

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 April 2016

Public Authority: West Dorset District Council
Address: South Walks House
South Walks Road
Dorchester
Dorset
DT1 1UZ

Decision (including any steps ordered)

1. The complainant requested information on the transfer of lands and properties in 1974 to the council. The West Dorset District Council (WDDC) confirmed that they did not hold any further information. The complainant considered that more information must be held. The Commissioner's decision is that WDDC does not hold any further information in this case. The Commissioner does not require WDDC to take any steps.

Request and response

2. On 2 September 2015 the complainant requested the following information:

'I would like to make a formal request to you for information under the Freedom of Information Act 2000.

I specifically request to know which lands and properties belonged to the former boroughs of Bridport, Dorchester and Lyme Regis, the urban district of Sherborne and the rural districts of Beaminster, Bridport, Dorchester and Sherborne prior to their dissolution in 1974.

I would also like to know which of these lands and properties were transferred to the newly formed West Dorset District Council post dissolution in 1974."

3. On 22 September 2015 West Dorset District Council responded that it did not hold the information:

'I am writing to advise you that, following a search of our paper and electronic records, I have established that the information you requested is not held by this Authority.

Dorset History Centre may hold the information you are seeking.'

4. The complainant requested an internal review on 23 September 2015. WDDC sent him the outcome of its internal review on 20 October 2015. WDDC provided a copy of Statutory Instrument 1972 No 2039 (which lists the former boroughs of Bridport, Dorchester and Lyme Regis, the urban district of Sherborne and the rural districts of Beaminster, Bridport, Dorchester and Sherborne) and a copy of the list which contains a database of Parish and Town Councils currently held. WDDC restated that no documents had been found.

Scope of the case

5. On 17 November 2015 the complainant contacted the Commissioner and after providing further documents, the case was accepted. He argued that WDDC must have additional information and provided copies of letters dated 1974 from the former borough for Lyme Regis to WDDC. He also referred to the housing stock that was later transferred to the private company Magna Housing.
6. He had contacted the Dorset History Centre, as advised by WDDC, and they did not hold this information but referred the complainant to WDDC.
7. The Commissioner has considered that the scope of the case is whether section 1 of FOIA was applied correctly by WDDC.

Reasons for decision

8. Section 1 of the FOIA states 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 within the scope of the request, and if so, to have that information communicated to him.
9. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead

of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.

10. 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 (or was held at the time of the request).
11. As is the practice in a case such as this, the Commissioner asked WDDC a number of questions to establish if the information is held.
12. In response to the Commissioner's questions about the location of the information, WDDC confirmed that it did not hold any further recorded information falling within the scope of the request. WDDC explained that
 - the WDDC Property Solicitor confirms that there is no property index or files going back to 1974 which lists "lands and properties belonged to the former boroughs of Bridport, Dorchester and Lyme Regis, the urban district of Sherborne and the rural districts of Beaminster, Bridport, Dorchester and Sherborne prior to their dissolution in 1974" or "the land and properties transferred to the newly formed West Dorset District Council post dissolution in 1974".
13. The Commissioner asked WDDC a number of questions to establish what searches had been carried out. WDDC stated that the questions on electronic searches were not applicable. If the information was held it would have been as manual records.
14. The Commissioner asked questions on whether any recorded information ever held relevant to the scope of the request had been destroyed. WDDC answered:
 - It is envisaged this information was held in paper files in the 1970s and 1980s which were destroyed by the late 1990s, if not earlier. No property files of this age were found when clearing out in the summer of 2012 WDDC's pre 2001 old property files stored in the cellar of WDDC's former Council offices.
15. The Commissioner asked if recorded information was held but is no longer held, when did WDDC cease to retain this information. WDDC answered:
 - Approximately 2007-2008 but difficult to be precise pending relocation of the Legal Services in 2013

16. The Commissioner asked about WDDC's formal records management policy on the retention and destruction of records of this type. WDDC answered:

- Prior to 2002, files were disposed of not in accordance with a policy or retention schedule but simply by reference to the legal requirements (The Law Society) and on an officer's judgement. It is envisaged that accordingly, property files would have been kept for 12 years and litigation files for 6 years after all issues related to the files were resolved. From 2002 to 2014, WDDC's property conveyance files are to be held for 13 years after the property purchase (subject to retention for so long as WDDC owns the property).

17. In addition WDDC stated that there is no business purpose for which the requested information should be held and no statutory requirements.

18. WDDC offered the following information:

- (following voluntary registration by WDDC) in 2005/6 WDDC sorted through WDDC's deeds so that only those deeds containing matters relevant to WDDC's current ownerships (such as restrictions on use, fencing covenants) were retained, the rest being sent to the Dorset History Centre. This means that WDDC now (via its deeds) only has patchy records of how a property came into WDDC's ownership, insufficient to be able to provide the information requested by the FOI request.
- Over the years WDDC has undertaken a programme of property disposal. The deeds of the properties disposed of (which may have contained information of previous owners) would (as is standard conveyancing practice) be handed over on completion of those disposals.
- All WDDC's deeds and files for its former housing estates were handed over to Magna Housing association in May 1993 as part of the large scale voluntary transfer of the Council's housing stock to Magna.

19. Having considered WDDC's responses to the Commissioner's investigations, the Commissioner is satisfied that any further recorded information that may have been held was destroyed in line with the record management retention policy at the time during the 1990's and therefore, on the balance of probabilities, WDDC does not hold any further recorded information within the scope of the request.

20. The Commissioner understands the reasons why the complainant considers further information may be held, but the Commissioner can only consider what is held. It is outside the Commissioner's remit to determine if it should be held, and even if it should be, he cannot require a public authority to create the information under the FOIA.
21. As the Commissioner's decision is that the information is not held, the Commissioner does not require the West Dorset District Council to take any steps.

Right of appeal

22. 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

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

23. 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.
24. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF