

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 April 2024

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the decision to change their address. The London Borough of Merton ("the Council") disclosed the information within the scope of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further information within the scope of the request. However, the Commissioner finds that the Council breached section 10(1) of FOIA as some of the information within the scope of the request was not disclosed to the complainant until after the statutory 20 working days.
3. The Commissioner does not require the Council to take any further steps.

Request and response

4. On 25 November 2022, the complainant wrote to the Council and requested information in the following terms:

"From: 01/01/2015
To: 31/12/2017"

Please may I have copies of all correspondence, internal and external, relating to the council's decision to remove [complainant's address] from its address database. I presume that as part of the process of deciding whether a change of address contrary to contemporaneous policy is justified, the council conducts some form of assessment of the impact such a change is likely to have on the lawful occupants of the property; please could you therefore supply copies of any such impact assessment conducted before deciding to remove [complainant's address] from the council's address database.

Further, I understand that the council had some correspondence with the owner of the building (i.e. my landlord) on or about 21 October 2017 relating to its decision to delete [complainant's address] and/or the neighbouring address [redacted] from its database. Please could you supply copies of that correspondence."

5. The Council responded on 1 December 2022. It disclosed a bundle of documents relating to the change to the complainant's address, including emails and forms, with some redactions of personal data.
6. The complainant wrote to the Council on 12 December 2022, setting out their reasons for understanding that the Council held further information within the scope of the request.
7. Following an internal review the Council wrote to the complainant on 13 September 2023. It stated that it was satisfied that it had disclosed all documents and communications relating to the change to the complainant's own address. However, as the complainant had made reference in their review request to the decision to change their address being linked to the development of some new flats on the opposite corner of the road, the Council conducted further searches of the files held in relation to the developer of those new flats. The Council located a further email trail between itself and the developer of the new flats which it deemed to be within the scope of the request Therefore the Council disclosed the email trail to the complainant with relevant redactions of personal data.
8. The complainant wrote to the Council again on 13 September 2023. They asked for two further emails, dated on or around 17 and 24 July 2015, which had been referred to within the email trail disclosed by the Council following it's internal review. The Council located those two emails and disclosed them to the complainant on 19 September 2023, with redactions of personal data.
9. The complainant wrote to the Council again on 19 September 2023 and requested further information in the following terms, specifically relating to electronic communications dated after 28 July 2015:

“supply of the remainder of emails between its Street Naming & Numbering Clerk and the developer of [redacted] which (presumably) ended with the latter conceding to the former’s unique and questionable interpretation of street numbering legislation.”

10. The Council responded on 9 October 2023. It disclosed a large bundle of documents containing all relevant electronic communications held within the case file for the development of flats on the opposite side of the road to the complainant’s address, with redactions for personal data.

11. The complainant wrote to the Council again on 10 October 2023 and requested further information in the following terms:

“copies of the internal Council discussion relating to its decision to start the enforced numbering of [redacted]... including both the discussions which led the Council to start forcing address changes upon corner properties without the owner’s consent, and the discussions which led to them subsequently reverting to the approach used outside Merton in compliance with national guidelines and s.13.1 of current Council policy.”

12. Prior to providing its response the Council undertook a review of the previous responses it had provided, as well as conducting searches of its case files for the change to the complainant’s own address and the development of flats on the opposite side of the road. The Council provided its response to the complainant on 23 October 2023, in which it set out that it had already disclosed all electronic communications and documentation relating to the matter.

Scope of the case

13. The complainant contacted the Commissioner on 29 September 2023 to complain about the way their request for information had been handled.

14. As set out above, the dialogue between the complainant and the Council continued after the complainant had submitted their complaint to the Commissioner. Despite further information being disclosed by the Council in response to the complainant’s further requests, the complainant remained of the position that the Council had not disclosed all relevant information. However, the complainant did confirm that they do not dispute the Council redacting personal data from the disclosed information, in accordance with section 40(2) of FOIA.

15. During the course of the Commissioner’s investigation, the Council located one further piece of relevant information – a complaint email addressed to the Chief Executive of the Council, followed by a short

internal email trail – which was disclosed to the complainant with redactions of personal data.

16. The Commissioner considers that the scope of his investigation is to determine whether, on the balance of probabilities, the Council holds any further information within the scope of the request.

