

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

**Date:** 6 June 2022

**Public Authority:** Wealden District Council

**Address:** [informationgovernance@wealden.gov.uk](mailto:informationgovernance@wealden.gov.uk)

**Decision (including any steps ordered)**

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1. The complainant requested information about the calculation of rent in respect of properties which, in the opinion of the Council, were of a similar size to their own property. Wealden District Council (the Council) stated that it did not hold recorded information concerning the opinion of its officers, however, the Council provided the complainant with other information concerning the calculation of rent. The Commissioner's decision is that the Council does not hold any further recorded information falling within the scope of the request. However, in failing to respond to the request within the statutory timescale, the Commissioner has determined that the Council breached section 10(1) of the FOIA. The Commissioner does not require any steps to be taken.

**Request and response**

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2. On 7 November 2020 the complainant wrote to the Council and requested information in the following terms:

"I am now seeking from the WDC any documents for the years 2016-16 to 2020-21 that show; Number & Location of properties

  1. The total number of properties in the WDC housing stock that in the opinion of the WDC are similar in size and type to my property as details in point 10(ii).

2. The location of the total number of properties in the WDC housing stock that in the opinion of the WDC are similar in size and type to my property as details in point 10(ii).
  3. The Gross Rents for the total number of properties in the WDC housing stock that in the opinion of the WDC are similar in size and type to my property as details in point 10(ii).
  4. Provide any documents that explain why the weekly Gross Rent may be different in any of the total number of the properties in the WDC housing stock that in the opinion of the WDC are similar in size and type to my property as detailed in point 10(ii).
  5. The Net Rents for the total number of properties in the WDC housing stock that in the opinion of the WDC are similar in size and type to my property as details in point 10(ii).
  6. Provide any documents that explain why the weekly Net Rents may be different in any of the total number of the properties in the WDC housing stock that in the opinion of the WDC are similar in size and type to my property as detailed in point 10(ii)".
3. The Council responded on 22 December 2020 and stated that it did not hold the specific information requested as opinions of officers was not held in recorded format. The Council did provide general information about rent formulas and rent calculation in relation to one and two bedroomed properties.
  4. On 14 April 2021 the complainant requested an internal review of the Council's handling of the request.
  5. The Council provided the outcome of its internal review on 14 June 2021 and upheld its position that no recorded information was held relevant to the request as opinions of council officers was not information that was held on record.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 26 May 2021 to complain about the way his request for information had been handled.
7. The scope of the Commissioner's investigation is to determine whether the Council holds any further recorded information relevant to the request.

## Reasons for decision

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### Section 1 – general right of access

8. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
9. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
10. Initially the Commissioner wrote to the complainant to advise that the FOIA applies only to recorded information and as the request referred to opinions of the Council, it was unlikely that the Council would hold that information in a recorded format. The complainant responded to the Commissioner and confirmed that they were not seeking information relating to the opinions of officers, but rather the request was worded in this way as the issue of calculation of rent is referred to in this manner in their lease, which states that:

“(10) ‘the Gross Rent’ shall mean at any relevant time a yearly rent which is equal to that in respect of a dwelling

(i) Which is in the opinion of the Council similar in size and type to the Property”
11. During his investigation the Commissioner confirmed to the Council the scope of the request, as clarified with the complainant, and asked it to reconsider whether any recorded information relevant to the request was held. The Council confirmed that it did not hold any further information, other than that which it had disclosed.
12. The Council confirmed that the complainant would have been advised of their rent at the commencement of the lease. Every year thereafter the yearly rent calculation is based on the previous year's figure and inflated in line with annual budget approvals. Rent increases are not based on the opinion or judgement of officers.
13. In terms of the searches undertaken to locate information relevant to the request, the Council advised the Commissioner that on receipt of the

request enquiries were made of the relevant officer responsible for determining rents each year. Relevant searches were undertaken and all the information located concerning rent calculations for one and two bedroomed properties was disclosed to the complainant. This included guidance and policy documents on rent calculations from the Department for Communities and Local Government and two spreadsheets, as detailed below:

- General and retirement living one and two bedded flats - formula rents from 2000/01 as per rent guidance. The council confirmed that this spreadsheet referred to general needs and retirement living but it did not include shared ownership properties.
  - General and retirement living one and two bedded flats – actual rents from 2015/16 to 2020.
14. The Council advised the Commissioner that at the time the rent was initially calculated in 2008, officers would have used their opinion and documentary evidence to determine the rent payable for each property. This historic information on which the spreadsheets for rent restructuring calculations was created is no longer held. This is because it was not considered necessary to retain the information as it served no useful purpose. The Council's position is that it has disclosed all relevant information relating to the rent calculation for one and two bedroomed properties. Other than bedroom numbers, officers would not be aware which properties would be of a similar size to the complainant's property and it would require officers to use their judgement and exercise their opinion in order to provide any further information.
15. Since 2001 the government introduced social housing rent restructuring guidance for setting rents for council tenants based on a set formula. This guidance became policy in 2020 but it does not apply to shared ownership low cost rental accommodation. However, the Council confirmed that the basis for setting the gross rent for retirement living shared ownership leaseholders is similar in as much as gross rent calculations are based on the formula to provide a rent for a property similar in size and type.
16. The formula rent for each property is calculated based on the relative property value (based on January 1999 valuations), relative local income levels and the size of the property (number of bedrooms) and are the basis of rent figures currently.
17. The Council confirmed that it is required to maintain details of properties it owns, including information such as the number of bedrooms, year of construction etc. This is held for many purposes including annual valuations of its housing stock and for calculation of its housing formula rent in accordance with relevant policy statements. However, there is no

statutory requirement, purpose or business need for it to hold the specific information requested by the complainant.

## **Conclusion**

18. In making his determination, the Commissioner has considered the Council's submissions and the specific wording of the request. The Commissioner has taken account of the explanations provided by the Council in respect of the way that rent is calculated. The Commissioner accepts that the Council does not hold information relating to properties which are "similar in size and type" to the complainant's property and that it has disclosed the relevant information held relating to rent calculations for one and two bedroomed properties.
19. It is not the Commissioner's role to consider whether a public authority should hold information that has been requested but whether, on the balance of probabilities, it does or does not hold it.
20. Based on the evidence available to him, the Commissioner accepts that, on the balance of probabilities, the Council does not hold any further information falling within the scope of the request.

## **Section 10 – time for compliance**

21. Section 1(1) of the FOIA states that:

"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."

22. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
23. In this case the request was dated 7 November 2020 and sent by post. The Council confirmed that it was received on 17 November 2020 however it did not respond until 22 December 2020. As such the Commissioner finds that the Council breached section 10(1) of the FOIA by failing to respond to the request within 20 working days.

## Other matters

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### Section 45 – Internal review

24. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 code of practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
25. In this case the complainant requested an internal review on 14 April 2021 and the Council provided the outcome of its review on 14 June 2021, 42 working days later. The Council advised that when the internal review request was sent (by post), the UK was in lockdown as a result of the Covid-19 pandemic. As no staff were in attendance at Council offices, this led to a delay in the Council taking receipt of, and subsequently responding to the internal review.
26. While it would have been desirable for the Council to have responded within 20 working days, the Commissioner notes the Council's explanations about the delay in receiving and actioning the internal review request was partly due to the Covid 19 pandemic. The Commissioner understands the immense pressures placed on public authorities during the pandemic. He is sympathetic to the difficult decisions authorities had to make between prioritising front-line services and continuing to meet their obligations under the FOIA.

## Right of appeal

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27. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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 .....**

**Joanne Edwards**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**