

Freedom of Information Act 2000 (Section 50)

Decision Notice

24 March 2011

Public Authority: London Borough of Camden
Address: Camden Town Hall
Judd Street
WC1H 9LP

Summary

The complainant requested London Borough of Camden ('the council') to release information relating to The Church of Scientology Religious Education College's (COSREC) applications for mandatory and discretionary rate relief. Initially the Council refused to disclose this information, citing sections 31(1)(d) and 42 of the Act. During the Commissioner's investigation the Council withdrew its reliance on these exemptions and released the information it holds relating to COSREC's application for mandatory rate relief to the complainant. Concerning COSREC's application for discretionary rate relief, the Council confirmed that it received a separate application for this relief but it was unable to provide a copy, as it was no longer held. As the complainant remained dissatisfied that the Council was unable to provide this information, the Commissioner made further enquiries to the Council. In conclusion, the Commissioner is satisfied that on the balance of probabilities the Council no longer holds COSREC's application for discretionary rate relief, as it was destroyed more than three months prior to the complainant's request in accordance with the Council's records management policy. He is therefore satisfied that overall the Council has now complied with section 1 of the Act and therefore requires no further action to be taken. The Commissioner has also found that the Council breached sections 1(1)(b) and 10(1) through its handling of the request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant contacted the Council on 17 August 2010 to request the following information:

"In respect of the following property:

68 Tottenham Court Road
W1T 2EZ

please provide details of any application for mandatory or discretionary relief from non-domestic rates which has been made (or which continues to apply) at any time over the past 5 years.

If such an application has been made, please provide:

- a copy of the application and all documents supplied in support of it.
 - the Council's decision whether or not to apply the relief, and the reasons behind that decision.
 - any other information held (including but not limited to internal and external correspondence and email, agenda, minutes and phone records) concerning the application and the decision."
3. The Council responded on 1 September 2010 refusing to disclose the requested information under section 31(1)(d) of the Act.
4. The complainant contacted the Council on 1 September 2010 to request an internal review.
5. The Council responded on 28 September 2010 and informed the complainant that it remained of the view that the requested information is exempt from disclosure under section 31(1)(d) of the Act. It also informed the complainant that it wished to rely on a further exemption; section 42 of the Act.

The Investigation

Scope of the case

6. On 28 September 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the Council had acted appropriately by refusing to disclose the requested information under sections 31(1)(d) and 42 of the Act.
7. During the Commissioner's investigation it was established that COSREC occupies the property referred to in the complainant's information request and that COSREC had made two separate applications to the Council; one for mandatory rate relief and one for discretionary rate relief. Concerning bullet points one and two of the complainant's request (please refer to paragraph 2), all requested information in respect of COSREC's application for mandatory rate relief was released to the complainant during the Commissioner's investigation. As these aspects of the complainant's request were informally resolved, they will not be addressed any further in this Notice.
8. Regarding COSREC's application for discretionary rate relief, the Council provided the information requested in bullet point two to the complainant during the Commissioner's investigation. Again, as this element of the request was informally resolved, it will not be addressed any further in this Notice.
9. Concerning COSREC's application for discretionary rate relief and bullet point 1 of the request (request for a copy of the application and any supporting information), the Council decided to withdraw its earlier reliance on sections 31(1)(d) or 42 of the Act for this element of the request during the Commissioner's investigation. However, the Council informed the Commissioner that it was unable to release a copy of the application itself and any information sent to the Council in support of it to the complainant because this information is no longer held, as it has been destroyed.
10. In respect of bullet point 3 of the complainant's information request, for both applications, the Council informed the Commissioner that it now wished to rely on section 12 of the Act, as it considered the cost to comply with this element of the request would exceed the cost limit. As the application of this exemption has only just been raised by the Council and the Council is currently in the process of corresponding with the complainant to try and agree a refined request, the

Commissioner has decided to withdraw this aspect of the request from the scope of this investigation. Bullet point 3 of the request will therefore not form part of this Notice.

11. The remainder of this Notice will therefore focus on COSREC's application for discretionary rate relief and bullet point one of the complainant's request only i.e. the request for a copy of the application itself and any supporting information. The Commissioner will consider the Council's latest claim that this information is no longer held, the complainant's dissatisfaction with this explanation and reach a decision on whether on the balance of probabilities the Council holds any further recorded information which addresses this element of the request.

Chronology

12. The Commissioner wrote to the Council on 13 December 2010 to request some additional information.
13. The Council responded on 6 January 2011.
14. As the Council's response raised some additional issues, the Commissioner wrote to the Council on 10 January 2011 to request further information.
15. The Council responded providing the additional information on 19 January 2011.
16. The Commissioner made some further enquiries to the Council on 2 February 2011.
17. The Council replied on 14 February 2011.

Analysis

Does the Council hold the remaining information?

18. As stated in paragraph 9 above, the Council confirmed that it is not in a position to release a copy of COSREC's application for discretionary rate relief and any information or documentation sent to the Council in support of it to the complainant because the information is no longer held.
19. As the complainant was unwilling to accept this explanation, the Commissioner made enquiries to the Council to establish whether, on the balance of probabilities, the requested information is in fact held, as the complainant more recently asserted.

20. The Council confirmed that its Regeneration and Partnerships section deal with all applications for discretionary rate relief and, initially, it was of the view that it was unable to retrieve and therefore release the outstanding information because the relevant data files had been "corrupted". However, once this matter was rectified and the Council was able to access these data files it came to the Council's attention that COSREC's application for discretionary rate relief and any supporting information or documentation was no longer held.
21. When the Commissioner questioned this with the Council, he was informed that the information had been destroyed because the application was unsuccessful and was no longer required.
22. To ensure that this was indeed the case, the Commissioner requested the Council to undertake fresh searches and to provide details of its records management policy for this type of information.
23. The Council responded explaining in more detail exactly why this information is no longer held. It confirmed that this information would only be held by its Regeneration and Partnerships section and further enquiries to this department had established that the application was destroyed in April 2010; more than three months prior to the receipt of the complainant's request. It provided a copy of the relevant section of its records management policy, which confirms the Council's internal policy to retain such applications for a maximum of two years.
24. The Council confirmed that it was satisfied that this information would not be located elsewhere within the Council, as its Regeneration and Partnerships section dealt solely with this application. The Council explained that its decision to refuse discretionary rate relief to COSREC was made within this department. The application was therefore not shared with other internal departments during the decision making process and would therefore not be held in other areas of the Council.
25. On receipt of this information the Commissioner reviewed the case in more detail. He reviewed the Council's records management policy and noted in accordance with this that COSREC's application for discretionary rate relief would have been destroyed in April 2010, having been retained by the Council for record keeping purposes for a period of 2 years. However, after further investigation he also noted that COSREC's application for mandatory rate relief was made to the Council much earlier than the application for discretionary rate relief; in February 2007 and yet this information had been disclosed. Following the council's records management policy, this information should have in theory been destroyed in February 2009. The Commissioner therefore made further enquiries to the council requesting it address this point.

26. In its further response the Council confirmed that COSREC's application for mandatory rate relief was held beyond the standard two year's retention because this involved a complex and lengthy decision making process involving its Legal Department, consultation with Counsel and enquiries to both the Charity Commission and the Department for Communities and Local Government. Although this application was received by the Council much sooner than the application for discretionary rate relief, the final decision to refuse mandatory rate relief was not made until late 2010. Therefore the Council had retained this information because it was an ongoing matter. The Council advised that COSREC's application for discretionary rate relief was a much quicker process and the decision was made within the department without the need for recourse to its Legal Department or other external bodies. The decision to refuse such relief was taken much sooner and the information was destroyed in accordance with its records management policy.
27. The Commissioner has given the matter careful consideration. He is satisfied that on the balance of probabilities the Council no longer holds COSREC's application for discretionary rate relief or any supporting information COSREC sent with it. He has reviewed the Council's records management policy and he is satisfied that on the balance of probabilities the outstanding information has been destroyed in accordance with the retention policy for these types of applications. He is also satisfied that sufficient searches have been undertaken by the Council to ensure that the information is no longer held and that there is no evidence available to suggest that this information should be held or could be held elsewhere within the Council.
28. He notes that COSREC's application for mandatory rate relief was made to the Council much sooner and that the Council has been able to provide a copy of this information. He is, however, satisfied that the Council has provided a reasonable explanation as to why this is the case. It has explained clearly why this application has been kept longer than COSREC's application for discretionary rate relief or the standard retention for such applications as outlined in its records management policy.

Procedural Requirements

29. The Commissioner notes that during his investigation the Council decided to withdraw its application of sections 31(1)(d) and 42 of the Act and to release the information it holds relating to this request. As the Council did not release this information (information to which the complainant was entitled) to the complainant within 20 working days of

his request, he has found the Council in breach of sections 1(1)(b) and 10(1) of the Act.

The Decision

30. Overall, the Commissioner's decision is that the Council has now dealt with the complainant's request in accordance with section 1 of the Act.
31. He has, however, found the Council in breach of sections 1(1)(b) and 10(1) of the Act for the elements of the request that were informally resolved during the Commissioner's investigation following the Council's decision to disclose this information. This is because the Council failed to communicate this information (information to which the complainant was entitled) to him within 20 working days of his request.

Steps Required

32. As the Council has now released all information it does hold relating to this request, the Commissioner requires no further steps to be taken.

Right of Appeal

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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 24th day of March 2011

Signed

**Gerrard Tracey
Principal Policy Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1)

Provides that -

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

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(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.”

Section 10(1)

Provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 31(1)

Provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,

- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment."

Section 42(1)

Provides that –

"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."