

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 11 March 2013

Public Authority: Dudley Metropolitan Borough Council

Address: Council House
Priory Road
Dudley
West Midlands
DY1 1HF

Decision (including any steps ordered)

1. The complainant has requested information from Dudley Metropolitan Borough Council ('the council') relating to the details of modernisation works for his property. The Commissioner's decision is that the council has provided the information it holds and that, on the balance of probabilities, it does not hold any further information. The Commissioner does not require any steps to be taken.

Background

2. The council explained that it's interaction with the complainant with regards to his requests has been confused and complicated. This has somewhat been as a result of the complainants complicated letters and multiplicity of follow up telephone enquiries to multiple contact points within the council. The letters are not usually dated and confuse multiple topics within the narrative. The complainant also has the habit of writing further instructions and demands in the margins and submitting multiple letters at any one time.
3. The council stated that it has endeavoured to assist the complainant in getting to the bottom of his concerns and requests by visiting the complainant in his own home. The view was to endeavour to reach a resolution to his complaints and to obtain some clarification as to the nature of his requests. Often, the complainant has called the office to follow up his letters resulting in requests being logged onto the council's

request management system as a combination of his written communication, visit dialogue and telephone conversations.

Request and response

4. As a result of a telephone conversation with the complainant on 10 February 2012, the following request was logged on the council's request management system:

"RFI-6092 Request for details of modernisation works for [complainants address]. Details of Works and costs. Modernisation 2006 - 3 x Floor, 2 x Disabled Bathroom, 2 x slabbing to front door. 1 x Slabbing to rear door etc."

5. The council provided a response on the 2 March 2012. It detailed the terms of the request as follows:

- 1) "Why it was necessary to lay 1 floor 3 times, and a breakdown and total cost?
- 2) Why it was necessary to do the disabled bathroom twice, breakdown and total cost?
- 3) Why it was necessary to slab the front access twice, breakdown and cost?
- 4) Slabbing of rear access, breakdown and total cost?"

and stated that;

"Considering the age of the project and the fact that these items have not previously been raised, the level of information on all the works carried out is sparse.

You have already received everything that is held, and a further re-examination or breakdown of the information for additional items would not be productive."

It then responded to points 1) to 4) and appeared to suggest that the information is not held in response to these requests although it did state that the council's appointed sub-contractor, who carried out works on behalf of the council, was reimbursed the sum of £51.50 for taking up and subsequently relaying 4 m2 of pre-cast concrete pavings.

6. The council received an undated letter from the complainant at the end of May 2012 which it took as a request for an internal review.
7. An internal review response was provided on 25 July 2012 in which the council stated that as further information has been identified and provided since the initial response of 2 March 2012, the content of that response was not adequate at the time but the complainant had now received all information in relation to the elements of the request. It also stated that all information held by the council relating to complainants information requests has been provided.

Scope of the case

8. The complainant initially contacted the Commissioner on 30 March 2012 to complain about the way his request for information had been handled. That complaint was closed on 16 May 2012 as the complainant had not requested an internal review. This complaint was opened on 29 October 2012 after the council provided the Commissioner with the internal review documentation.
9. The Commissioner has considered whether information is held in relation to the terms of the request (as detailed by the council in its response of 2 March 2012) that hasn't been previously disclosed to the complainant. This was confirmed to the complainant on 31 January 2013.
10. This decision notice does not consider information that represents the personal data of the complainant. Personal data such as this is exempt from the scope of the FOIA. The Commissioner notes that all material held by the council in both social care files and housing files that constitutes the complainant's personal data has been provided under the council's reference number 'RFI - 6188' on 24 April 2012.

Reasons for decision

11. Sections 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
12. 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 is not held and he will consider any other

reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is 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 civil standard of the balance of probabilities.

13. The council explained that the complainant was initially provided with spread sheets and job printouts extracted from the council's housing system (Northgate) summarising all the repairs made and the costs incurred relating to his property. It stated that there was no specific breakdown in relation to the 4 areas identified at that time. The Commissioner understands that this information was provided on 16 August 2011 in response to a request for copies of all repairs documentation since 1 January 2004.
14. In council also explained the following in relation to the numbered points of the request:
 - 1) Although the council has no record of laying 1 floor 3 times, on review, evidence was identified that the flooring was relayed in 2006, in order to resolve a dispute with the complainant. This was undertaken within a period of time known as a "Defect Liability Period", therefore the council did not incur any additional costs for this, as this would have fallen to the contractor at the time. As a consequence this work did not appear on any previous Northgate reports or contractor accounts that were provided to the complainant.
 - 2) Although the council has no record to suggest that the disabled bathroom (shower floor) was done twice, as documents did not show this, it was subsequently confirmed by officers recalling the situation that work was done. However, no costs were levied against the council and as a consequence no records appeared on the Northgate system.
 - 3) & 4) The council has no record of slabbing the front access twice and the available information relating to work done to the paved area does not identify if the work was undertaken to the front, side or rear of the property. Slabbing work was undertaken whilst the property was modernised, primarily as a result of modifying below ground services to the dwelling. Some slabbing would have been reinstated by Statutory Authorities to make good pavings disturbed on completion of works but the cost was included in a lump sum quotation for relocating services from the Statutory Authorities therefore the exact cost of slabbing reinstatement cannot be ascertained. There were no records held on the Northgate system that indicated that any slabbing had been re-worked.

15. The Commissioner enquired as to whether further information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether further information had ever been held but deleted and whether copies of information may have been made and held in other locations.
16. The council explained that initial searches focused on the information held within the council's housing system 'Northgate' and paper files using various search terms including unique reference numbers relating to the tenant and tenants property and name and address. It stated that the initial searches did not include searches of information held locally on personal computers nor did it include information included in emails as the council has a policy that business information must not be stored locally and this policy is fully enforced. However, on review it was identified that further information was available recorded in emails of officers but this information was identified and provided to the requestor in response to his request RFI - 6188 on 24 April 2012. The council also stated that there is no documented evidence to suggest that information relating to the complainant's request has been deleted or destroyed.
17. The council reiterated that it is confident that all records have been identified and searched and all relevant information has been provided to the complainant including details of the costs that were incurred by the council. Where costs were not incurred by the council and re-work had to be undertaken by the council's contractors within the original budget that had been set, this information was not recorded on the system searched.
18. In reaching a decision as to whether further information is held, the Commissioner has also considered whether there was any legal requirement or business need for the council to hold the information. The council stated that information is held for the purposes of meeting statutory obligations imposed by Housing Law and that the contents of a Housing File may have retention rules applied as a consequence of various pieces of legislation.
19. The Commissioner also considered whether the council had any reason or motive to conceal any further information but he has not identified any reason or motive to conceal the requested information. On the contrary, as the council has explained that has done all it can to resolve the complainants issues and has spent a lot of time, effort and resources in dealing with this complainant both in terms of his property and his requests, the Commissioner considers that the council would not wish to prolong its communications with the complainant by withholding requested information.

20. In addition, the council has informed the Commissioner that it has processed many requests over recent years to access information held within housing files and all of these requests have been processed successfully. It also informed the Commissioner that it takes its Information Governance responsibilities extremely seriously and already has in place robust controls to ensure that Information Governance requirements are understood, policies implemented, those policies complied with and controls regularly reviewed. It stated that Information Governance at the council is overseen by the Senior Information Risk Owner (SIRO) who attends Corporate Board. He is supported by the Corporate Information Governance Board (chaired by the SIRO) that oversees the council's Information Governance Strategy and meets on a bi-monthly basis. At an operational level, the council has a corporate compliance Steering Group that communicates Information Governance (including Data Protection and Information Security) matters and awareness to staff across the council. The council's employees, contractors etc, are expected to operate and deliver council services in accordance with their legal requirements and failure to do so would be treated as a serious disciplinary matter. Where breaches of Data Protection and Information Security are concerned, the council has an incident reporting procedure in place for the handling and investigation of such incidents.
21. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any further information relevant to this request. The Commissioner is therefore satisfied that on the balance of probabilities, further information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

Right of appeal

22. 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

23. 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.
24. 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