

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 September 2021

Public Authority: London Borough of Wandsworth

Address: The Town Hall
Wandsworth High Street
London
SW18 2PU

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Wandsworth (the Council) seeking information about the electricity supply at a particular property. The Council disclosed some information in response to the request. The complainant argued that the Council was likely to hold further information falling within the scope of his request that had not been provided to him.
2. The Commissioner's decision is that on the balance of probabilities the Council has, following the disclosure of further information during the course of her investigation, provided the complainant with all of the recorded information it holds falling within the scope of his request. However, the Commissioner has concluded that the Council breached section 10(1) of FOIA by failing to respond to the request within 20 working days.
3. No steps are required.

Request and response

4. The complainant wrote to the Council on 27 February 2020 regarding the communal electricity supply at a particular property, namely 18 Yukon Road. The complainant's email, which was part of an ongoing exchange of correspondence on this topic, contained the following information request:

'...I formally request under the freedom of information act that you provide me with a copy of the last three years electricity bills for the property, with meter numbers and account numbers, I would also like to see pictures of the meter and evidence of its location in 16 Yukon Road. Under the same provisions of the act, please provide the invoice from the electrical contractor itemising the material and labour costs for the recent work to lighting in 18 Yukon Road.'

5. In addition, the email also included the following request:

'As mentioned in my previous email there is no record of a cable connecting the communal lighting from 16 to 18 Yukon Road. Please provide evidence that such a cable exists...'

6. The Council responded on 16 October 2020 and in relation to the complainant's FOI request provided:

1. A breakdown of electricity costs incurred for the last 4 years.
2. Photos of the meter in the communal lobby of 16 Yukon Road.
3. Copies of the quotation and invoice submitted by the company which undertook the electrical works.

7. The complainant contacted the Council on 23 October 2020 and raised a number of concerns about the nature of the responses provided. With regard to the Council's response to his FOI request he queried why the Council had failed to supply the electricity bills from the utility company for the communal area. He asked whether he was correct to assume that these bills did not exist.

8. The Council undertook an internal review and informed the complainant of the outcome on 3 December 2020. The Council acknowledged that it had breached section 10 of FOIA by failing to respond to the request within 20 working days and apologised for this. The Council explained that it did not hold any electricity bills from the utility company, either in paper or electronic form. It explained that this was because the Council manages its payments by way of a 'mass transfer'. The Council explained that the information previously provided (ie the information

described at point 1 above) is an extract from a database where the details of the charges are held for the meter in question and the Council confirmed that the only other information held in relation to the electricity charges is a breakdown of each charge, specifically by VAT amount, standing charge amount and the amount for electricity used.

Scope of the case

9. The complainant initially contacted the Commissioner on 19 August 2020 in order to complain about the Council's failure to respond to his request. Following the Commissioner's intervention, the Council provided the complainant with the response detailed above, and subsequently completed an internal review, again as detailed above. Following the completion of the internal review, the Commissioner established with the complainant that his grounds of complaint in relation to his FOI request were as follows:
 1. He was unhappy with the Council's delay in responding to his request.
 2. He argued that the Council had not supplied copies of utility company bills identifying the name of the company and meter readings for the alleged external meter. Rather, he noted that the Council had claimed that the bill is paid by mass transfer, with no explanation or evidence of what this means.
 3. He noted that the breakdown of the electricity bill stops on 30 November 2019 and therefore is not an up to date breakdown of costs for the last 4 years.
 4. He argued that the Council has not supplied the meter reference and serial number for the meter.
 5. He argued that Council had not provided any proof that the meter captured in the photograph was in the location suggested, ie 16 Yukon Road.
 6. He argued the Council had not supplied evidence that a power cable runs from an external meter to his communal area.
10. The Commissioner has therefore considered each of these grounds of complaint.

Reasons for decision

Complaint 1

11. Section 10(1) of FOIA requires a public authority to respond to a request promptly, and in any event, within 20 working days of a request.

12. As is clear from the above chronology the Council clearly failed to meet this requirement and therefore breached section 10(1) of FOIA in its handling of this request.

Complaint 2

13. In relation to this point of complaint, as with a number of others raised by complainant, it is important to remember that the right of access provided by section 1 of FOIA is simply to recorded information. A public authority is under no obligation to create information or provide an opinion in response to a request.
14. Furthermore, in scenarios such as this 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 Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard 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 (or was held at the time of the request).
15. The Commissioner noted that the internal review response explained that the charges for the meter in question are paid by mass transfer and as a result the Council did not hold either paper or electronic bills.
16. Consequently, as part of her investigation the Commissioner asked the Council to clarify the process of 'mass transfer' and why this meant that no electricity bills are generated for the meter in question. In particular, the Commissioner asked the Council to explain how the utility company determines the charges to be paid in relation to this meter.
17. In response, the Council confirmed that it did not receive bills (either paper or electronic) for this meter. Instead, the Council explained that there is a consolidated (ie a 'mass transfer') bill charging for hundreds of meters/accounts at a time. The Council explained that the charges are based on meter readings, which are often estimated.
18. As part of his submissions to the Commissioner, the complainant provided her with a copy of an email he had received from the Council. The complainant noted that the email, dated 20 January 2020, stated that *'following contact from a resident in 16 Yukon Road who received a large electricity bill, it was found that the communal electricity supply for 16, 18, 20, 22, 24, 26 and 28 came from this property'*. The complainant asked the Commissioner to take this email into account in relation to this point of complaint.
19. The Commissioner acknowledges that this email refers to one resident receiving an 'electricity bill'. However, in the Commissioner's view this

does not mean that they were provided with an actual bill for the meter – be it paper or electronic – as opposed to simply receiving a charge for that meter. Further, on the basis of the clarification provided by the Council, and the Council's responses to the complainant, the Commissioner is satisfied that on the balance of probabilities the Council does not hold any electricity bills for this meter. This is because the method by which charges are raised by the Council for this meter does not involve the utility company providing the Council with an actual bill. Rather, the costs incurred for meters are recorded on a database and the Council uses this database to determine how to issue charges to residents, and the complainant has been provided with the relevant extracts of the database.

Complaint 3

20. In relation to this point of complaint, the Commissioner is limited to considering the circumstances of a request at the point it was submitted, in this case on 27 February 2020.
21. Therefore, the Commissioner asked the Council whether it had held details of any charges for the meter in question *after* 30 November 2019 but up to the date of the request which could be provided to the complainant. The Commissioner also suggested to the Council that given the further passage of time since the request, it should consider proactively providing the complainant with an updated list of charges since 30 November 2019.
22. In response the Council contacted the complainant on 1 July 2021 and provided him with a list of charges in relation to this meter after 30 November 2019. In the Commissioner's view this resolves this particular complaint and ensures that the Council has complied with its obligations in respect of section 1 of FOIA concerning the part of the complainant's request which sought '*a breakdown of electricity costs incurred for the last 4 years*'.

Complaint 4

23. As part of her investigation the Commissioner explained to the Council that it was her understanding that the meter reference and serial number are in fact contained in the breakdown of charges provided to the complainant on 16 October 2020, namely 'Number: 3KJ8267V' and 'Meter no. L66A 20583'.
24. However, the Commissioner asked the Council to clarify whether it held any further recorded information about regarding the meter reference and serial number in question.

25. In response the Council confirmed that it did not hold any further recorded relevant information.
26. As noted above, the Commissioner is satisfied that the Council has complied with section 1 of FOIA in relation to this part of the request because it has already provided the complainant with the meter reference and serial number as part of the breakdown of charges in October 2020. The Commissioner also notes that the meter number is also visible in one of the photographs of the meter disclosed to the complainant in October 2020.

Complaint 5

27. The Commissioner asked the Council whether it held any recorded information which would 'prove' that the meter identified in the disclosed photograph is located in 16 Yukon Road.
28. In response the Council provided her with two photos of the meter, the first taken recently by the estate manager at 16 Yukon Road, the second taken on 3rd July 2019 by an Estate Services Officer. The Council noted that the photos demonstrate they are the same meter. (At the Commissioner's suggestion, the Council provided these to the complainant in July 2021.¹)
29. As noted above, FOIA only provides a right of access to recorded information. The legislation does not place any obligation on the Council (or any public authority) to 'prove' a particular issue. With regard to the Council's actual obligations under FOIA, the Commissioner considers it unlikely that the Council would hold recorded information which 'proves' that the meter identified in the photos previously sent to the complainant is located in 16 Yukon Road. There would appear to be no obvious business need why the Council would hold such specific information. She appreciates that the Council has located two separate photographs of what it maintains is the meter at 16 Yukon Road and these have been provided to the complainant. Under FOIA, the Commissioner is satisfied that the Council is under no further obligations in relation to this point of complaint.

¹ One these photographs had already been disclosed to the complainant in October 2020, one had not been previously provided to him.

Complaint 6

30. As part of her investigation of this point of complaint, the Commissioner asked the Council whether it held any recorded information which would demonstrate that a cable existed between 16 to 18 Yukon Road.
31. In response the Council provided the Commissioner with a copy of an email dated 17 January 2020 which it argued highlights the fact that the meter '*served/covered 16-28 Yukon Road*'. (The Council also noted that an electrician had recently met with the complainant at Yukon Road to demonstrate the existence of the cable(s) that serves the communal lighting.)
32. At the Commissioner's request, the Council provided the complainant with a copy of the email in July 2021.
33. The Commissioner agrees with the Council that the email in question highlights the existence of a cable(s) between 16 and 18 Yukon Road. She also considers it unlikely that the Council would hold any further recorded information which would demonstrate the existence of such a cable as there would appear to be no obvious business need for the Council to hold such specific information. Therefore, on the balance of probabilities the Commissioner is satisfied that the Council does not hold any further recorded regarding the location of the cable beyond the email now provided to the complainant.

Right of appeal

34. 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

35. 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.
36. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF