

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 July 2021

Public Authority: Stroud District Council
Address: Ebley Mill
Ebley Wharf
Stroud
GL5 4UB

Decision (including any steps ordered)

1. The complainant requested information from Stroud District Council (the Council) about the maintenance and repair of specified flats. The Council advised that it had disclosed all recorded information within the scope of the request. During the course of the Commissioner's investigation, the Council disclosed some additional information. The Commissioner's decision is that the Council does not hold any further recorded information relevant to the request. The Commissioner also finds that the Council breached section 10 of the FOIA in failing to comply with section 1 within the appropriate timescale. The Commissioner does not require any steps to be taken.

Request and response

2. On 11 January 2020, the complainant wrote to the Council and requested information in the following terms:

"I hereby request the following information from all departments of Stroud District Council and its contractors under the Freedom of Information Act 2000:

All information, including internal and external correspondence, emails, plans, budgets, estimates, contracts, minutes, surveys, notes, transcripts of telephone or other conversations, etc., concerning the maintenance and repair of the roof of all the flats at Lower Berrycroft, Berkeley since 1st January 2010 to date."

3. The Council replied to the request on 24 February 2020 and advised that it was attaching all of the recorded information within the scope of the complainant's request.
4. The complainant requested an internal review on 29 February 2020.
5. The Council provided an internal review outcome on 6 August 2020 and advised the complainant that the documents provided in response to his request for information (consisting of 144 pages) included everything that fell within the scope of his request. The Council explained that no further documents were available that fell within the scope of the request and that no documents were withheld.

Scope of the case

6. The complainant contacted the Commissioner on 30 August 2020 to complain about the way the Council had handled his request for information. He disputed the Council's explanation that it did not hold any further recorded information within the scope of the request.
7. During the course of the Commissioner's investigation, the Council located additional recorded information held relevant to the request, which it disclosed to the complainant.
8. The scope of this case is whether the Council is likely to hold any further recorded information within the scope of the request.

Reasons for decision

9. Section 1(1) of the 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. 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. She 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, she will consider any reason why it is inherently likely or unlikely that information is not held.

11. For clarity, the Commissioner is not expected to conclude categorically whether the information is held, she 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

12. With regard to whether the Council is likely to hold any further information falling within the scope of this request, the Commissioner asked the Council to explain the searches it had undertaken to locate information falling within the scope of this request and to explain why those searches would have been likely to locate all of the information in scope.
13. The Council replied to the Commissioner's enquiries and explained that thorough searches had been undertaken of any systems and records relevant to the request. These searches included material held on the Council's Housing and Asset Management systems; these systems act as a repository and all documents/correspondence relating to a property or individual are saved on these systems. Further to this, the Right to Buy Team database was searched, as all leasehold correspondence is held within the system. The Council's shared and local information storage facilities were also searched as they are used by all staff to record and manage information. Finally, staff mailboxes were also searched, as the Council determined that these were a possible source of communication which could have been used as a form of direct contact which was not recorded elsewhere.
14. Following the Commissioner's enquiries, the Council also explained that no documents would have been deleted. The Council's data is held in accordance the Limitation of Liability Act. Contractual records in this instance would need to be retained for a period of 12 years, as the contract is under seal. This means, therefore, that there was no information within the time scale of the request which would have been deleted.
15. The Council explained to the Commissioner that it considered no further recorded information was held.
16. The Commissioner asked the Council to take into consideration the complainant's concerns that no information had been disclosed dated prior to 13 February 2018. He disputed that no information was held between 1 January 2010 and 12 February 2018.

17. The Council undertook further searches and located further invoices and supporting documents pre-dating 2018 which were held by its Right to Buy Team. These additional documents were disclosed to the complainant. The Council also confirmed that no planned maintenance had been carried out on the roofs of the flats specified within the request for information between 2010 and 2018.

The Commissioner's conclusion

18. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that the public authority holds no relevant information. However, as explained earlier in this notice, the Commissioner is required to make a judgement on whether the information is held on the civil standard of the balance of probabilities
19. Based on the searches undertaken and the other explanations provided, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any further recorded information relating to the request, other than that which it has disclosed prior to and during her investigation.
20. Having been advised previously by the Council that no further information within the scope of his request was held, only for it to turn out during the Commissioner's investigation that this was an incorrect statement, the Commissioner recognises that the complainant may find it difficult to accept at this stage that all relevant information has now been identified. The Commissioner agrees that it is unfortunate that the Council did not carry out thorough searches when handling the request and notes that this means it failed to comply with section 1(1) of the FOIA at that time. However, her view is that the evidence available to her suggests that, on the balance of probabilities, no further information within the scope of the complainant's request is held and hence the Council is now in compliance with section 1(1).

Section 10 – time for compliance

21. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "*not later than the twentieth working day following the date of receipt*". Section 1(1) states that a public authority should confirm whether it holds relevant recorded information and, if so, to communicate that information to the applicant.
22. In this case the request was submitted on 11 January 2020. The Council provided some information relevant to the request on 24 February 2020. The Council also disclosed additional information it identified during the

Commissioner's investigation. As the Council failed to comply with section 1(1)(b) within the required timescale it breached section 10(1) of the FOIA.

Other matters

Section 45 – internal review

23. The Commissioner cannot consider in a decision notice the amount of time it took a public authority to complete an internal review because such matters are not a formal requirement of the FOIA. However, it is good practice to offer an internal review, and, where a public authority chooses to do so, the code of practice established under section 45 of the FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
24. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances.
25. The complainant asked for an internal review on 29 February 2020. The Council did not provide the internal review outcome until 6 August 2020 and therefore failed to act in accordance with the section 45 code.
26. The Commissioner does note, however, that the request for review was received shortly before the initial lockdown period during the coronavirus pandemic.
27. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.

Right of appeal

28. 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

29. 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.
30. 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

Ben Tomes
Group Manager
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