

## **Freedom of Information Act 2000**

### **Decision notice**

**Date:** 11 June 2013

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

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

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1. The complainant requested information about the London Borough of Hackney's staff. He also requested information about complaints made against the London Borough of Hackney (the Council) to the Local Government Ombudsmen (LGO) and a copy of the then most recent report by the Audit Commission.
2. The Commissioner's decision is that the Council has provided some of the information relevant to the complainant's request, but on the balance of probabilities has not provided all it holds. The Commissioner requires the public authority to issue a new response to the items in the complainant's request regarding the ethnicity data for Council staff (item 5 of the request), complaints to the LGO (item 6 of the request) and the Audit Commission report (item 7 of the request).
3. The public authority 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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4. On 11 March 2011, the complainant wrote to the Council and requested information in the following terms:
  1. *How many staff does the Council employ?*
  2. *How many staff are full/part time?*
  3. *Does the above include staff employed by contractors?*
  4. *How many contractors are there?*
  5. *What is the ethnicity groups and numbers in all of the above?*
  6. *How many Local Government Ombudsmen complaints are made on a yearly basis since 2000? What are the areas of complaint?*
  7. *Does the Council submit a report to, or does the Audit Commission visit Hackney? The report which follows, can I have a recent copy?*
5. The Council initially responded on 14 April 2011. As this response was issued after 20 working days the Council breached section 10 of the Freedom of Information Act (the Act). It acknowledged this in its response.
6. The Council subsequently issued three responses to the complainant's requests. Its final position is as follows:

Items 1 – 5: the Council provided information about its staff relevant to the complainant's request.

Item 6: the Council provided LGO reports from 2007-2011.

Item 7: to the Commissioner's knowledge, no response has been issued.
7. The complainant requested an internal review on 24 August 2011. At the time of writing this Notice the Council had yet to provide the complainant with its internal review decision.

## Scope of the case

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8. The complainant originally contacted the Commissioner on 23 November 2011 to complain that he had not received an internal review from the

Council. The Commissioner contacted the Council and stated that it should carry out a review of the complainant's request.

9. The complainant contacted the Commissioner again on 9 November 2012 to state that no internal review had been carried out and that he believed more information was held for items 4 – 7 of his request. However, the complainant did not provide any specifics about what had not been disclosed.
10. The Commissioner considers the scope of the case to be whether the Council has provided the complainant with all of the requested information that it holds for items 4 – 7.

## **Reasons for decision**

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### Section 1 – Information Not Held

11. Section 1 of the Act states that:

*(1) 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.*

12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, in accordance with a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

### *Item 4 – contractors*

13. The Council provided information relevant to item 4 in its response of 21 July 2011. The complainant questioned whether the information was valid and stated that he did not understand the figures given. In his response the complainant provided an example that the disclosed information would suggest that the Council only employs three traffic wardens.

14. Having reviewed the information it appears to the Commissioner that the complainant may have misunderstood what the information represents. The figure for traffic wardens shows that the Council

employed three traffic wardens on a sub-contractor basis, not that the Council only employs three traffic wardens in total.

15. The Council did not offer an explanation to the complainant concerning the disclosed information and it is not obliged to do so. The Act provides an individual with the right to request recorded information, not to ask for explanations. Section 16 of the Act places a duty upon public authorities to provide advice and assistance to complainants. However the Commissioner's view is that the Council has created a table to collate this information and thus answered the request in a straightforward and easy to understand manner. The complainant asked for the number of contractor workers employed by the Council and this was provided to the complainant in a table which was broken into subdivision for various departments. This information was distinct and separate from the responses to the complainant's other requests and so it is apparent what the information refers to.
16. The Council has confirmed that the figures are correct and that it has provided the complainant with all of the relevant information that it holds. The Commissioner has not established any reason to doubt whether the figures are accurate. The disclosed information appears reasonable given the size of the Council and the work that it carries out. Therefore, the Commissioner considers on the balance of probabilities that the Council is unlikely to hold any further information.

*Item 5 – ethnicity data*

17. In its initial response the Council stated that this information was exempt under section 22 of the Act (information intended for future publication). However, in its later response of 19 August 2011 it provided the complainant with a table showing the breakdown of employees' ethnicity within each department in the Council, both as a number and as a percentage.
18. The total number of staff in the table is 1260. This is at odds with the information provided to the complainant in response to item 1 which states that the Council employed 3305 members of staff either full time or part time.
19. No explanation has been provided by the Council to the Commissioner as to why 2000 member of staff have not been accounted for and the Commissioner considers that there is a reasonable expectation that the Council would hold further information about its employees. Having inspected the Council's website the Commissioner was able to locate a

staff survey from February 2011 which shows that the Council holds information about the ethnicity of 1,800 members of staff.<sup>1</sup> Therefore the Commissioner considers on the balance of probabilities that it is likely the Council does hold more information relevant to the complainant's request. He requires it to issue a new response to the complainant and ensure that it has met its obligations under the Act.

*Item 6 – LGO complaints*

20. The Council provided the complainant with copies of the LGO's reports from the years 2007 - 2011. These reports contain details of complaints made against the Council and show the statistics for the number of complaints and the areas they were made in. The Commissioner considers that this information is relevant to the complainant's request.
21. However, the request was for the number of complaints and the area of complaint from the year 2000, not 2007. From searching the Council's own website the Commissioner found a report – which appears not to have been provided to the complainant – issued in 2004 from the Director of Law and Democratic Services into the LGO finding of maladministration with injustice.<sup>2</sup> Furthermore, the Council previously answered a request in 2008 which gave the number of findings of maladministration the LGO had made against the Council for the previous 10 years.<sup>3</sup> The LGO itself highlights a report from 2006 in which the Council was "heavily criticised" for failing to take enforcement action over planning breaches.<sup>4</sup>
22. The Commissioner considers it likely that information of this significance would be held and that the response from 2008 shows the Council did previously retain information for long periods of time. Therefore the

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[http://www.hackney.gov.uk/Assets/Documents/2011\\_hackney\\_staff\\_survey\\_report\\_final.pdf](http://www.hackney.gov.uk/Assets/Documents/2011_hackney_staff_survey_report_final.pdf) see page 57

2

[http://apps.hackney.gov.uk/servapps/reports/s\\_ViewAgendaItem.ASP?ID=4777](http://apps.hackney.gov.uk/servapps/reports/s_ViewAgendaItem.ASP?ID=4777)

3

[https://www.whatdotheyknow.com/request/local\\_government\\_ombudsman\\_140?unfold=1](https://www.whatdotheyknow.com/request/local_government_ombudsman_140?unfold=1)

<sup>4</sup> <http://www.lgo.org.uk/complaint-outcomes/planning/planning-archive-2006-07/london-borough-hackney-05a12349-05a10374-06a03393/>

Commissioner considers that on the balance of probabilities the Council is likely to hold further information that is relevant to the complainant's request. The Commissioner requires the Council to provide a new response to the complainant and ensure that it has met its obligations under the Act.

*Item 7 – Audit Commission reports*

23. The Commissioner notes that all of the Audit Commission reports are available online from the Council's website.<sup>5</sup> In certain circumstances, this would allow the Council to refuse the request as the information is exempt under section 21 of the Act (information accessible to applicant by other means). However, the Council did not provide the information or rely upon an exemption; instead it did not respond to this part of the request.
24. The complainant has made it clear to the Council that he does not have a computer and would prefer to have a permanent copy of all the requested information. Section 21 only makes information exempt if it is "reasonably accessible" to an applicant. Whilst the complainant does not have immediate access to a computer, he does live very close to a number of public libraries with free access to computers with internet access and on-site computer coaching. Therefore, the Commissioner's view is that the relevant information is reasonably accessible.
25. However, the Commissioner wishes to make it clear that if a public authority is to rely on section 21 it should provide the clear directions to a requester on how to find the information already in the public domain.
26. The Council should therefore either provide the complainant with the information requested at item 7 or provide a refusal notice in line with section 21.

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<sup>5</sup> <http://www.hackney.gov.uk/f-statement-of-accounts.htm>

## **Other matters**

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### *Internal Reviews*

27. The Commissioner's understanding is that the Council has not provided an internal review despite the complainant requesting one on 24 August 2011. The Act does not provide a timescale for conducting internal reviews. Instead this is guided by the section 45 Code of Practice. At paragraph 42 it states that "target times" for responding should be "reasonable", although no definitive figure is given. The Environmental Information Regulations 2004 state that the time limit for a review is 40 working days, and the Commissioner considers that this is a useful guide for a "reasonable" time limit for requests made under the Act.
28. With this in mind the Commissioner would ask that the Council attempt in future to provide internal reviews within this timeframe in order to provide a better service to requesters.

## Right of appeal

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29. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

30. 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.
31. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**