

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 September 2022

Public Authority: London Borough of Hackney
Address: Hackney Service Centre
1 Hillman Street
London
E8 1DY

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Hackney ("the Council"), in relation to obtaining a copy of the open electoral register in large print. The Council refused the request, advising that it does not hold the requested information for the purposes of FOIA.
2. The Commissioner's decision is that the requested information is held by the Electoral Registration Officer (ERO) in their statutory role and is therefore not held by, or on behalf of, the Council for the purposes of FOIA. The Commissioner, however, finds that the Council breached section 17(1) of FOIA, as its refusal notice was not adequate.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

Request and response

4. On 12 October 2021, the complainant wrote to the Council and requested information in the following terms:

"Please provide me with the latest version of the open electoral register (in digital format) for Hackney North and South. I have been unable to

view the register at my local library since I need large print and it was only available in small print.”

5. The Council responded on 21 October 2021. It stated that the complainant was not entitled to receive a copy of the open register (and explained why) and provided them with a link instead. The Council also advised that the complainant could attend it's offices, where a member of staff would be able to assist them in finding the information they required.
6. Following an internal review the Council wrote to the complainant on 12 November 2021 and explained that it does not hold the requested information for the purposes of FOIA; the ERO holds it, but the ERO is not subject to FOIA. As the Council does not hold the information, it therefore could not provide it to the complainant.

Scope of the case

7. The complainant contacted the Commissioner on 14 November 2021, to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether the Council holds the information for the purposes of FOIA. He will also consider the Council's refusal of the request.

Reasons for decision

9. Section 1(1) of FOIA states that:

“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.”

10. Section 3(2) of FOIA states that:

“For the purposes of this Act, 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.”

11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.
12. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The Council's position

13. The Council explained that FOIA gives rights of public access to information held by public authorities, before advising that under section 8(2)(a) of Representation of the People Act 1983, the Council must by law appoint an officer of the Council to be the Electoral Registration Officer for any constituency or part of a constituency coterminous with or situated in the Council's area¹.
14. The Council went on to explain that, although the ERO is appointed by the Council, their appointment as ERO is a separate appointment with their own statutory functions, which are independent of the Council. The ERO does not carry out their duties and responsibilities on behalf of the local authority, but in their own personal capacity.
15. The Council also explained that the ERO is not listed under FOIA as a public authority and, as such, it is not subject to FOIA.
16. The Council advised that the Council does not hold an electoral register on behalf of the ERO and the ERO does not hold the information on behalf of the Council. It added that all requests and queries regarding the register must be made to the ERO directly.

The Commissioner's view

17. Having considered the nature of the information requested, the Commissioner agrees that it is information that the ERO would hold in their statutory role.

¹ [Representation of the People Act 1983 \(legislation.gov.uk\)](http://legislation.gov.uk)

18. The Commissioner notes that the Council did make an offer for the complainant to make an appointment so that they could go and view the open electoral register and that a member of staff would be able to assist them to obtain the information that they require.
19. Even though particular information may be physically present in the offices of, or on the servers of a public authority, the public authority may not necessarily hold that information for the purposes of FOIA.
20. As the Council has explained, even though the ERO is appointed through the Council, they have their own statutory functions and are not subject to FOIA. The ERO holds the open electoral register and, as they are not subject to FOIA, they are not required to provide the information.
21. The Commissioner acknowledges the complainant's concerns regarding how the Council uses the open electoral register, however, the Commissioner can only consider the Council's response to FOIA requests and any other concerns need to be made to the relevant body.
22. As the Council does not hold the requested information for the purposes of FOIA, it not obliged to provide the information to the complainant.

Section 17 – refusal of request

23. Under section 17(1) of FOIA, a public authority which is relying on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which (a) states that fact, (b) specifies the exemption in question, and (c) states (if that would not otherwise be apparent) why the exemption applies.
24. In its refusal of 21 October 2021, the Council advised that the complainant was not entitled to a copy of the withheld information, but it did not specify the FOIA exemption on which it was relying. In the Council's internal review response, it briefly explained where the complainant could find a list of public authorities under FOIA (Schedule 1, part 2), however it still did not state explicitly which FOIA exemption that it was relying on. Whilst the Council was not specific in stating which exemption it was relying upon, the Commissioner was able to determine that the Council was clearly advising that it does not hold the requested information, either for itself or on behalf of the ERO and, as such, it was relying on section 1(1) of FOIA.
25. As the Council failed to state which exemption it is relying upon, its refusal notice did not meet the requirements of section 17(1).

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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF