, in their opinion, have actually been obstructive when requesting information regarding the issues raised.
12. In its internal review response the Council apologised for issues surrounding some of the previous requests and offered explanations for this.
13. The Commissioner notes that the links provided enable access to the information although do not go directly to the specific details sought by the complainant.
14. The Commissioner's guidance¹ says that "Information is in the public domain if it is easily, readily, and realistically accessible to the public. One example of this is information which can be easily found through a simple internet search. The information should also be available in practice and finding it should not require unrealistic persistence or efforts nor any specialised knowledge." This interpretation was established by the High Court of Justice in the landmark case of Attorney General v Greater Manchester Newspapers Ltd².

The Commissioner's conclusion

15. The Commissioner has reviewed both the complainant's requests and the Council's responses, and on the evidence presented to him in this

¹ [Information in the public domain | ICO](#)

² <https://www.bailii.org/ew/cases/EWHC/QB/2001/451.html>

case, the Commissioner does not consider that the Council has complied with its obligations under FOIA. Therefore, the complaint is upheld.

Other matters

16. The Council failed to clearly cite an appropriate exemption within its response to the complainant's request when providing the links to information publicly available.
17. It also failed to adequately sign post the complaint to the relevant sections and/or paragraphs within the documents to enable them to scrutinise the information provided to them.
18. The Commissioner is sympathetic towards the complainant's position. He understands their frustration and dissatisfaction regarding the quality of responses received from the Council, which ultimately led to the complainant making the request.
19. In their correspondence to the Commissioner, the complainant comments that: "I thought ICO was to help people report who were thought to be deliberately given wrong information by Councils accepting of course being completely independent to ensure both sides are supplying an EVIDENCED correct defence?"
20. The role of the Commissioner is to ensure that public authorities comply with the legislation he oversees, in this case FOIA. Where a public authority has provided information in response to a request his remit does not extend to challenging the veracity of that information.
21. In addition, it is not the Commissioner's role to investigate matters of potential misconduct or other alleged wrongdoing by public authorities that the complainant raised.

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: 0203 936 8963
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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF