

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 July 2019

Public Authority: Aylesbury Vale District Council
Address: The Gateway
Gatehouse Road
Aylesbury
Buckinghamshire
HP19 8FF

Decision (including any steps ordered)

1. The complainant requested information pertaining to measurements taken at a nearby property including the precise make and model of the tape measure that was used. The Council disclosed some information, but stated that it did not hold information falling within the scope of other parts of the request.
2. The Commissioner's decision is that Aylesbury Vale District Council ("the Council") has disclosed all the information it holds within the scope of the request and has therefore discharged its duty under section 1(1) of the FOIA. However, she also finds that it failed to provide its response within 20 working days and thus breached section 10 of the FOIA.
3. The Commissioner does not require any further steps.

Request and response

4. On 27 August 2018 the complainant requested information of the following description in relation to a site visit the Council had carried out:

"[1] Date, time, temperature and weather conditions at the time of the survey.

[2] Plan showing the survey points from which the measurements were taken to calculate the total height of the building.

- [3] Any permanent or marked survey points used to calculate the mean level of the ground immediately surrounding the building.*
 - [4] Details as to what type of device/s used to:*
 - [a] Calculate the mean level of the ground immediately adjacent to the development.*
 - [b] To calculate the height of the development*
 - [c] To include equipment type, class, model, serial number & age.*
 - [5] Copies of the calibration certificates of the equipment used.*
 - [6] Professional surveying qualifications of the surveyor who undertook the measurements."*
5. On 20 February 2019, the Council responded. It provided some broad information about the site visit.
 6. The complainant requested an internal review on 24 February 2019, noting that the Council had issued a general response to his specific questions.
 7. The Council sent the outcome of its internal review on 4 March 2019. In relation to element [1], it provided the date and approximate time. It stated that it did not hold records of the temperature and that it had deduced the weather conditions from photos taken on site. It stated that it held no recorded information within the scope of elements [2], [3] and [4a]. For element 4[b] the Council confirmed that a tape measure had been used to calculate height, but in relation to elements [4c], [5] and [6] it simply stated "not applicable."

Scope of the case

8. The complainant contacted the Commissioner on 31 October 2018 to complain about the way his request for information had been handled. At that point, a response had not been forthcoming and the Commissioner's intervention was necessary to elicit one.
9. Following the outcome of the internal review, the complainant wrote to the Commissioner on 9 March 2019, to say that he felt that the Council should either confirm or deny holding information within the scope of elements [4c] and [6] of the request. The Commissioner formally accepted the case for investigation on 12 March 2019.

10. The Council then issued a further response on 21 March 2019. It stated that it held no information within the scope of elements [4c] and [5]. In relation to element [6] it provided the professional qualifications of one of the individuals who conducted the visit and confirmed that the other individual did not possess a professional qualification.
11. As the complainant has not disputed that the Council holds no information in respect of elements [2], [3], [4a] and [5] and as the Commissioner considers that elements [1], [4b] and [6] have now been satisfied, the only remaining matter for her to consider is whether the Council holds the make and model of the tape measure used (element [4c]).

Reasons for decision

Held/Not Held

12. 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.*

The Complainant's position

13. The complainant has a broader dispute with the Council over a planning matter. This dispute centres on measurements taken to establish whether a particular structure was or was not within the limits of permitted development. The complainant argued that he needed the information in sufficient granularity to enable to him to establish whether the measurements had been taken using an appropriate method.

"we need to know the type of tape used for accurate measuring as they are categorised to enable the user to calibrate for expansion/contraction, also provide details of optimum temperature for use/accuracy."

14. The complainant did not offer any particular justification as to why he believed that information was held. Rather his arguments centred on a need (as he saw it) for the Council to keep detailed records of which individual tape measure had been used and in what conditions.

"The use of a tape measure to undertake the surveying activity stated to have been used by AVDC is inappropriate, it is not the professional tool for the job and will provide inaccurate measurements. Tape measures held up 2.5 metres will naturally bow and bend and you can have no confidence that they are held completely vertically. It is also common place that tape measures get stretched overtime thus the need for calibration to avoid false measurements.

"AVDC have failed to provide any evidence as to the accuracy of the equipment being used. Tape measures of a quality needed to undertake accurate surveying work are categorised and must be used at a pre-defined tension within a specific temperature range. Thus my request under the Environmental Information Regulations, which returned an answer confirming that AVDC did not keep appropriate records."

The Council's position

15. In order to determine whether information was likely to be held, by the Council, in recorded form, the Commissioner put several questions to the Council about the way tape measures were allocated among its staff who would have need of them. In particular, she wanted to know whether a particular officer would always use a particular tape measure or whether they would be a shared resource.

16. The Council responded thus:

"Generally speaking tape measures are a shared team resource. However, low value equipment is not recorded on asset registers (as is the case here) and it is not uncommon in a busy office for tape measures to be shared with other regulatory based teams, occasionally requiring replacement, when lost or broken. Additionally, some of the Planning Enforcement team are contractors who are engaged via a limited company (and outside of IR35 tax legislation). This means that they must provide their own equipment and so would routinely carry their own tape measures with them.

17. The Council confirmed that it held no records which would confirm which particular tape measure had been used for which particular visit. As it did not know which particular device had been used it could not therefore provide any technical information relating to that device.

The Commissioner's view

18. The Commissioner's view is that the Council does not hold the requested information.

19. 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. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.
20. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
21. In this particular case, the Commissioner considers it reasonable that, almost a year after the particular site visit in question, the Council is unable to determine the precise tape measure in question. Even had the request been responded to within the requisite 20 working days, there would still have been a gap of around two months between the visit and the information being sought.
22. The complainant clearly believes it should be a priority for the Council to keep detailed records about its usage of tape measures. Whether such record-keeping would be proportionate is not for the Commissioner to consider – only the *fact* of whether such information is held.
23. If the Council is unable to identify the precise tape measure used on the site visit in question it would follow logically that it would be unable to identify the technical detail which the complainant has requested.
24. The Commissioner accepts that it is unlikely that the Council would hold the information sought by the complainant in relation to a tape measure. The Commissioner is therefore satisfied that, on the balance of probabilities, the Council holds no further information within the scope of the request.

Timeliness

25. Section 10 of the FOIA states that responses to requests made under the Act must be provided "promptly and in any event not later than the twentieth working day following the date of receipt."
26. The Council claimed that it did not receive the complainant's original request, but the Commissioner is aware of no evidence which would persuade her that it did not do so. The request was submitted to the same email address which the Commissioner has used to correspond with the Council during the course of this investigation, and she is aware

of no issues relating to the ability of that email address to receive messages.

27. In addition, the Commissioner notes that, when the Council did acknowledge the request (on 8 January 2019), it still failed to issue its response within 20 working days. The Commissioner therefore finds that the Council breached section 10 of the FOIA in responding to the request.

Right of appeal

28. 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

29. 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.
30. 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
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