

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 May 2016

Public Authority: London Borough of Southwark
Address: PO BOX 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Southwark ("the Council") relating to spend data.
2. The Commissioner's decision is that section 22 is not engaged.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - disclose the information requested on 16 December 2015.
4. The Council 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

5. On 16 December 2015, the complainant wrote to the Council and requested information in the following terms:

*"Thank you for publishing you spending data here:
http://www.southwark.gov.uk/downloads/download/2525/council_spending_-_201516.*

However, I notice that you haven't published any spending data does not meet the DCLG's requirements for publishing spend data.

In line with these new open data requirements, which have been in place since January 2015, please can you add the following information to these files:

*local authority department which incurred the expenditure
summary of the purpose of the expenditure
merchant category (eg. computers, software etc).*

Please see this link for more details: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf.

6. The Council responded on 15 January 2016 and explained that it currently published spend data each month for items of expenditure exceeding £250. It informed the complainant that the information which it is able to publish does not at present include the location authority department, the purpose of expenditure and the merchant category. The Council explained that

"Options for the inclusion of this additional data in reports have been considered and work is still under way to progress this. As soon as it is able to, the council will include the information requested as part of its published monthly reports".

7. The complainant contacted the Council on 18 January 2016 and explained that the new guidelines of publication had now been in place for a year. She explained:

"I believe that it is reasonable to expect them to have been adopted by Southwark council and for the spending data from January 2015 onwards to be updated to contain this information. Therefore, I believe there should be review to explain why I was not provided with the information I asked for in my request of 16th of December".

8. The Council sent the outcome of its internal review on 27 January 2016. It explained that it was currently working with its IT supplier to commission the additional functionality required to report on the data that has been requested.

Scope of the case

9. The complainant contacted the Commissioner on 18 February 2016 to complain about the way her request for information had been handled.
10. The Commissioner subsequently contacted the Council and advised it to confirm whether the requested information was held. The Commissioner also explained that if the information was held by the Council, it would need to disclose it to the complainant or cite an exemption to withhold it under.
11. The Council responded to the Commissioner on 13 April 2016 and confirmed that it did hold the requested information and it did not wish to apply an exemption.
12. The Commissioner wrote to the Council on 27 April 2016. He stated that as the information was held, in accordance with the FOIA, it was now required to either disclose the requested information or cite an exemption. The Council subsequently cited section 22 to withhold the requested information on the grounds that the information requested is intended for future publication.
13. The Commissioner has had to consider whether the Council was correct to apply section 22.

Reasons for decision

Section 22 Information intended for future publication

14. *(1) Information is exempt information if -
 - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
 - (b) the information was already held with a view to such publication at the time when the request for information was made, and
 - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).*
15. In order to determine whether section 22 is engaged the Commissioner therefore considered the following questions:
 - When the complainant submitted the request, did the Council intend to publish the information at some date in the future?

- If so, had the Council determined this date when the request was submitted?
- In all the circumstances of the case, was it 'reasonable' that the Council should withhold the information from disclosure until some future date (whether determined or not)?

Was the information held with a view to its publication at a future date?

16. The Council explained that the Local Government Transparency Code¹ requires local authorities to publish spend data over £500 on a quarterly basis and sets out what details are to be included in each transaction.

17. The Council explained that:

"Spend data is held in a number of modules in the council's financial information system and the council currently publishes the date of the transaction, the vendor name and the amount in respect of all transactions over £250. It does this on a monthly basis".

18. The Council explained that it takes its statutory responsibilities in relation to data transparency and spend data seriously and it intends to publish it as soon as it is able to do so.

19. In its submissions, the Council explained:

"Although progress has been made with its IT provider, the council is still working through the changes needed to produce the information in a form consistent with the statutory requirements. Meanwhile it continues to publish what it can".

20. The Commissioner's guidance² states that although a public authority must hold the information at the time of the request with a view to its publication, the exemption does not require a set publication date in place. A public authority may still be able to apply section 22 if:

- there is a publication deadline, but publication could be at any date before then;

¹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf

² <https://ico.org.uk/media/for-organisations/documents/1172/information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf>

- publication will take place once other actions have been completed;
 - publication will take place by reference to other related events; or
 - there is a draft publication schedule that has not been finalised.
21. Therefore as long as the public authority has decided that it or another person will publish the information at some time in the future, the exemption may apply.
22. The Council has confirmed that it does intend to publish the requested information once a system has been implemented which allows the Council to report on the data requested.
23. The Commissioner has considered the Council's arguments and accepts that at the time of the request, there was a settled intention to publish the requested information, even though that date was not specified and would take place after the Council has adapted its current financial information system to enable it to publish spend data in format required by the Local Government Transparency Code.

Was it 'reasonable' to withhold the information?

24. For the exemption to be relied on section 22(1)(c) requires that the application is 'reasonable' in all the circumstances of the request.
25. The Council explained:
- "Although progress has been made with its IT provider, the Council is still working through the changes needed to produce the information in a form consistent with statutory requirements. Meanwhile it continues to publish what it can. Given the position and the difficulties in extracting the full information currently, it is considered reasonable to withhold the information until the Council has resolved the outstanding issues".*
26. The Commissioner disagrees with the Council and considers that it is not reasonable in all the circumstances of the request. His reasons for this are set out below.
27. As explained at paragraph 16, the Local Government Transparency Code³ requires local public authorities to publish details of each

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150_227_PUBLICATION_Final_LGTC_2015.pdf

individual item of expenditure that exceeds £500. This includes items of expenditure consistent with Local Government Association guidance.⁴ The Local Government Association guidance states:

"The Code makes it mandatory to publish details of all expenditure that exceeds £500 and Government Procurement Card transactions, at least on a quarterly basis, with first publication not being later than 31 December 2014 generally referring to the previous three months of spending. The data should be published not later than one month after the quarter to which the data and information is applicable".

28. The Commissioner notes that the request was made in December 2015 which was already 12 months after the date that the Local Government Transparency Code required the Council to publish this information. At the date of this decision notice, it is now 18 months since the requirement was in place and the Council has still not published the information it is required to do so.
29. The Commissioner therefore considers that it is not reasonable in all the circumstances for this information to be withheld until publication at a later date. He therefore finds that section 22 is not engaged and has, consequently, not gone on to consider the public interest test.

⁴ <http://www.local.gov.uk/documents/10180/11655/Transparency+guidance+2014+-+spending+and+procurement++20150601+v1.3.pdf/465594a4-779d-4063-b593-70a84f3bf253>

Right of appeal

30. 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

31. 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.
32. 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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