

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 February 2024

Public Authority: London Borough of Lambeth
Address: Lambeth Town Hall
Brixton Hill
SW2 1RW

Decision (including any steps ordered)

1. The complainant has requested information about public spending of money received from the Public Works Loan Board (PWLB). The London Borough of Lambeth ("the Council") stated it did not hold recorded information within scope of the request and provided the complainant with a narrative response.
2. The Commissioner's decision is that the Council does not hold recorded information within scope of the request further to the narrative response provided.
3. The Commissioner does not require further steps.

Request and response

4. On 8 March 2023, the complainant wrote to the Council and requested information in the following terms:
5. "Dear Lambeth Borough Council,

£320m has been borrowed by Lambeth from the Public Works Loan Board since 2019. Please can you give a breakdown as to what projects this has been spent on? If this is too time consuming due to many

small spends, please list any spending over £10,000 from the money borrowed. For each item, please can you list:

Payment date
Supplier name
Amount
Description of spend

Please can you provide this information in an Excel spreadsheet?"

6. The Council responded on 31 March 2023 in the following terms:

"Please note that the Council does not borrow for specific projects for as required to support its overall capital programme and treasury requirements, therefore it is not possible to provide the information requested."

7. On 24 April 2023 the complainant requested an internal review.

8. On 23 October 2023 the complainant contacted the Commissioner to complain about the length of time taken by the Council to conduct an internal review.

9. On 1 November 2023 the Commissioner accepted the complaint for investigation without the requirement for an internal review.

10. The Council provided its internal review outcome to the complainant on 14 November 2023. It stated that:

"The Council does not borrow for specific projects and borrows as and when required to support its overall capital programme and treasury requirements. Therefore, it is not possible to link amounts borrowed to specific payments as requested and this can be for a variety of reasons, for example:

- some loans are taken out because previous loans need to be repaid - this can relate to capital expenditure incurred decades ago, for example council housing stock inherited from London County Council.
- capital schemes can have several funding sources and therefore it is not possible to link specific types of funding to specific payments (other sources include general and specific grants (e.g. government; GLA; etc.), s106, CIL, revenue contributions, etc.)."

11. The Council explained that borrowing is undertaken to finance the capital investment programme and directed the complainant to

documents¹ available on the Council's website which detail the capital programme, which the Council states is "a key reason why increased borrowing is required, and therefore Council borrowing".

12. The Council stated that the Council's Children's Homes Redress Scheme had been a major reason for borrowing in recent years, as well as the leaseholder buy-back programme, where it has been reacquiring properties on six specific council estates that are currently under private ownership. Further to this, the Council explained that in 2017 it had set up the Homes for Lambeth Group of companies and that it had outstanding loans due from Homes for Lambeth. The money loaned to the Group is used to fund new housing developments and acquire newly built affordable housing properties.

Scope of the case

13. The complainant contacted the Commissioner on 23 October 2023 to complain about the way their request for information had been handled.
14. In their grounds of complaint, the complainant explained that they felt the Council's response was insufficient as it lacked transparency and accountability for how the money is spent. The complainant stated that they believed the Council was "stonewalling" local residents seeking clarity on Council borrowing.
15. Ahead of contacting the Council the Commissioner asked the complainant to detail what recorded information they believed the Council should hold within scope of their request, further than the narrative response given in its internal review. As of the date of this notice, the complainant has not responded to the Commissioner's request.
16. The Commissioner considers that the scope of his investigation is to determine whether recorded information is held within scope of the request.

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<https://moderngov.lambeth.gov.uk/documents/g15896/Public%20reports%20pack%20Wednesday%2001-Mar-2023%2019.00%20Council.pdf?T=10> ("page 223 sets out how much of the current programme is financed through borrowing")

Reasons for decision

17. Section 1 of FOIA states that:

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

(a) to be information 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.”

18. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

The Council's position

19. In correspondence with the Commissioner the Council stated that it was relying on the response provided in its internal review.

20. The Council explained that it had consulted with its Finance and Government department where the technical aspects of the Capital programme and all aspects of borrowing are managed. Specifically, the Council stated that it had consulted with the Acting Director of Finance and Property, the Acting Deputy Director of Finance, the Interim Corporate Director of Finance and Governance, the Group Manager for Strategic Finance, and the Acting Assistant Director of Finance for Corporate Finance (recently the Head of Treasury and Pensions).

21. In his investigation letter the Commissioner asked the Council to explain whether it is obligated to provide an account of its loan spending to the Public Works Loan Board (PWLB). Per PWLB's website², the Commissioner understands that the Council was only required to provide a “high-level” version of its borrowing and capital expenditure plans. The Council confirmed that this is the case, and that it was not expected to provide an account of how the loan had actually been spent.

² <https://www.dmo.gov.uk/responsibilities/local-authority-lending-pwlb/about-pwlb/>

The Commissioner's position

22. The Commissioner recognises the complainant's position and considers it a reasonable presumption that the Council might be able to provide an itemised breakdown of how borrowed money is administered across Council projects.
23. However, he also finds that the explanation given by the Council in its internal review sufficiently explains why specific borrowed amounts cannot be linked directly to actual spend. He notes that the Council has provided the complainant with some narrative information in respect of the initiatives that the capital budget is used for, as detailed at paragraph 12 above.
24. In the absence of any evidence from the complainant to suggest that the Council holds the requested information, the Commissioner finds that, on the civil standard of the balance of probabilities, the Council does not hold a breakdown of the nature sought by the request.
25. Per paragraph 3 above the Commissioner does not require any steps.

Right of appeal

26. 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

27. 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.
28. 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
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF