

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2021

Public Authority: Westminster City Council
Address: Westminster City Hall
64 Victoria Street
London
SW1E 6QP

Decision (including any steps ordered)

1. The complainant submitted a request to Westminster City Council (the Council) seeking information about the replacement of windows at a residential block of flats. The Council responded by stating that it did not hold any information falling within the scope of the request. The complainant disputed this. During the course of the Commissioner's investigation the Council located some information which was disclosed to the complainant.
2. The Commissioner's decision is that on the balance of probabilities the Council has now located (and disclosed) all of the information it holds falling within the scope of this request. However, the late disclosure of this information represents a breach of section 10(1) of FOIA.
3. No steps are required.

Request and response

4. The complainant submitted a request to the Council on 13 February 2020 seeking the following information:

'1. any costings of replacement of the windows in Russell House with double glazed units to improve insulation and reduce energy wastage (as has happened all over the Churchill Gardens estate) which have already taken place separate from the Major Works contract.'

- 2. Please send me details of the costings which have been provided for the replacement of the existing wooden units with double-glazed wooden units which have been fitted from inside.*
- 3. And if not what costings have been provided to the Council now that the windows have deteriorated further over another year.'*
5. The Council responded on 12 March 2020. In relation to question 1 the Council explained that there was no cost of replacing the windows in Russell House with double glazed units which were separate from the 'Major Works' contract. In relation to question 2 the Council explained that no costs were received in respect of the specified works. In relation to question 3 the Council explained that it had not received any costs this year and it had previously only received budget costs in respect of window repairs from its contractor United Living, but these were not acted upon or evaluated by the Council.
6. The complainant contacted the Council on 14 March 2020 and asked it to conduct an internal review of this response. In relation to questions 1 and 2 he argued that there must have been some costings provided and/or costs actually charged to the Council, and/or then passed onto leaseholders for the replacement of existing single glazed windows in the flats on the seventh and eighth floors where windows have recently been replaced by contractors from inside the flats concerned. He argued that in relation to question 3, the Council should have clarified the nature of the information he was seeking as the budget costs provided by United Living was the actual information he was seeking, regardless as to whether these figures had been acted upon or evaluated.
7. The Council informed the complainant of the outcome the internal review on 16 April 2020. In relation to request 1 the Council confirmed that Major Works had not undertaken any window replacements and, as previously advised, it did not hold any costings separate to Major Works in this regard. The Council suggested it was possible that the installation of windows done internally was done by leaseholders privately rather than by the Council. With regard to question 2 the Council confirmed that no costs were ever sought or provided in respect of window replacements from the inside. With regard to question 3, the Council explained that it did not seek clarification when it received the request as it considered it to be clear what information was being sought, ie information for the preceding year. However, it explained that in light of the complainant's comments, it was now not clear what timeframe he was interested in and asked him to clarify this. The Council explained that in order to assist him, the last published budget costs date from 2018.

Scope of the case

8. The complainant contacted the Commissioner on 11 July 2020 in order to complain about the Council's handling of his request. He disputed the Council's position that it did not hold any information falling within the scope of requests 1 and 2.
9. During the course of the Commissioner's investigation, the Council disclosed some information to the complainant. (Further details of this disclosure is set out below.) Following this disclosure the complainant explained to the Commissioner that he was dissatisfied with the delay in this information being provided to him, and also maintained that the Council had still not provided him with all of the requested information.

Reasons for decision

Section 1 – Right of access to information

10. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
11. 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.
12. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, and/or other explanations offered as to why the information is not held.

The complainant's position

13. In support of his position that the Council held information falling within the scope of his request, the complainant initially explained that he knew that leaseholders who live in flats on the seventh and eighth floors of Russell House have had replacement window frames installed by the Council. (During the course of the Commissioner's investigation, he provided the numbers of two specific flats numbers where he understood windows had been replaced.) Therefore, he argued that the Council was incorrect to state that the leaseholders had carried out this work at their own cost. He also noted that the windows and frames are the responsibility of the freeholder, ie the Council, and this further supported his view that any work to the windows and frames would have been undertaken by the Council rather than by individual leaseholders.

14. Following the disclosure of information to him by the Council during the course of the Commissioner's investigation, the complainant argued that the information which had been disclosed did not provide details of all of the windows which had been replaced internally without scaffolding.

The Council's position

15. In order to investigate this complaint the Commissioner initially asked the Council a number of questions about the steps it had taken to locate information falling within the scope of requests 1 and 2. The Commissioner has reproduced her questions below, as well as reproducing the Council's answers.

16. *Question:* What searches have been carried out to check no information was held within the scope of the request and why would these searches have been likely to retrieve any relevant information?

Response: Searches in the current Major Works project folders regarding Russell House. These folders would include any costs that would have been received in regards to replacement windows at Russell House. All Major Works folders are held in a central location on Microsoft Teams and in SharePoint where the whole team has access to those files. A search was also undertaken of the Council's Housing system.

17. *Question:* Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.

Response: All those involved in the early planning stages of projects within the Major Works team where projects are tendered and initial costs are received have been informed of the request for information and they have made the relevant searches.

Although paper records are held off site in Archive they are historic records and therefore not considered to be relevant to this request.

18. *Question:* If searches included electronic data, what search terms were used and what types electronic records were searched (ie emails, databases, etc)?

Response: The term 'Russell House' is the main search term that would have been used as there is no known project number associated with the search requested. This means that all projects that include Russell House would have been pulled up within the search within the Major Works team. The searches were carried out in all central locations i.e. Teams and SharePoint where all the Major Works documents are held.

19. *Question:* If the information were held would it be held as manual or electronic records?

Response: If the information were available it would be in electronic form.

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

Response: No

21. *Question:* Furthermore, as noted the complainant is firmly of the view that the individual leaseholders did not replace these windows; rather this work was undertaken by the Council. In light of this, please clarify whether the windows and frames of Russell House are the responsibility of the Council or the leaseholders.

Response: Generally the windows are the responsibility of the Council however, there are certainly occasions where leaseholders have carried out their own works. In these instances, when the council then come to complete Major Works such as window replacements, the leaseholders would still be responsible for paying a contribution to the window replacements as they are counted as a block cost rather than to each individual property.

22. *Question:* If the windows and frames are the responsibility of the Council, can the Council please explain why it does not hold any information relating to the costs of replacing these windows?

Response: The Major Works generally carry out projects over the value of £100,000 and therefore would not just replace the windows to one or two flats as a stand alone project. The project would involve general resident consultation as well as section 20 formal consultation that is a legal requirement. Any individual replacements, should they be required, would be either done as an emergency repair or as a smaller planned maintenance project (which again would likely require formal section 20 consultation). In terms of Major Works team we therefore do not hold any costs in relation to these window replacements as they were not carried out by the Major Works team.

In relation to this, a search of the Council's Housing system identified 3 logged 'repairs' to windows from September 2020 to date, which may be what the applicant may consider the replacements.

23. *Question:* Please provide any further submissions the Council wishes to provide the Commissioner with at this stage to support its view that it does not hold information falling within the scope of questions 1 and 2.

Response: Major works are planned later this financial year and replacement windows may be considered as part of the scope of works. This process will involve requesting actual costs for replacement windows from the Council's Service Provider and using this information

to compare lifecycle costs of replacement windows versus window repairs. Once reviewed, this information will be shared with residents in line with the consultation process.

24. Having considered this response, the Commissioner contacted the Council again and noted that as the request had specifically sought details of works separate from the Major Works contract, she could understand why no relevant information was located in the Major Works records. However, the Commissioner explained that she was unclear why the Council had not been able to locate some record of the costs involved in replacing the windows in the wider records on its 'Housing System'.
25. In light of this the Commissioner had sought further clarification from the complainant in relation to the details of the replacement windows which he understood to have been replaced. The complainant was able to provide the numbers of two flats within the building which he believed had replacement windows fitted by the Council prior to December 2018. The Commissioner shared this clarification with the Council and asked it to undertake searches of its Housing Records to establish if information regarding the costs in relation to either property could be located.
26. In response, the Council confirmed that any wholesale replacement of windows of the nature described in the original request would come under the remit of 'Major Work', as the Council would have to address the block as a whole rather than individual properties, such as for sustainability reasons and/or fire safety.
27. The Council explained that any individual replacement/repair of windows would usually be dealt with as 'repairs', although these may not necessarily be for the reasons stated in the original request, nor the reasons for the repairs recorded. The Council also suggested that the scope of the request appeared to have become wider to encompass *any* replacements, rather than replacements for the specific reasons in the original request.
28. However, the Council explained that in light of the Commissioner's request it had run a report on the 'Repairs system' of all repairs jobs logged at Russell House. The Council noted that that as per its original reply to the Commissioner, these may have included individual repairs/replacements, albeit not for the reasons stated in the original request.
29. The Council explained that this process returned over 3200 records which were then manually filtered (which took approximately 3 hours) in order:
 - to exclude results where the job completion date was post-Dec 2018;

- to determine if the fields contained reference to window repairs / replacements, as this is not a standard field, but excluding relatively minor works such as to locks;
 - to exclude works which were clearly to communal areas using work type and description; and
 - to exclude properties not on the 7th or 8th floor as specified in the examples.
30. The Council explained that this was then cross referenced by another officer using the repairs system to identify the relevant costs of works.
31. The Council explained that it has specifically checked the repairs record for the two flats in question and confirmed that for one of the flats no record of any repairs against that property were held. However, the Council did locate some information about repairs to windows, including to windows to the other flat.
32. The Council subsequently disclosed this information to the complainant.

The Commissioner's position

33. The Commissioner is satisfied that on the balance of probabilities the Council has located (and disclosed) all of the information it holds falling within the scope of requests 1 and 2. In reaching this conclusion the Commissioner notes that the complainant's submissions to support his complaint that the Council did hold information, focused on windows that were replaced in two specific flats prior to December 2018. The Commissioner is satisfied that the nature of the searches undertaken by the Council (and as described at paragraphs 29 to 32) to locate such information were sufficiently thorough, as evidenced by the fact that information in relation to one of these flats was located. The Commissioner accepts that information about the other property was not located, however she notes that the Council had specifically checked the repair record for that property and no information was located. Furthermore, the Commissioner is satisfied that the nature of the searches initially conducted by the Council and during the progress of her investigation were sufficient to locate any further information falling within the scope of the request.

Section 10 – time for compliance

34. Section 10(1) of FOIA requires public authorities to respond to a request and disclose any information they hold (subject to any exemptions) within 20 working days. In this case the Commissioner has concluded that the Council breached section 10(1) as the information provided to the complainant during the course of her investigation was not provided to him within 20 working days of his request.

Right of appeal

35. 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

36. 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.
37. 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
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