

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

### **Decision notice**

**Date:** 8 September 2015

**Public Authority:** Basildon Borough Council

**Address:** Basildon Centre  
St Martins Square  
Basildon  
Essex  
SS14 1DL

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

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1. The complainant has requested minutes of meetings relating to a report prepared by Thames Energy in 2008. Basildon Borough Council stated that it did not hold the information.
2. The Commissioner's decision is that Basildon Borough Council has correctly confirmed that the requested information is not held and complied with section 1 of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

### **Request and response**

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4. On 21 March 2015, the complainant wrote to Basildon Borough Council (the "council") and requested information in the following terms:

*"I am writing today to request minutes of meetings pertaining to the commissioner of the report which was prepared by Thames Energy in 2008. The 2008 Thames Energy report contains details of Motehill which is of interest to me.*

*The meetings would have been in 2008 and 2007. I believe details of financial matters such as commissioning and paying for the report would be involving the cabinet member for Property Services at that time..."*

5. The council responded on 21 April 2015 and stated that it did not hold the requested information.
6. Following an internal review the council wrote to the complainant on 8 June 2015 and confirmed that it was maintaining its position.

### **Scope of the case**

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7. On 1 May 2015 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner confirmed with the complainant that his investigation would consider whether the council had correctly confirmed that the requested information was not held.

### **Reasons for decision**

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#### **Section 1 – duty to provide information held**

9. Section 1(1) of the FOIA states:

*"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. The council has confirmed that it does not hold the information specified in the request. The complainant disputes this and considers that the requested information should be held.
11. The complainant considers that the council conducted wholesale replacement of water pipes on the estate where they live and that a Condition Survey Report dated May 2008 (the "Report"), by a contractor, Thames Energy, provides evidence of this. The complainant maintains that the scale and expense of such a project should result in the generation of associated information, not least for audit purposes.
12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

13. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
14. To assist with this determination the Commissioner approached the council with a range of standard questions he routinely uses in such scenarios. These, together with a summary of the council's responses are reproduced below.

*What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?*

15. The council stated that the database which is used to log maintenance activity was interrogated. It confirmed that, whilst it showed repairs had been undertaken to the Langdon Hills estate, no information into wholesale replacement could be found.
16. The council also confirmed that an Officer currently working for the council who has previously had dealings with the Langdon Hills Estate, and an officer who no longer works for the council, but who was responsible for the estate during their tenure with the council, were questioned as to whether they could remember the wholesale replacement of the water main in the area identified by the complainant. They both confirmed no such wholesale replacement had been undertaken. The council stated that it is reassured they interviewed all individuals responsible for the estate during the period identified in the request.
17. The council also confirmed that work undertaken by Thames Energy on the Langdon Hills estate was modest in comparison with the Housing Departments budget for maintenance activity, and no formal meeting notes would have been taken arising from the submission of their report. The council also stated that, contrary to the complainant's view that the Report would have been discussed by councillors and other senior members of the council; this is not the case given such meetings are reserved for the discussion of strategic rather than operational issues.

*If the information were held would it be held as manual or electronic records?*

18. The council confirmed that records would be held electronically.

*If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.*

19. The council confirmed that it utilises centralised storage drives and that no information is held on individual machines.

*If searches included electronic data, which search terms were used?*

20. The council confirmed that the following search terms were used: Motehill, Mote Hill, Thames Energy, Water main, Medium density polyethylene (the blue plastic material water pipes are made from, and mentioned in the Thames Energy report).

*Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?*

21. The council confirmed that no relevant information had been deleted or destroyed.

*Is there a business purpose for which the requested information should be held? If so what is this purpose?*

22. The council confirmed that there is no business purpose for which information around the Report would be held. It clarified that, contextually, the Report was supplied free of charge by a contractor who, whilst they are a specialist in the maintenance of district heating plant, are not experts in other mechanical and electrical disciplines. The council stated that Report was supplied in the hope they would receive work arising from their own recommendations. The council confirmed that, whilst of interest, no actions were taken as a consequence of the Report.
23. The complainant's contention that wholesale water pipe replacement has taken place on the estate in question is, in part, based upon the content of the Report. The Commissioner has some sympathy with the complainant's position and appreciates why they might consider, having viewed the Report, that the work in question has been undertaken. It follows, it is reasonable to assume, that work of such substance would result in an audit trail being generated.
24. However, the council has confirmed that the Report was submitted by the contractor in the hope that work of the scale envisaged by the complainant would be approved by the council. The council has stated that no such work was undertaken and the contractor was not retained to conduct wholesale water pipe replacement at the estate identified in the request.
25. The Council has confirmed that it does not dispute parts of the water main beneath the estate in question (and the complainant's own property) have been renewed; in fact the entire network (it is approximately 2 km long), has been subject to ongoing repairs for

decades. The council confirmed that sections of new pipe can be observed connected to sections of older pipe across the estate, and that the combination of new and old pipework and connections is part of the issue in causing water leaks. However, contrary to the complainant's view, the council does not accept that a systematic programme of renewal has already been undertaken.

26. The council has further confirmed that, in any event, meetings (the request asks for associated meeting minutes) are reserved for strategic rather than operational matters, and repair work would not be discussed with senior members of staff or councillors.
27. Having considered the available evidence and the submissions provided by the council and the complainant, the Commissioner has concluded that, on the balance of probabilities, it is likely that the council has correctly confirmed that it does not hold the requested information.

## Right of appeal

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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: 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)

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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**