

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 November 2019

Public Authority: Gloucestershire County Council
Address: Shire Hall
Westgate Street
Gloucester
GL1 2TG

Decision (including any steps ordered)

1. The complainant requested from Gloucestershire County Council (the Council) information in relation to 104 sold properties and the parties to whom they were sold. The Council confirmed that it held the information requested but refused to disclose it stating that it was reasonably accessible from the Land Registry (LR) and it cited section 21 of the FOIA as its basis for the refusal.
2. The Commissioner's decision is that the Council has correctly applied section 21 of the FOIA in relation to the complainant's information request.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

Request and response

4. On 20 March 2019, following a discussion in a Twitter thread the complainant wrote to the Council and requested information in the following terms:

"hello @glosCC: I've gone through the full list of land sales, and could find unambiguous price data for just 20 of the 104 locations. For many of the 'Land at' cases, the Land Registry is explicit: they don't have price paid data (see attached example).

Could you please publish a list of all the prices paid ASAP, and who the land was sold to, to live up to your values of transparency, accountability and integrity. Please consider this an FOI request if necessary."

5. The Council acknowledged receipt on 22 March 2019 and responded on 16 April 2019. It stated that *"the Council hold the information you have requested. However the information is already accessible to you."* The Council explained that it followed the Commissioner's relevant guidance on this matter. It stated that:

"The ICO guidance on regulation 6 of the Environmental Information Regulations does not specifically cover where costs are payable to another body. Therefore, we have also reviewed the ICO guidance under FOI; the council has concluded that the same considerations are relevant under EIR. The guidance says: 'information will be considered reasonably accessible even though payment is required – information that is available by means of other legislation which also permits a charge to be made...'

Therefore the Council considers that Regulation 6(1) of the EIR applies, in that all the information you have requested is accessible to you in another form or format."

6. The complainant wrote back to the Council on the same date to express his dissatisfaction with the Council's decision and asked them to conduct an internal review, stating that:

"Firstly, price data is not provided in land titles...

Secondly, I requested the information that Gloucestershire County Council holds on who land was sold to, not the information held by land registry...

My request does not ask for the title deeds; it asks for the name of the person or entity to whom the land was sold in the transaction between

GCC and a third party. This information should be possible to provide without charge."

7. Following an internal review the Council provided the complainant with its outcome on 17 May 2019. It stated that section B of the land registry for each property contains the price paid, entitled "Proprietorship Register". The Council reconfirmed that it held the same information as the LR. In conclusion, the Council upheld its position that the information requested was reasonably accessible in another form or format, so regulation 6(1) of the EIR applied.

Scope of the case

8. The complainant contacted the Commissioner on 20 May 2019 to complain about the way his request for information had been handled.
9. The complainant stated *"I recognise that on point (1) of my request for a review I was incorrect, and that price paid is available for £3/per property from the Land Registry for properties sold since 2000 (and so all those covered by this request).*

However I maintain that:

- (a) *The authority is acting against the spirit of the EIRs and FOI exceptions by directing me to the Land Registry, when it notes it hold the information requested, and would be able to supply it directly... It is not reasonable or proportionate to require citizens to spend upwards of £300 to understand who council property has been sold to.*
 - (b) *I cannot be assured that the Land Registry information will answer my question. If a property has changed hands between the date of sale by GCC, and the date of my search, I will only be able to access the most recent price paid (for non-residential land) in Title Deeds."*
10. During the course of the investigation the Council was asked to reconsider whether the information requested fulfils the requirements of being qualified as environmental information. In its response, the Council stated *"...on further consideration, in this case as the request asks for details of prices paid for land and to whom land was sold that the application of Section 21 under the FOI regime would be more appropriate. This is because the actual request is not about the land itself, but about its ownership and cost."*

11. The Commissioner agrees that it was appropriate to consider the request under the FOIA rather than the EIR. Therefore, the following analysis covers whether the Council relied on section 21 of the FOIA correctly.

Reasons for decision

Section 21 - Information reasonably accessible to the applicant by other means

12. Section 21(1) of the FOIA provides that a public authority is not obliged to provide information under section 1 of the FOIA if that information is reasonably accessible to the complainant by other means.
13. Section 21 provides an absolute exemption. This means that if the requested information is held by the public authority, and it is reasonably accessible to the applicant by other means, it is not subject to the public interest test.
14. In order for section 21 to apply there should be another existing, clear mechanism by which the particular applicant can reasonably access the requested information outside of the FOIA. Furthermore, for section 21 to apply, it is necessary to consider whether the entirety of the requested information is reasonably accessible to the applicant.
15. Information is only reasonably accessible to the applicant if the public authority:
 - Knows that the applicant has already found the information; or
 - Is able to provide the applicant with precise directions to the information so that it can be found without difficulty.
16. The Commissioner has carefully reviewed submissions of both parties as well as the arguments provided in support of their positions.
17. The Commissioner notes that in its initial response, the Council provided the complainant with a direct web-link to the LR's database, followed by detailed instructions on how to use this database in order to access the information requested.
18. To the complainant's argument regarding the fee that the LR charges for access to information requested, the Council responded by referring to the Commissioner's guidance and stated that "*charges may be made in circumstances where there is a statutory scheme under which information is provided for a fee, or where the information is provided*

under a public authority's publication scheme and scheme indicates that a charge may be made and that this is considered to be reasonably accessible."

19. In response to the Commissioner's investigation enquiry whether the information is considered to be reasonably accessible by other means, the Council stated that in addition to the Commissioner's guidance it also consulted previous decision notices relating to information that could be obtained from the LR. Citing the Commissioner's decision notice in case reference FS50517275¹, the Council referred to the scenario of information requested being considered reasonably accessible where a fee is required when there is a statutory process under which the information is provided.
20. The Council argued that in this case *"there is a statutory process through which the Land Registry makes information publicly available for a fee. That process is defined by the Land Registry Act 2002 and the Land Registration Rules 2003, and is described by the Land registry at: <http://www.landregistry.gov.uk/public/guides/public-guide-15>."*
21. The Commissioner also asked the Council whether it took into account the particular circumstances of the complainant when deciding whether the requested information was reasonably accessible. The Council stated that as the information is available via the internet at any time irrespective of geographical distance from the LR it considered that it was reasonably accessible.
22. The complainant argued that the information that can be obtained from the LR may differ from the information held by the Council *"if a property has changed hands between the date of sale by GCC and the date of my search, I will be only able to access the most recent price paid (for non-residential land) in Title Deeds"*.
23. The Commissioner asked the Council whether it can confirm that the information it held at the time of the request is exactly the same with that available in the LR's database. The Council confirmed that the information it held is identical to that recorded in the LR documents, regardless of ownership changes. It explained that the LR's database offers information about transaction history at no additional cost to the standard fee of £3.00 per property.

The Commissioner's conclusion

24. The Commissioner has carefully examined the submissions and the arguments put forward by both parties.

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/970380/fs_50517275.pdf

25. The Commissioner is sympathetic to the complainant's argument that in order to access the information requested from the LR's database, he would be required to pay an aggregate fee of £312.00, which the complainant considers to be significant.
26. However, in this respect the Commissioner wishes to refer to section 21(2)(a) of the FOIA which states that information may be regarded as reasonably accessible to the applicant *"even though it is accessible only on payment"*. In addition the Commissioner's guidance² on the application of section 21 stated that *"In such cases, information is generally reasonably accessible even though the payment may exceed that which would be payable via FOIA."*
27. On the issue of whether the LR holds the same information held by the Council and that was identified in the complainant's request, the Commissioner accepts the Council's repeated confirmation on this point, along with evidence it supplied in the form of a screenshot from the LR's database. These screenshots showed transaction history, which prove that the information requested can be obtained regardless of ownership changes that might have taken place in the meantime.
28. Having considered the above, and in the absence of any conflicting evidence, the Commissioner has concluded that the withheld information is reasonably accessible to the complainant by other means, and that the Council correctly applied section 21 of the FOIA.

² <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

Right of appeal

29. 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@justice.gov.uk

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

30. 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.
31. 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

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF