

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 September 2014

Public Authority: South Somerset District Council
Address: Council Offices
Brympton Way
Yeovil
BA20 2HT

Decision (including any steps ordered)

1. The complainant has requested copies of all documents relating to an oil fired installation for his property and all correspondence relating to a handrail for disability access at his property. South Somerset District Council (SSDC) states that the complainant has been provided with access to all relevant documentation falling within the scope of his request and it holds no other information.
2. The Commissioner's decision is that the council does not hold any other information relevant to the request. However, as the council did not provide a response to the complainant's request within the statutory timescale of 20 working days it has breached section 10 of the FOIA. The Commissioner does not require the council to take any further action.

Request and response

3. On 31 January 2014 the complainant wrote to SSDC and requested information of the following description:

"all details for completion of new installation, and commissioning of oil fired boilers, and tank bases for the last three years, where SSDC used alternative acceptance documentation from an alternative trade association in place of OFTEC."

4. On 12 February 2014 SSDC advised that the cost of considering this request would exceed the appropriate limit and suggested that the complainant narrow his request.

5. Subsequently, on 15 February 2014, the complainant requested information of the following description:

1. *"Access statement from the builder reference Access Part M and Disability Act.*
2. *Details of Percolation Test to Soakaway as requested by Council.*
3. *Copy of Risk Assessment reference site of oil tank base.*
4. *Copy of Alternative Documents accepted by SSDC for Installation, and Commissioning Certificate for oil fired installation as accepted by the Secretary of State for Compliance under Building regulations 1984.*
5. *Copies of all emails between [three named individuals] and OFTEC.*
6. *Water efficiency calculations*
7. *Approved Document C1 & C2."*

6. On 16 February 2014 the complainant also requested information of the following description:

"I require all correspondence between South Somerset District Council Building Control Dept [named individual] and the builder [two named individuals] with regards to the acceptance of Non Compliance of Building regulations with ref: Handrail disability access, Construction of tank Base, Soakaway details & Test."

7. On 8 April 2014 SSDC responded to the requests of 15 and 16 February 2014.
8. With regard to the request dated 15 February 2014 it denied holding the requested information in respect of points 1-6 and with regard to point 7 it confirmed that the documents were on the planning portal and the Department for Communities and Local Government (DCLG) website. A

downloaded copy was provided to the complainant. In respect of the request dated 16 February 2014 SSDC denied holding any information other than that which had already been seen when the complainant had viewed the relevant file and was offered the opportunity to take copies.

Scope of the case

9. The complainant contacted the Commissioner on 10 April 2014 to complain about the way his request for information had been handled. Specifically, he believed that SSDC should hold further information in addition to that he had already accessed when viewing the file.
10. The Commissioner considers the scope of the case is to determine whether any further information falling within the scope of the requests is held by the council.

Reasons for decision

11. Section 1(1)(a) and 1(1)(b) of 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/her.
12. In considering cases such as this, the Commissioner, in accordance with a number of First Tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities. To reach a decision on this, the Commissioner asked the council detailed questions as to the nature of the requested information and the searches it has carried out. He also considered the context of the case, the nature of the requested information, the authority's responses, arguments provided by the complainant and any information to suggest that the information in question is held.
13. In responding to the Commissioner's questions, the council advised that the records had been held on a paper file and that once the Building Regulations matters had been completed, the paper file was then transferred on to the council's electronic system. Records show that the scanning was completed on 21 December 2010 and that the paper file was destroyed on the same date. The council confirmed that all data is held centrally and that it had made searches of current email mailboxes and archived emails using its Archive Manager email search facility.

14. The council confirmed that the terms of its searches had included the property name, OFTEC (Oil Firing Technical Association), the complainant's name, the name of the officer at OFTEC, the name of the builders associated with the Building Regulations application and names of officers at the council.
15. With regard to the destruction or deletion of any documents, the council asserts that it does not hold, nor has it ever held, further information falling within the scope of this request. The only document to have been destroyed was scanned on to the electronic system and is now held as an electronic record. This record is retained by the council for 15 years despite there being no statutory requirement for this.
16. In its submission the council has advised the Commissioner that the complainant has had unrestricted access to the file at the council offices and was provided with copies of any/all documents he required.
17. In its response to the complainant dated 8 April 2014, the council advised that the information requested at point 2 was not held in a recorded form. Asked specifically by the Commissioner how the council was then able to provide detail about the ground inspection, the council advised that these were taken from notes made at a site visit and photographs provided by the builder. The council further clarified that these documents were on the file viewed by the complainant.
18. There is some dispute between the complainant and the council about the existence of emails between the council and OFTEC. The council was asked to clarify its position and advised that officers have again been asked about the existence of any emails but that their honest recollection is that the discussion with OFTEC took place by telephone. Searches of the officers' email boxes and of their archived emails have failed to locate any relevant emails. The council is aware that the complainant disputes this fact asserting that OFTEC has said it is in receipt of emails from the council. The Commissioner notes that even in the event that OFTEC may hold emails from the council, it is not necessarily the case that those are held by the council or that the emails to which OFTEC refer fall within the scope of the request.
19. Asked about its obligation to record water efficiency calculations, which the complainant requested at point 6, the council advised that the new regulations relating to water efficiency took effect on 1 October 2009 and that the application in question was submitted on 25 August 2009 and was approved before the new regulations came into force. Therefore SSDC confirmed it does not hold information on water efficiency calculations in recorded form.

20. In cases such as this the Commissioner does not consider what information should be held by a public authority but only whether the requested information is, on the balance of probabilities, held or not. The complainant's position in relation to the majority of the further information he is seeking appears to be that the information requested should be recorded and kept on file, albeit that it had not been. However, he is of the view that SSDC does hold further information relating to his request for emails between the Council and OFTEC.
21. With regard to all information within the scope of the request which has not previously been viewed by the complainant, the council insists it is not held and nor has it ever been held. No information has been deleted or destroyed.
22. Based on the submissions provided by both the complainant and the council, the Commissioner's decision is that on the balance of probabilities it is unlikely that the council holds any other information relevant to the request.

Other matters

23. Having failed to issue a response within the statutory timescale of 20 working days, SSDC is in breach of section 10 of the FOIA. The Commissioner does not require SSDC to take any further steps other than to note the timescale for responding to requests and take steps to ensure the timescale is met when handling future requests.

Right of appeal

24. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

25. 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.
26. 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

Alexander Ganotis
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