Reasons for decision

Section 1 – general right of access

17. Section 1 of FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to them.
18. In scenarios where a dispute arises over whether further relevant recorded information is held by the public authority at the time of the request, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is more likely than not that the public authority holds any further information falling within the description set out in the request.

The complainant's position

19. The complainant remains of the position that the Council holds further relevant information that it has not disclosed to them. Specifically, the complainant considers that content within the documents which the Council has already disclosed, along with comments made by the Council in emails about the re-addressing outside of the FOIA process, indicate that further recorded information must exist.
20. The complainant referred to particular examples where the Council sent an email to a neighbouring local authority outlining its position on enforcing address changes but did not disclose a response from that neighbouring local authority, and the Council stated that it had sought legal advice prior to implementing the address changes in 2015. However, in their correspondence to the Commissioner the complainant conceded that based on the internal correspondence disclosed by the Council they believe that such legal advice related solely to the Council's legal entitlement to change addresses, rather than it being advice on the correct thing to do in the particular circumstances of changing the complainant's address.

The Council's position

21. The Council explained that when it receives a street naming and numbering (SNN) application or query, the officer handling it will create a new case file in Sharepoint. Each case file is broken down into sub-folders where documents relating to that case are held, such as communications, formal documentation/notices, plans, etc. During its handling of the requests the Council accessed the folders for the complainant's own address and the new flats on the opposite side of the road, and disclosed all information held in those case files to the complainant. In order to satisfy the Commissioner's enquiries, the Council revisited both case files again during his investigation, opening and checking each document to confirm that they had already been provided to the complainant, and no further information was held in the files that had not already been disclosed.
22. The Council also explained that there is no requirement for an impact assessment to be conducted in relation to an enforced change of address. Therefore, no assessment was conducted and no such record exists.
23. The Council undertook a further search of the dedicated SNN email account, including inboxes and archive folders, which were found to contain no relevant information.
24. During the Commissioner's investigation it was highlighted that during the time period that the complainant's request relates to, the developer of the new flats had been in communication with the Council's Chief executive and Director of Corporate Services. The Council stated that where the SNN Officer was copied into those communications the SNN Officer had saved the communications to the case file in Sharepoint. However, the Chief Executive and Director of Corporate Services had since left their employment at the Council, so any communications sent directly to them but not copied to the SNN Officer may sit in email folders which were archived when they left their roles at the Council.
25. The Council agreed to ask its IT team to conduct searches on the archived email folders belonging to the former Chief Executive and Director of Corporate Services to see if they contained any further information within the scope of the requests which had not already been saved to the relevant case files in Sharepoint. Those searches located one short email trail dated 3-4 August 2015, which was disclosed to the complainant during the Commissioner's investigation. However the Council advised that the IT team had been unable to recover an attachment to the initial email of 3 August 2015.

26. Finally, regarding any further documents which the complainant believes the Council should hold, the Council explained that it migrated its files from shared internal drives to Sharepoint in 2018. The case files were structured in the exact same way that they remain structured within Sharepoint in the present day. Any electronic communications and documentation held on shared internal drives from before the move across to Sharepoint were transferred across to the new platform by the Council's IT team. However, considering the time that has lapsed since the address changes occurred, the Council cannot categorically confirm that every document was saved to the case files, nor that every document was successfully copied over during the migration to Sharepoint.

The Commissioner's conclusion

27. The Commissioner has considered both parties' positions and supporting arguments. The Commissioner is not required to prove beyond doubt that the Council does or does not hold further information within the scope of the request. He is only required to make a decision based on the balance of probabilities.
28. The Commissioner notes the large amounts of information that the Council has made available in response to the complainant's various requests relating to this matter, along with the Council's willingness to fully engage and co-operate with his extensive questioning and requests for clarification and repeated searches throughout this investigation.
29. The Commissioner is satisfied that the Council has demonstrated that it has conducted appropriate and proportionate searches that would be likely to locate any further information if it were held. The Commissioner accepts the Council's position that, on the balance of probabilities, it does not hold any further information within the scope of the request. As such the Commissioner finds that the Council has complied with section 1(1) of FOIA.

Procedural matters

30. Section 10(1) of FOIA provides that 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.
31. The final documents within the scope of the request were not located and disclosed until during the Commissioner's investigation, therefore the Commissioner finds that the Council breached section 10(1) of FOIA.

Right of appeal

32. 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

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Michael Lea
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