

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 May 2015

Public Authority: Cornwall Council
Address: County Hall
Treyew Road
Truro
TR1 3AY

Decision (including any steps ordered)

1. The complainant requested information from Cornwall Council ("the council") relating to a particular property. The council transferred the requests to Cornwall Housing Limited ("Cornwall Housing"). Cornwall Housing provided some information but subsequently said that the requests were vexatious under section 14(1) of the Freedom of Information Act 2000 ("the FOIA"). The complainant argued that the information was held by the council. The Commissioner decided that the council was wrong to claim that the information requested would only be held by Cornwall Housing for the purposes of the FOIA. The Commissioner therefore investigated whether any additional information was held by the council beyond that already made available. The Commissioner found that further information was held by the council. The Commissioner found breaches of section 1(1)(a), 1(1)(b) and 10(1) of the FOIA for the failure to confirm that information was held and to provide it within 20 working days. There are no steps to take.

Request and response

2. On 25 July 2014, the complainant requested information from the council in the following terms:

"The information I request concerns Homechoice Property Ref: 14661 at Timber Close which according to 'Outcomes for CBL' was advertised between 05/04/2014 to 09/04/14. I would like a copy of the

Homechoice advertisement used on the Council's website, a copy of the picture used by Sanctuary Housing, all the individual details which accompanied the Homechoice advertisement and information on any preferences/eligibilities.

I would also like to know if or when Cornwall Council began paying Rent/Service Charge on the Homechoice property”.

3. On 26 July 2014, he made a further request in the following terms:

“Further to my FOI request regarding Homechoice Property: 14661, I would also like to know the day and month the Let's information was added to the Council's 'Recent Lets' section on it's [sic] website for the benefit of applicants”.
4. Cornwall Housing responded to the requests on 22 August 2014. It said that the information on the property was updated on 23 June 2014 when the landlord marked it as let. It said the information on the 'Recent Lets' section of the website would have been updated shortly afterwards. The authority said that it could not recreate the web advert but it gave a general account of the information it would have contained and it supplied a copy of a newsletter advert for the property. It said there were no preferences and no other photographs supplied by the housing association except that provided. It said that while the council may hold information on housing benefit payments if applicable, this information would be exempt under section 40(2) of the FOIA as it would be personal information relating to the occupier(s).
5. The complainant replied on the same day to express dissatisfaction with the response. He said that he did not believe that the advert could not be recalled or recreated. He said that there was a duty to advise him which image was used to advertise the property, when it was added to the council's website and if the council paid rent or service charges. He also sent a copy of the response to the council.
6. The council replied on 27 August 2014 and clarified that it considered that Cornwall Housing should deal with the matter.
7. Cornwall Housing completed an internal review on 22 September 2014. It said that it had decided that the requests were vexatious under section 14(1) of the FOIA and it explained why it had made this decision.

Scope of the case

8. The complainant made an eligible complaint to the Commissioner on 10 October 2014. He complained about the way his request for information had been handled. The Commissioner clarified that the complainant wished the Commissioner to consider the following issues:
- Whether the council held the information requested, and if so, whether there is any more information held falling within the scope of the requests other than that already provided by Cornwall Housing.
 - In particular, the complainant said that he did not accept that the web advert cannot be recreated or recalled and he said that there was a duty to advise which image was used to advertise the property, when it was added to the council's website and if the council paid rent or service charges (by which he meant had the council paid housing benefit). He also said that the council did not provide all of the 'individual details' that would have accompanied the web advert, in particular the service charge for the property.
 - During the Commissioner's investigation, the complainant said that he wished to withdraw his complaint relating to the request to know if or when the council paid housing benefit.

Reasons for decision

Section 1 and 3

9. Section 1(1) of the FOIA provides a general right of access to recorded information held by public authorities. Any person making a request for information to a public authority is entitled to be informed in writing by the public authority within 20 working days whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him unless a valid reason exists for not doing so under the legislation.
10. In this case, the complainant's request to the council was transferred to Cornwall Housing because the council considered that any information falling within the scope of the requests would be held by Cornwall Housing rather than the council. For clarity, Cornwall Housing is wholly owned by the council and is therefore a public authority in its own right in accordance with sections 3(1)(b). The council told the Commissioner initially that it did not consider that any of the information could be held by the council and that is why it had transferred the request to Cornwall Housing.

11. The Commissioner has published guidance explaining how he decides whether a public authority should be deemed to hold information for the purposes of the FOIA. For ease of reference, this guidance is here:

<https://ico.org.uk/media/for-organisations/documents/1148/information-held-by-a-public-authority-for-purposes-of-foia.pdf>

12. As explained in the guidance, whether information is held is not always a simple matter of physical possession of that information. Section 3(2) of the FOIA provides the following:

"(2) For the purposes of this Act, information is held by a public authority if –

It is held by the authority, otherwise than on behalf of another person, or

It is held by another person on behalf of the authority"

13. The council confirmed to the Commissioner that Cornwall Housing had been commissioned by the council to deliver a range of services on its behalf, including the housing register known as "Cornwall Homechoice". The Commissioner obtained a copy of the council's contractual agreement with Cornwall Housing and having considered that agreement, the Commissioner explained to the council that it appeared to him that the council had ownership and control over the information to an extent that meant it could not maintain the position that the information requested was not held by the council for the purposes of the FOIA, which would include information held on its behalf by Cornwall Housing. Following the Commissioner's comments, the council told the Commissioner that it agreed with that view and it said that it would issue a response to the requests. The council subsequently wrote directly to the complainant and said that if it had responded to the requests, it would have responded in the same way as Cornwall Housing had done. It said that there was no further information it could provide.
14. 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 argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the

information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".¹

15. As noted above, the complainant was dissatisfied with the response provided by Cornwall Housing because he said that he did not believe that the advertisement could not be recalled or recreated. He said that there was a duty to advise him which image was used to advertise the property, when it was added to the council's website and if the council paid rent or service charges which was referring to housing benefit.
16. The council explained to the Commissioner that the advert for the property referred to by the complainant was published on a web based system called Abritas, which runs Cornwall Homechoice. It said that there is a link to this from the webpage of Cornwall Housing. The council said that in order for the advert to be created, the third party landlord involved, Sanctuary Housing, would have inputted the data on a web form which would have been converted into an advert in a newsletter and a website advert.
17. The council said that the website advert only runs for a maximum time of one week and after that time it would be deleted and the original advert cannot be recovered. It said that the only way to reproduce the website advert is to load up the data again to make the advert live so it is advertised on the webpage. The council said that Cornwall Housing could not do this as the property has now been let and this would advertise the property as available. In view of this, Cornwall Housing provided the complainant with a copy of the newsletter advert that was created when Sanctuary Housing inputted the data on the web form.
18. The council said that Cornwall Housing had confirmed that the only photograph provided by Sanctuary Housing was the one shown in the newsletter. The council said that the photograph is stored indefinitely. The council said that the newsletter advert provided also included information that would have also appeared on the web advert, although the web advert would have contained additional information. Cornwall Housing said that this had been provided in its original response to the complainant. The council confirmed that these details are those provided by Sanctuary Housing and are also stored indefinitely. The council provided to the Commissioner a 'screen shot' of the web form that had been filled in by Sanctuary Housing to show the information it contained,

¹ This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

from which both the web advert and the newsletter would have been generated.

19. The council confirmed that an appropriate check on its system had taken place and that there was no further information falling within the scope of the request which the council would be able to provide. It confirmed that, with the exception of the webpage advert, no information had been deleted, destroyed or mislaid.
20. Firstly, it became apparent to the Commissioner during his investigation that a misunderstanding had arisen over the extent of the information that Cornwall Housing had made available to the complainant. The original response to the complainant had included a screen shot of a newsletter advert however it appears that when this was emailed to the complainant, it did not display and the complainant did not realise that it had been provided. The newsletter advert included the photograph used to advertise the property and confirmation of the rent and service charge.
21. In relation to the web advert sought by the complainant, the complainant told the Commissioner that he does not accept that the council cannot recall or recreate the advert. The first issue to note is that the FOIA relates only to recorded information that is held by the public authority concerned. The legislation does not impose any obligation for public authority staff members to recall information from memory. In relation to whether the council could "recreate" the web advert, it is clear that there is nothing in the FOIA that would oblige the council to upload the same information to its IT system to reproduce another duplicate web advert in response to the complainant's request. In relation to the original web advert information, the Commissioner accepts that the council did not hold this information at the time of the request since it was deleted in line with the council's routine business. However, it appears that by "recreate" the complainant also meant that he would like the information that would have appeared in the web advert, even if the actual advert was no longer available. The complainant provided a copy of one such advert to the Commissioner as an example of the information it contained.
22. The council explained to the Commissioner that the web adverts would have the same headings each week although the content would be the responsibility of the individual landlord. The property details would naturally vary. When the Commissioner compared the web form and the example web advert provided by the complainant, it became apparent that it would have been possible for the council to provide additional information that would have been displayed in the web advert by using the information provided on the web form. The council agreed to provide

this additional information to the complainant. The web form also includes information about when the property would be advertised.

23. The Commissioner's investigation above established that the council had been wrong to claim that it did not hold any of the information for the purposes of the FOIA. There was also some additional information held falling within the scope of these requests. The Commissioner found that the council breached its obligations under section 1(1)(a), 1(1)(b) and 10(1) to confirm that requested information is held and provide it to the requester within 20 working days. The outstanding information has now been provided to the complainant and the Commissioner accepts on the balance of probabilities that no further information was held. The council has consulted Cornwall Housing and appropriate checks have been made. As the original web advert was deleted as part of the council's routine business, the Commissioner accepts that there is no other information that would confirm when the advert was displayed on the website or what image was used. The council has provided a reasonable account to explain why the web advert is no longer held and it has made available the information that it would have contained.

Right of appeal

24. 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

25. 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.
26. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF