

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 18 April 2023

Public Authority: London Borough of Merton
Address: Merton Civic Centre
London Road
Merton
SM4 5DX

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

he may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference IC-175671-X5R3, for a decision whether a request for information made by the complainant to the above public authority on 18 March 2022, has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. The complainant disputes that the public authority has disclosed all the information that it holds within the scope of his request.
3. On 21 October 2022, the Commissioner wrote to the public authority to make it aware that he was likely to commence his investigation imminently. He asked the public authority to begin preparing its submission and gave it 20 working days in which to complete the task.
4. No response was received by the public authority. The Commissioner chased the correspondence on 5 January 2023 and, when the public authority did finally acknowledge receipt, he agreed to a further extension until 2 February 2023 for the public authority to provide a response.
5. The public authority has not, at the date of this notice provided a submission, nor an explanation as to why no submission has been forthcoming nor any further indication of when it might be able to respond.

Information required

6. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of the Act he requires that the public authority shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information.
7. The Commissioner requires a detailed submission, from the public authority, which explains how the public authority has satisfied itself that it holds no further information within the scope of the request. This will include, but is not limited to, answering the following questions:
 - a) What searches have been carried out to check no information was held within the scope of the request and why would these searches have been likely to retrieve any relevant information?
 - b) Describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.
 - c) If searches included electronic data, which search terms were used and explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

- d) If the information were held would it be held as manual or electronic records?
- e) Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?
- f) If recorded information was held but is no longer held, when did the public authority cease to retain this information?
- g) Does the public authority have a record of the document's destruction?
- h) What does the public authority's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the public authority describe the way in which it has handled comparable records of a similar age?
- i) If the information is electronic data which has been deleted, might copies have been made and held in other locations?
- j) Is there a business purpose for which the requested information should be held? If so what is this purpose?
- k) Are there any statutory requirements upon the public authority to retain the requested information?
- l) Are there any further arguments the public authority wishes to put forward that would explain why it should not be expected to hold the information that has been requested.

Failure to comply

8. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

9. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can 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

10. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF