

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2014

Public Authority: **Harborough District Council**
Address: **The Symington Building**
Adam and Eve Street
Market Harborough
Leicestershire
LE16 7AG

Decision (including any steps ordered)

1. The complainant has requested information relating to a building certificate. Harborough District Council (the council) provided a schedule to the complainant and advised that this is all it holds within the scope of the request. The complainant considers that further information is held by the council.
2. The Commissioner's decision is that the council has provided all the information it holds within the scope of the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 7 September 2013, the complainant wrote to the council and requested information in the following terms:

"As a former owner of [address redacted] I have been required to pay, in full, the cost of building work in order that a retrospective Building Completion certificate may be issued by Harborough District Council. As I have never been issued with an exact breakdown of the work necessary, please can you supply in order that I may confirm that the items I have paid for are appertaining to your requirements."

5. The council responded on 10 September 2013. It advised the request was received on the 9 September 2013, but did not hold the requested information.
6. The complainant requested an internal review on the 13 September and advised:

"...I was requesting a schedule of the works necessary at 11.Latimer Crescent LE16 8AP in order that a retrospective Building Completion Certificate may be issued nor a breakdown of the costings."

7. The council responded on the 18 September 2013. It provided a copy of a schedule titled "Schedule of Observations made during Site Inspection on 13th September 2011 by [name redacted]".

Scope of the case

8. The complainant contacted the Commissioner on 18 November 2013 as he had not received a response from the council since 18 September 2013.
9. The Commissioner contacted the council who provided a copy of a response that it sent to the complainant dated 29 October 2013. The response stated that the schedule it had provided on the 18 September 2013 is the only information it holds within the scope of the request. It advised that the level of detail requested is not held by the council.
10. The council informed the complainant that he may be able to get the information he requires from the court as any appointed costs must have been assessed by an independent party.
11. The complainant has advised the Commissioner he is not satisfied with the council's response.
12. The Commissioner considers the scope of the case is to determine whether the council holds any further information within the scope of the complainant's request.

Reasons for decision

13. Section 1 of 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.

14. 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. The Commissioner must decide whether, on the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
15. The council has advised the Commissioner that it was part of a legal proceeding that took place with regards to some building regulation certificates, to which the complainant was also involved. The council explained that it did not instigate the proceedings in this case. This case was brought by the police, and following an investigation by the police the council became involved.
16. The council has told the Commissioner that site inspections were carried out by the council to ensure compliance with the building regulations. However its records do not identify the full extent of the exploratory, remedial and additional work required. The schedule provided to the complainant is the only document it holds that would give an indication of this.
17. The council has explained to the Commissioner that it contacted its building control and legal services as these were the two most likely departments to have held the information because they would have been involved in any part that the council had in the court case.
18. The council stated to the Commissioner that as the result of the court case was known by the council, and it was close to the date of the request, the council knew that the information required was not held by it. However, it conducted a general search of its files and document management system to locate any further information. It keeps case files for building control records and these were searched for any information that matched the request.
19. The council maintains that the only relevant information it holds within the scope of the request is the schedule provided, it has confirmed that no information has been destroyed or deleted. It has explained to the Commissioner that if the information were held, in this case, it would have been retained against the relevant building control file and retained indefinitely, in accordance with its retention policy document. And if any information is disposed of, the officer doing so, is required to complete a disposal log to evidence that destruction.

20. The council has also told the Commissioner that it is not required to create or hold the information requested as part of its routine operations.
21. The Commissioner has considered the council's explanations to its involvement with the court proceedings, the searches it has carried out and the reasons to why it states it does not hold any further information that would fall within the scope of the complainant's request.
22. On this consideration, the Commissioner is satisfied that, on the balance of probabilities, the council does not hold any further information within the scope of the request.

Right of appeal

23. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

24. 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.
25. 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

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