

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 August 2014

Public Authority: London Councils
Address: 59½ Southwark Street
London
SE1 0AL

Decision (including any steps ordered)

1. The complainant has requested information from London Councils relating to the number of appeals by the Parking on Private Land Appeals (POPLA) service for penalty charge notices (PCNs) issued by ParkingEye Ltd. London Councils explained that it does not hold this information for the purposes of the FOIA.
2. The Commissioner's decision is that London Councils does not hold the information for the purposes of the FOIA and he does not require any further steps to be taken.

Background

3. The request refers to POPLA, Parking on Private land Appeals. Information about this service can be found online¹.

Request and response

4. On 18 December 2013, the complainant wrote to London Councils and requested information in the following terms:
"I would like to know how many appeals have been allowed by POPLA for PCN's issued by ParkingEye Ltd."
5. London Councils responded on 20 December 2013. It stated that it does not hold the information requested.

6. Following an internal review London Councils wrote to the complainant on 15 April 2014. It maintained its original position that it does not hold the requested information.
7. During the course of the Commissioner's investigation, London Councils provided the complainant with details of the first and second annual reports of the "Lead Adjudicator". This contains statistics for the year 1 April 2013 – 31 March 2014. London Councils provided an online link to this report. London Councils disclosed to the complainant, according to the first and second annual reports of the Lead Adjudicator, the number of appeals which have been allowed and refused by POPLA for PCNs issued by ParkingEye Ltd.

Scope of the case

8. The complainant contacted the Commissioner on 17 April 2014 to complain about the way his request for information had been handled.
9. The Commissioner will consider whether London Councils handled the complainant's request for information in accordance with the FOIA and he will determine whether it is correct to state that it does not hold the information requested.

Reasons for decision

Section 1 – information not held

10. Section 1(1)(a) of the FOIA requires a public authority to inform the complainant in writing whether or not recorded information is held that is relevant to the request. Section 1(1)(b) requires that if the requested information is held by the public authority it must be disclosed to the complainant unless a valid refusal notice has been issued.

¹<http://www.popla.org.uk/about.htm>

11. The Commissioner acknowledges that London Councils informed the complainant that it does not hold the requested information for the purposes of the FOIA. However, 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, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

12. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request). Without evidence to suggest that London Councils holds further information, this argument cannot carry weight.
13. London Councils stated to the Commissioner that it maintains that the information requested by the complainant is not held by London Councils for the purposes of the FOIA. It explained that the request relates to information which London Councils holds by virtue of it providing a service to the British Parking Association (BPA) under a service contract. It added that London Councils has no statutory duty to provide the service and the service could be provided by another public or private body.
14. The Commissioner has noted that London Councils had provided the complainant with an online link² containing a report in which *some* of the requested information can be found. This annual report contains statistics for October 2012 – March 2013 and includes the number of appeals that have been allowed by POPLA for PCNs issued by each parking operator, including ParkingEye Ltd.

Section 3(2) – information held by a public authority

15. Section 3(2) of the FOIA sets out the two legal principles that establish whether information is held for the purposes of the FOIA.
 - (2) For the purposes of the FOIA, information is held by a public authority if-
 - (a) it is held by the authority, otherwise than on behalf of another person, or
 - (b) it is held by another person on behalf of the authority.
16. The Commissioner's position on the interpretation of "held" for the purposes of the FOIA is that when information is solely held by a public authority on behalf of another person, it is not held by the public authority for the purposes of the FOIA. However, the information will be held by that public authority for the purposes of the FOIA if it is holding the information for someone else, and also holding it to any extent for its own purpose.

17. The Commissioner has noted that London Councils quoted section 3(2) of the FOIA with regard to the information it states it does not hold for the purposes of the FOIA. However, from its response the Commissioner acknowledges that London Councils considers that information regarding the delivery and operation of the POPLA service is not held by London Councils for its own purposes. It clarified that London Councils delivers the POPLA service on behalf of the BPA, it is held confidentially by London Councils on behalf of the BPA.
18. London Councils explained that it is contracted to provide the POPLA service by the BPA. Information produced as a result of the POPLA contract is held by the BPA and not by London Councils, and is therefore not subject to the FOIA. It added that if London Councils were to release this information, this would constitute a breach of the confidentiality terms in this contract.

Conclusion

19. In view of the above, the Commissioner is satisfied that London Councils does not hold the information requested for the purposes of the FOIA.

²<http://www.popla.org.uk/AnnualReport.htm>

Right of appeal

20. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. 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.
22. 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

Rachael Cragg
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