

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2024

Public Authority: Mid Sussex District Council
Address: Oaklands
Oaklands Road
Haywards Heath
West Sussex
RH16 1SS

Decision (including any steps ordered)

1. The complainant requested information regarding signed lease contract documents for two shopping centres and their associated car parks. Mid Sussex District Council (the Council) cited section 21 of FOIA to refuse the request for the information.
2. The Commissioner's decision is that the Council was entitled to rely on section 21(1) of FOIA to refuse the request for information already in the public domain.
3. No steps are required as a result of this decision.

Request and response

4. On 13 March 2024, the complainant wrote to the Council and requested information in the following terms:

“Please share the signed lease contract documents for the Burgess Hill Martlets Shopping Centre and Market Place Shopping Centre (including their car parks).”
5. The Council provided its response on 9 April 2024 stating that long leases over 21 years old are required to be registered with HM Land Registry and citing section 21 to refuse the request.
6. The complainant wrote to the Council on 11 April 2024 and stated:

“Mid Sussex District Council holds the requested signed lease documents. It is unreasonable to defer the requestor to have pay the Land Registry in order to access this documentation which MSDC can readily share, particularly as I am a MSDC council taxpayer.”
7. The Council responded on 12 April 2024 further explaining its initial response and upholding its reliance on section 21 to refuse the request.

Reasons for decision

8. Under section 21(1) of FOIA, information is exempt from disclosure if it's already reasonably accessible to the applicant.
9. Unlike most exemptions, the circumstances of the applicant can be considered, as the information must be reasonably accessible to the particular applicant.
10. It is reasonable for a public authority to assume that information is reasonably accessible to the applicant as a member of the general public until it becomes aware of any particular circumstances or evidence to the contrary.
11. The complainant has argued that the Council have failed to provide details on the exact location and how to retrieve the requested FOI information.
12. In its internal review response, the Council gave some further guidance on the process to request information from HM Land Registry.

13. During the Commissioner's investigation the Council was advised to consider if any further guidance may be available to the requester to enable them to access the information they had initially requested.
14. The Council wrote to the complainant on 20 November 2024 and provided further guidance and assistance to help enable the requester to access the information in scope of their original request.
15. The Commissioner's guidance¹ says that "Information is in the public domain if it is easily, readily, and realistically accessible to the public. One example of this is information which can be easily found through a simple internet search. The information should also be available in practice and finding it should not require unrealistic persistence or efforts nor any specialised knowledge." This interpretation was established by the High Court of Justice in the landmark case of Attorney General v Greater Manchester Newspapers Ltd².

The Commissioner's conclusion

16. The Commissioner has reviewed both the complainant's requests and the Council's responses, which included its most recent reply via the What Do They Know (WDTK) website which states:
 - (i) The applicant can access the land registry portal using the link here- <https://www.gov.uk/guidance/land-registry-portal-how-to-request-official-copies#order-official-copies-of-documents>
 - (ii) The applicant can then apply for copies of deeds and documents, including leases, by completing [form OC2](#) and sending it to the land registry by post. When filling in the form, the applicant should:
 - enter the details of the land or property that you would like to find out about
 - enter the title number - (The requestor has seen the title as confirmed in their response to the council.)
 - enter their own details into the applicant fields

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-21-information-accessible-to-the-applicant-by-other-means/#what>

² <https://www.bailii.org/ew/cases/EWHC/QB/2001/451.html>

- provide as much detail as they can about the deeds or documents you want copies of.

The applicant will need to pay fees. In this case a copy lease will cost £7 per copy.

17. On the evidence presented to him in this case, the Commissioner considers that the Council has complied with its obligations under FOIA. Therefore, the complaint is not upheld.
18. The Commissioner is unaware of any particular circumstances that may prevent the complainant from accessing the information from the Land Registry. Furthermore, he is unaware of any reason why the complainant may be unable to pay the charge required and considers that it is 'reasonably accessible'.
19. On the evidence presented to him in this case, the Commissioner considers that the Council has complied with its obligations under FOIA, and the complaint is not upheld.

Right of appeal

20. 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

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Susan Duffy
Senior Case Officer
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