

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 September 2015

**Public Authority:** Cornwall Council

**Address:** County Hall  
Truro  
Cornwall  
TR1 3AY

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to a property advertisement. The Commissioner's decision is that, on the balance of probabilities, Cornwall Council does not hold the requested information. He does not require any steps to be taken to ensure compliance with the legislation.

#### **Request and response**

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2. On 24 February 2015, the complainant wrote to Cornwall Council ('the council') and requested information in the following terms:

"I wish to make a Freedom of Information Request...

...The information I request, and in the public interest, concerns the currently advertised Homechoice property ref : 17960, a 1 Bed Bungalow in Linkinhome, Carnedon, Upton Cross, Cornwall. PL14 5AP, to which you are the landlord.

As you are aware I have been doing a weekly blog for the last 34 weeks on wilfully misleading Homechoice property advertisement descriptions/images.

I have it on good authority the "Front View" description and the photograph used for Ref : 17960, do not in fact show the bungalow on offer and are therefore wilfully misleading.

Would you please confirm who is right and amend or withdraw the information forthwith if it is misleading and in the public interest.”

3. The council replied on 5 March 2015. It did not refer to a freedom of information request but it explained that the photograph was of similar properties on the same road and was labelled incorrectly. It explained that this was not a wilful or deliberate mistake and that the voids management team have acknowledged that they need to ensure their photographs are accurate in future.
4. The complainant responded on 9 March 2015 stating that he had not made a complaint but had made a freedom of information request and requested a response by 25 March 2015.
5. On 23 March 2015, the council wrote to the complainant and said that his request does not ask for recorded information, but asks for an opinion which is not recorded in a form that can be supplied under the FOIA. It said that the matter would be more appropriately handled as a complaint and that a full and comprehensive investigation and response has already been provided by Cornwall Housing under its complaints procedure.
6. The complainant requested an internal review on 26 March 2015. He stated that the request related to recorded information provided on the council's website which he found to be 'misleading and erroneous and not in the public interest'.
7. The council responded on 7 April 2015. It said that while it was possible to reply to the question, it was not possible to respond by way of information held in a recorded form as no document existed that specifically set out who was right. It also said that, for a response to be compiled, the opinion of an officer has to be sought and a comparison made between the description given and if there was an error in the front view description.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 5 May 2015 to complain about the way his request for information had been handled.
9. The Commissioner wrote to the complainant on 23 June 2015. He said that it appears that the complaint centres on the council publishing misleading information on its website and not removing or amending misleading information. He explained that the FOIA is solely concerned with access to information and does not address the issue of the accuracy of any information published on a council's website or provided

in response to a request for information. He informed the complainant that a public authority will have complied with their obligations under the FOIA where it has provided the recorded information that it holds in relation to a request irrespective of whether this information is accurate or not. He said that he cannot assess the accuracy of information published on a website or disclosed in response to a request, nor can he look into accusations of maladministration or request that a council corrects inaccurate information that it may hold.

10. It was also explained to the complainant that the FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold. It was further explained that a question can be a valid request for information if information that answers the question is held in recorded form and that in this case, the council answered the question and also explained that no document exists that set out an answer to the question.
11. The Commissioner informed the complainant that the only way he could progress this case is by investigating whether the council holds recorded information that would answer your question – i.e. whether it holds information recording 'who is right' in relation to the property advertisement. He said that it does not appear that such an investigation would satisfy the complaint which seems to be that the council published misleading information on its website and did not remove or amend such information. However, he asked the complainant to confirm whether he wished an investigation to be commenced regarding whether the council holds recorded information that answers 'who is right' in relation to the property advertisement or if he now wish to withdraw his complaint.
12. The complainant responded on the same day. He confirmed that he would not be withdrawing his complaint and stated the following:

"How can the Council not hold recorded information on 'who is right' when, on the civil standard of the balance of probabilities, the Council itself owns the property in question."
13. The Commissioner therefore considers whether the council holds any recorded information within the scope of the request.

### **Reasons for decision**

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14. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it

holds the information and if so, to have that information communicated to him.

15. 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 is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is 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 civil standard of the balance of probabilities.
16. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. He asked the council to bear in mind that the complainant has asserted that the council must hold recorded information on 'who is right' because, the council itself owns the property in question.
17. The council said that it maintains that the complainant was asking for an opinion rather than recorded information. It explained that the complainant is fully aware of how to request recorded information, for example copies of property adverts and details, and has made numerous of these requests to the council and to Cornwall Housing. It said that at no stage did the complainant advise that he wanted copies of the property advert and property details and the council therefore processed the correspondence of 24 February 2015 as a complaint. It said that, clearly, the council does hold recorded information about the property but this was not part of the request as the complainant was asking for an opinion about whether the photograph was wilfully misleading and such an opinion is not held in recorded form.
18. In relation to any searches carried out, the council said that consideration was given to whether any information was held which may form part of an overall data set which may be able to answer the question but as the information requested was an opinion, this information was not held until that opinion was created by Cornwall Housing and sent to the complainant on 5 March 2015.
19. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal

requirement or business need for the council to hold the information. The council said that there was neither.

20. The Commissioner also considered whether the council had any reason or motive to conceal the requested information but he has not seen any evidence of this. Therefore he has not identified any reason or motive to conceal the requested information, particularly given that it has acknowledged that there was a mistake in the labelling of the photograph.
21. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any information relevant to this request. The Commissioner is therefore satisfied that on the balance of probabilities, the information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

## Right of appeal

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22. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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**