

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 December 2011

Public Authority: Medway Council

Address: Gun Wharf
Dock Road
Chatham
Kent
ME4 4TR

Decision (including any steps ordered)

1. The complainant requested information from Medway Council ("the council") relating to a property valuation. After initially denying that it held relevant information, the council provided the information that it held following the Commissioner's intervention. The complainant alleged that further information was held.
2. The Commissioner's decision is that on the balance of probabilities, no further information was held. However, he finds that the council breached the Freedom of Information Act 2000 ("the FOIA") by disclosing relevant information at a late stage.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 9 June 2011, the complainant requested information from the council in the following terms:
"...copies of all correspondence between Medway Council and the '3rd valuer' referred to in 16 May 2007 instructions letter to [name] (District Valuer [name])".
5. The council responded on 11 July 2011. It said that it did not hold the requested information because it had never appointed a third valuer.
6. The complainant requested an internal review on 20 July 2011. She referred to an email dated 27 November 2008 which referred to the fact

that a third independent valuer had declined to accept instructions. She said that she wanted the name of the firm, a copy of the council's instructions and the firm's response.

7. The council completed its review on 30 August 2011. It said that it wished to maintain its position that the information was not held and added that it did not have a record of the email referred to.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She specifically asked the Commissioner to consider whether the council had correctly said that it did not hold any information.
9. During the Commissioner's investigation, the council conceded that it held some relevant recorded information which it provided to the complainant however the complainant refused to withdraw her complaint and alleged that further relevant information was held.

Reasons for decision

10. Section 1 of the 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 of the description specified in the request, and if that is the case, to have that information communicated to him.
11. 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 argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".¹

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

12. The background to this matter is that the complainant has been in dispute with the council over whether a development depreciated the value of her property. The request in this case concerns the council seeking to obtain an independent valuation for the property, referred to in the request as the "3rd valuer".
13. The council initially denied that it held relevant recorded information because it said that it had never appointed the third valuer. However, when the Commissioner pointed out that the complainant had expressed a clear interest in knowing the name of the firm that was approached and receiving correspondence between the council and the firm, the council reviewed its handling of the request and conceded that it held relevant recorded information. It explained that it had in fact approached two potential third valuers. It said that on 16 May 2007, the council had sent a letter to Countrywide Surveyors to obtain their opinion on the property's value. However, Countrywide Surveyors declined to act. The council provided a copy of this letter to the complainant along with the enclosures. It also provided a council email confirming that Countrywide Surveyors had declined to act. The council also provided a copy of a letter it had written to a firm called Harrisons dated 23 May 2007 asking them to conduct a valuation along with the firm's response dated 30 May 2007. It also supplied a copy of a council email showing that the council had decided to await a report from the District Valuer before considering whether to appoint Harrisons.
14. Following the disclosure of the above information, the Commissioner invited the complainant to withdraw her complaint. The complainant declined and alleged that the council had still not provided all the recorded information that it held. The complainant said that the council had not provided evidence to substantiate its claims that a third valuer was never appointed.
15. The council explained to the Commissioner that it accepted that its initial understanding of the request had not been broad enough and it searched the relevant case file again as a result. This led the council to identify relevant correspondence which it provided to the complainant as described above. The council said that the case officer who had dealt with the matter had long since left the council's employment and their emails would therefore have been deleted. It commented that the paper file held appeared to be quite comprehensive but it could not be sure that no relevant recorded information had been destroyed prior to the request. The Commissioner asked the council whether it could explain why there was no recorded response from Countrywide Surveyors. The council was unable to explain this. It said that the response could have been verbal but in any case, no recorded information was held at the time of the request.

16. The Commissioner considered the complainant's reason for alleging that further information was held that should have been provided to her. The Commissioner's view is that the complainant's argument is misconceived. The council is not required to prove that a third valuer was never appointed. It is only required to provide the recorded information that it held. The Commissioner was satisfied to the required standard – the balance of probabilities – that no further recorded information was held.

Procedural Issues

17. Section 10(1) of the FOIA provides that if a public authority holds recorded information falling within the scope of the request it must be disclosed within 20 working days unless a valid reason exists for not doing so.
18. In this case, the council only disclosed relevant information following the Commissioner's intervention. That was a breach of the legislation.

Right of appeal

19. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. 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 – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF