

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2016

Public Authority: Huntingdonshire District Council
Address: Pathfinder House
St Mary's Street
Huntingdon
PE29 3TN

Decision (including any steps ordered)

1. The complainant has requested information linked to council tax regarding a specified property from Huntingdonshire District Council (the council). The council responded initially to say that the most of the information was not held, and that section 21 applied to the remainder as the council had previously provided it to the complainant. During the course of the investigation, the council ceased to rely on section 21 and provided a further copy of this information.
2. The Commissioner's decision is that the council does not hold any further information falling within the scope of the request, and therefore the council has complied with section 1 of the FOIA.

Request and response

3. On 6 June 2016 the complainant made the following request for information:

"Why was no Council Tax was paid during the period August 2007 to August 2009 [sic]?"

Why was it left empty and unoccupied for the period 29 August 2009 to 8 October 2014?"

4. The council responded on 8 June 2016 advising that the information could not be provided as the account was not in the complainant's name and so was not his personal data.
5. On 8 June 2016, the complainant expressed dissatisfaction with the response and also added the following requests:

"Was the above property jointly owned for the period 1996/1997 to 8 October 2014?"

Who were the joint owners of the property?"

6. The complainant wrote to the Commissioner to complain that the council's response was not compliant with the FOIA as it did not rely on an exemption to withhold the information. The Commissioner therefore contacted the Council on 21 July 2016 to ask it to consider the complainant's email as an internal review request, and to conduct a review accordingly.
7. The council then provided an internal review on 18 August 2016 in which it stated that the council had previously provided the complainant with the information regarding the question *"Why was no Council Tax was paid during the period August 2007 to August 2009 [sic]?"* and therefore section 21 applied. In respect of the remaining questions, it advised that no information was held.

Scope of the case

8. The complainant contacted the Commissioner on 22 August 2016 to complain about the outcome of the internal review.
9. During the course of the investigation, the Commissioner invited the council to reconsider its position and decided to provide the complainant with the information it was withholding under section 21. This consisted of a letter it had sent to the complainant's wife on 19 January 2011 regarding the non-payment of council tax at the specified property.

10. This information is therefore removed from the scope of the investigation as it has now been provided. Therefore, the remaining aspect of this case is to establish the extent to which the council is correct when it says that the requested information is not held.

Reasons for decision

11. Section 1 of the FOIA states that any person is entitled to request information and be informed by the public authority if it is held, and if so, to have it communicated to them.
12. The council states that it does not hold any information in respect of the following parts of the request:

"Why was it left empty and unoccupied for the period 29 August 2009 to 8 October 2014?"

Was the above property jointly owned for the period 1996/1997 to 8 October 2014?"

Who were the joint owners of the property?"

13. In cases where there is some dispute as to whether the requested information is held by a public authority, the Commissioner takes the lead of a number of Information Tribunal decisions in applying the civil test of the balance of probabilities. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
14. The complainant stated to the Commissioner that he believes that the council must hold the information as it will have been provided to it by the Land Registry, the police of the liquidators to the estate in question. The Commissioner directly asked the council whether the requested information had been provided to it by these sources. It states that no record exists of this information being obtained in this case. It has asked the officers in the Council Tax, Benefits and Fraud Services whether this information has ever been sought and held, and they concurred that it had not, and was not held.

15. The council also set out details of the general searches it has undertaken for the information. It explained that searches were carried out on systems in Council Tax, Benefits and Fraud services. These were considered to be the services likely to obtain or hold residential property ownership information, and therefore the only likely locations that the requested information might be held. The council notes that in particular it was Council Tax information that the complainant seemed to focus upon in his enquiries. The information requested was not held in any of the systems searched. It advised that further enquiries have been made across the wider organisation, but these have also failed to indicate that the requested information is held.
16. In terms of information requested concerning joint ownership of the property, the council explained that for the purposes of council tax as a general rule, it does not obtain ownership information for properties. This is because ownership is not usually directly relevant for council tax liability, other than as a means to an end in cases where there is some uncertainty about liability. It confirmed that the Fraud team sometimes has a need to obtain property ownership information in the course of conducting investigations into Council Tax or Housing Benefit Fraud. The council confirmed that the records for each department show that no information in respect of ownership was sought or held for the property in question. The council also confirmed that there is no other business purpose for the information to be held.
17. Turning to the request for information held as to why the property was empty and unoccupied for a period, the council has provided its view that it is reasonable to believe that the property was unoccupied as a result of a probate dispute involving the complainant and his wife following the death of the occupant. However, it states that it has no reason to hold the information, and the searches have revealed that no such information is held. The council maintains that the complainant is better placed to know the answer to these questions given his links to the property in question.
18. The Commissioner has had regard to the council's explanations for why the requested information is not held and has considered whether on the balance of probabilities, the council had reached the correct conclusion. The Commissioner's decision is that it seems more likely than not that the requested information is not held. This is because there is no business purpose or legal requirement for the council to record, hold or retain information in respect of property ownership and also reasons for a property

Reference: FS50633195

being empty. The Commissioner understands that the complainant expects the information to be held, but on the balance of probabilities, she concludes that it is not.

Right of Appeal

19. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. 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.
21. 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
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Wycliffe House
Water Lane
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Cheshire
SK9 5AF