

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 July 2013

**Public Authority:** Cardiff Council  
**Address:** County Hall  
Atlantic Wharf  
Cardiff  
CF10 4UW

#### **Decision (including any steps ordered)**

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1. The complainant requested information about a particular property owned by Cardiff Council ('the Council'). The Council provided some information and withheld other information under sections 40(2) and 43 of the FOIA. The Council also stated that no further information was held other than that the information disclosed and the information withheld from the lease agreement under sections 40(2) and 43. The complainant was not content with the Council's decision to withhold information from the lease and he considered the Council held additional information relevant to his request. During the course of the Commissioner's investigation, the Council disclosed the information originally withheld from the lease. It also located and disclosed additional information relevant to the request. The Commissioner's decision is that, on the balance of probabilities the Council does not hold any further recorded information. The Commissioner does not require the Council to take any steps.

#### **Request and response**

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2. On 5 October 2012, the complainant wrote to the Council and requested information in the following terms:  
  
"Please can you supply me with information about the current leasing arrangements for the Dalton Street Centre, including details about the conditions attached, the number of years it covers and when it is up for renewal."

I would like to know if there is a way to get a copy or sight of the lease.”

3. The Council responded on 12 November 2012 and provided some information about the lease in question but stated it would be unable to provide a copy of the lease “Due to commercial sensitivity and future negotiations of any lease”.
4. The complainant wrote to the Council on 13 November 2012 asking for an internal review of its handling of the request. He asked the Council to address the delay in responding to the request and its decision to withhold a copy of the lease in question.
5. The Council provided the outcome of its internal review on 21 November 2012. It apologised for the delay in responding to the request. The Council provided a copy of the lease in question, but withheld certain parts of it under sections 40(2) and 43 of the FOIA.
6. The complainant wrote back to the Council on 22 November 2012 asking for further details of its public interest test considerations in relation to the information withheld under section 43 of the FOIA. He also asked the Council to:
  - “1. Confirm that there is no other undertaking, arrangement or understanding with the leaseholder over any of the activities that take place within the centre?
  2. Supply me with any material that outlines the process that will be followed by the council to secure a new lease from May 2013, given that the present leaseholder does not have any automatic right to a continuance?
  3. Explain the inclusion of page 37, which refers to Cardiff University?”
7. The Council responded on 3 December 2012 and provided further information about its decision to withhold information under section 43 from the lease in question. In relation to the three additional questions, the Council confirmed that it did not hold any recorded information relating to questions 2 and 3 and page 37 referring to Cardiff University had been provided in error.
8. On 11 December 2012, the complainant contacted the Council and requested information in the following terms:

“In your last response to a previous FOI request (FOI 2493), you mention that the council's Adult Services will be involved when the next lease is determined. This seems to me to be an out-of-the-ordinary arrangement when considering the council's property portfolio as a

whole and doesn't seem to be reflected in the current lease, which you have confirmed is the only relevant document.

Does any other material exist to explain the background behind this particular aspect of the leasing process?"

9. The Council responded on 11 December 2012 and stated that it did not hold any recorded information relating to the request. However, it provided some background information to explain why its Adult Services department would be consulted prior to granting a new lease for the property in question (Dalton Street Centre).
10. The complainant contacted the Council again on 11 December 2012 asking it to clarify/confirm a number of points, as detailed below:

"Can you explain:

1. 'vested with Adult Services' - can you explain what is meant by this, and how this has been affected by the re-organisations that have taken place in local government in Cardiff over the last period?

Can you confirm:

1. that, although you are sure that the property is 'vested in Adult Services', there are no records of how, why or when this came about, or of any considerations of how the property might be used?

2. that the fact that it is 'vested in Adult Services' has not led, or is not likely to lead, to any special conditions being applied to the choice of leaseholders that are not already in the public domain through your responses to my FOI requests".

11. The Council responded on 17 January 2013 and confirmed that, in relation to the requests concerning the lease, it had provided a full response and all information held relating to the subject matter. In relation to the other requests, the Council advised that it did not consider these to be valid requests for recorded information and it treated them outside the provisions of the FOIA and responded accordingly.

## **Scope of the case**

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12. The complainant contacted the Commissioner on 20 January 2013 to complain about the way his requests for information had been handled.

13. Based on exchanges with the complainant, it was agreed that the Commissioner's investigation would be:
  - to establish whether the Council correctly withheld information from the lease for the Dalton Street Centre under section 43 of the FOIA.
  - to determine whether the Council held any additional information relating to the leasing arrangements for the property.
14. During the course of the Commissioner's investigation the Council disclosed an un-redacted copy of the lease in question. The Council also provided additional information relating to the leasing arrangements for the property in question. The Council withheld some parts of the additional information provided – namely the names of third parties and junior officers under section 40(2). The complainant has not raised any concerns regarding the personal information which has been withheld from the additional information disclosed by the Council. However, the complainant maintains the view that the Council holds additional information relevant to the request.
15. In view of the above, the Commissioner considers this complaint to relate to whether the Council holds any additional information relevant to the requests other than that which has been disclosed (and the small amount of information withheld under section 40(2)).

## **Reasons for decision**

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### **Section 1 –General right of access**

16. Section 1 of the FOIA provides 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.
17. In cases where a dispute arises over the extent of the recorded information that is 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 ascertain information falling within the scope of the request and he will consider if the authority is able to explain why further information is not held. For clarity, the Commissioner is not expected to prove categorically whether additional information was held. He is only required to make a judgement on whether the information is held "on

the balance of probabilities"<sup>1</sup>. Therefore, the Commissioner will consider both:

- the scope, quality, thoroughness and results of the searches and
- other explanations offered as to why further information is not held.

18. The requests made in relation to the leasing arrangements at the property and which form the basis of the Commissioner's investigation are summarised below:

Request 22 November 2012

- "1. Confirm that there is no other undertaking, arrangement or understanding with the leaseholder over any of the activities that take place within the centre?
- 2. Supply me with any material that outlines the process that will be followed by the council to secure a new lease from May 2013, given that the present leaseholder does not have any automatic right to a continuance?".

Request 11 December 2012

- "Does any material exist to explain the background behind this particular aspect of the leasing process" – This relates to information the Council provided that its Adult Services department would be involved in determining the next lease for the property.

19. The Council provided the Commissioner with details of the searches it had undertaken in order to locate all relevant information. It explained that full searches were undertaken within the only two departments which would hold information relating to the subject matter –Property and Estate Management and Adult Services. Property and Estate management deal with matters relating to Council properties and the Dalton Street Centre is vested within the Adult Service area within the Council.

20. The Council confirmed that the searches undertaken included both manual and electronic records. As the Council does not have an electronic record management system, the electronic searches

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

conducted involved searching for structured databases as well as keyword searches via relevant search engines of all network drives to which officers within the relevant departments had access. The Search terms that were used were – “Dalton Street, Dalton Street Centre, Dalton Street Day Centre”.

21. The Council also confirmed that it held a property file on the Dalton Street Centre containing records back to 1998 (including correspondence between Council officers). The Council initially advised the Commissioner that full searches had been conducted of this property file and no further recorded information relevant to the request was identified.
22. However, during the course of the Commissioner’s investigation, the complainant provided clarification in relation to part 1 of his request of 22 November 2012. He explained that this request primarily relating to the on-going activities at the centre in question – the provision of a luncheon club and day care centre. He explained that the property in question was owned by the Council and was converted in 1996 for use as local authority day care centre offering services for older people. The complainant understands that the Council undertook a review of the arrangements for the Dalton Street Centre in 2002 which led to a partnership with Highfields Church. This, in turn, lead to the Council agreeing a lease with Highfields Church for the Dalton Street Centre in 2002 which including the on-going provision of the luncheon club.
23. Following the clarification provided by the complainant, the Council undertook further searches and provided additional information relating to the request to the complainant. The additional information provided by the Council included a full copy of the property file (which included information about the luncheon club and minutes of meetings regarding the property and Highfields Church). The Council redacted certain parts of the property file – namely names of third parties and junior officials which it withheld under section 40(2) of the FOIA. The Council also identified further information held by the previous Executive Member about the property, and additional information held within its Adult Services department relating to the property, and provided this information to the complainant. Although the Council did not consider the additional information held within its Adult Services fell within the scope of the request, it nevertheless disclosed it.
24. The Council explained to the Commissioner that it had originally interpreted the requests narrowly as only relating to the lease and leasing arrangements for the property. However, it acknowledged that, under its duty to provide advice and assistance, it should have opened up formal dialogue with the complainant to better understand the information requested. The Council confirmed to the Commissioner that

other than the information which has been disclosed and redacted under section 40(2), no further information is held relevant to the requests.

25. During the course of the Commissioner's investigation, the complainant expressed concern at the lack of information held by the Council regarding his request, as he considered the decision to lease the property to Highfields Church who would then take over the running of the luncheon club to be a significant one. He considered that the Council must hold individual care plans for those persons attending the centre as well as financial information in relation to support given to those travelling to and from the centre. The Commissioner advised that this type of information would not fall within the scope of the requests which are the subject of this notice as detailed in paragraph 18. The Commissioner advised the complainant that if he was interested in this type of information, he would need to submit a new request for information to the Council.
26. Based on the information provided by the Council the Commissioner is satisfied that it has carried out adequate searches of all locations and records where the information would be held. There is no evidence of any inadequate search or grounds for believing there is a motive to withhold information. The Commissioner is therefore satisfied that, on the balance of probabilities, the Council holds no further recorded information relevant to the scope of the complainant's requests other than that which has already been disclosed to him, and the small amount of third party personal data redacted under section 40(2).

## 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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 .....**

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**