

Freedom of Information Act 2000 (the Act)

Decision notice

Date: **13 December 2018**

Public Authority: **London Borough of Lambeth Council**
Address: **Southwyck House**
Moorland Road
Brixton
London
SW9 8UR

Decision (including any steps ordered)

1. The complainant has requested information in relation to the London Borough of Lambeth Council's (the Council's) preparation for GDPR¹.
2. The Commissioner's decision is that the Council has breached section 10(1) of the Act by not complying with section 1(1).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue responses, in accordance with the Act, to the requests about a) GDPR readiness and b) security incidents.
4. 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.

¹The General Data Protection Regulations 2018
<https://eur-lex.europa.eu/eli/reg/2016/679/oj>

Request and response

5. On 28 February 2018, the complainant wrote to the Council and requested information in the following terms:

"Can you please provide the following:

- 1. A copy of GDPR readiness assessment or reports. Please provide the source information as well as any summary information.*
- 2. Confirm who is the nominated Data protection officer and how they will meet the criteria prescribed in GDPR.*
- 3. Copies of any correspondence or action plans relating to the DPO requirement, to also include suggestions or recommendations on the role, or allocation of responsibility.*
- 4. Which councillor has responsibility for Data Protection?*
- 5. A copy of all reported or recorded security incidents, incident reporting, including descriptions."*

6. The Council responded on 13 March 2018 and provided the following responses:

- 1. "Readiness assessment not held please clarify do you mean readiness reports or all reports that mention GDPR?"*
- 2. Not held*
- 3. Not held*
- 4. [named Councillor]*
- 5. The Council refused to comply with the request and cited section 12(1). The Council stated that as no time period was specified, it would need to search its records for the 52 years since the Council's creation. The Council advised the complainant to modify the time period of the request.*

7. On 23 March 2018, the complainant wrote to the Council and confirmed the interpretation of the first element of his request, stating:

"A report is a written document, the subject or content of a report can include assessments. Please explain why you have not included any readiness "reports" and have relied on selective language to withhold documentation. This is a nuance and a seeming obstruction to disclosure

and transparency. I expect you to interpret the request in the spirit the law intended, and not use restrictive interpretation to hinder disclosure."

8. The complainant expressed concern at the lack of information held in relation to the second and third element of the request. He also refined the last element of his request, stating:

"When did the council start recording security incidents in a structured manner? Please provide data for the past 3 years."

9. On 26 April 2018, the Council provided its response. It referred the complainant to the "*Corporate Committee*"² report dated 21 March 2018 and stated that the report "*may assist with your request*". The Council provided a link to a previous request and stated that information regarding security breaches could be found within this response. The Council also stated that similar information can be accessed using the Freedom of Information Disclosure log and provided a link to the disclosure log front page³.
10. On 5 May 2018, the complainant wrote to the Council and expressed his dissatisfaction at the handling of his requests. The complainant asserted that the Council had engaged a named organisation for GDPR readiness but had failed to provide him with its report. The complainant confirmed that the link provided in relation to his request for information on security incidents gave him an aggregated summary only and was not what the complainant had asked for.
11. On 8 May 2018, the Council responded to the complainant. It stated that most of the information requested did not exist at the time of the request and provided some further information regarding the Data Protection Officer.
12. On 10 May 2018, the complainant wrote to the Council and again explained that the Council had not provided the information requested in relation to his request for GDPR readiness reports and security incident reporting.

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<https://moderngov.lambeth.gov.uk/%28S%280cmzi2vta2o4ow55m5w2s455%29%29/documents/s94187/GDPR%20Corporate%20Committee.pdf>

³ <https://www.lambeth.gov.uk/elections-and-council/foi/find-answers-to-freedom-of-information-foi-requests>

Scope of the case

13. The complainant contacted the Commissioner on 15 June 2018 to complain about the way his request for information had been handled.
14. The complainant confirmed that his complaint was regarding the "GDPR readiness assessments or reports" and "Security incidents and reporting" elements of his request only. More specifically, he complained that the Council has failed to respond properly to these elements of his request.
15. On 8 October 2018, the Commissioner wrote to the Council and set out that it had not provided an adequate response in accordance with the Act. She asked it to review the requests again and issue a response that complies with the Act.
16. On 25 October 2018, the Council contacted the Commissioner to explain that it was experiencing delays collating the information and required further time to respond to the complainant.
17. To date, the Council has not provided the complainant with a response.
18. The Commissioner will therefore consider whether the Council has complied with the Act in relation to the disputed requests.

Reasons for decision

19. Section 1(1) of the Act states:

"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."*

20. Section 1(3) of the Act states:

"Where a public authority –

- (a) reasonably requires further information in order to identify and locate the information requested, and*
- (b) has informed the applicant of that requirement.*

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."

21. Section 10(1) of the Act states:

"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."

"A copy of GDPR readiness assessment or reports. Please provide the source information as well as any summery information"

22. The Commissioner has considered whether the Council was entitled to clarify the request. The Council appears to have informed the complainant that the request could be interpreted in the following two ways:

- GDPR readiness assessment or GDPR readiness reports
- GDPR readiness assessment or GDPR reports

23. As the request could be interpreted in more than one way, the Commissioner considers that the Council was correct to clarify what information the complainant was seeking.

24. Having reviewed the complainant's clarification, the Commissioner considers that the complainant is seeking assessments or reports on the Council's preparations for GDPR and any source material used in the preparation of these documents.

25. The Commissioner considers that the complainant has provided sufficient information to identify and locate the requested information and the Council is therefore required to comply with section 1(1) of the Act.

26. The Commissioner notes that the Council states that most of the information requested was not held at the time of the request, however, it is not apparent which element(s) of the request this refers to.

27. The complainant provided his clarification on 23 March 2018. The Commissioner therefore considers that this is the date of the request.

28. As the Council has not complied with section 1(1) to date, it has breached section 10(1) of the Act.

29. The Commissioner requires the Council to provide a response to the request relating to GDPR readiness which complies with section 1(1)(a) of the Act and, if the information is held, either disclose the information or issue a refusal notice citing a reason to withhold the information.

Security Incidents

30. The complainant refined his request for *"A copy of all reported or recorded security incidents, incident reporting, including descriptions"* to the 3 years leading up to the request. He also requested *"When did the Council start recording security incidents in a structured manner?"*
31. The Council provided a link to a previous response under the Act dated 7 November 2017 regarding cyber-attacks on the Council and the amount spent on IT security.
32. The Commissioner has reviewed the information available via the link provided and she is not persuaded that the Council has complied with the obligations under section 1(1) of the Act.
33. The Commissioner set out to the complainant that, in the context of the request as a whole, her interpretation of *"security incidents"* related to data security incidents. The complainant confirmed that this was correct.
34. Although the complainant did not specify that he was seeking information on cyber-attacks, the scope of the complainant's request clearly extends beyond this. The Commissioner therefore considers that the Council has failed to take into account the full scope of the complainant's request.
35. The Council has also failed to take into account the period of time between the requested linked to in the original response and the complainant's request of 23 March 2018.
36. The Commissioner is unable to locate any form of response to the complainant's request for when the Council started recorded security incidents.
37. The Commissioner considers that the Council has failed to confirm or deny whether information is held falling within the scope of the requests relating to security incidents within the statutory timeframe and has therefore breached section 10(1) of the Act.
38. The Commissioner requires the Council to comply with section 1(1)(a) of the Act and, if information is held, either disclose the information or issue a refusal notice citing its reason to withhold the information.

Other matters

39. The Commissioner is disappointed that she has had to issue a decision notice on a matter that she considers could have been informally resolved.
40. The Council has failed to engage with the Commissioner in an adequate manner during the course of this investigation. The Commissioner would like to remind the Council that it has an obligation to provide evidence regarding how it is complying with the legislation.
41. The Commissioner expects the Council to take steps to improve its engagement with her office.
42. Given the length of time the complainant has already waited for a response under the Act, if he is dissatisfied with the response, the Commissioner will accept a complaint for investigation without an internal review.

Right of appeal

43. 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

44. 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.
45. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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SK9 5AF