

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 April 2015

Public Authority: Ascham Homes
Address: Willow House
869 Forest Road
London
E17 4UH

Decision (including any steps ordered)

1. The complainant has requested information relating to the exclusion of a specific property from a scheme to install solar panels. The Commissioner's decision is that, on the balance of probabilities, Ascham Homes does not hold the requested information. He does not require any steps to be taken to ensure compliance with the legislation.

Request and response

2. On 22 July 2013, the complainant wrote to Ascham Homes and requested information in the following terms:

"Please provide the following:

The factors used by your contractors to arrive at the conclusion to exclude [named property] from the installation of solar panel scheme (scheme).

The criteria used by your contractors when they exercised their discretion to exclude [named property] from the scheme.

A copy of your contractors' discretionary policy used to exclude [named property] from the scheme."

3. The above request was made in a letter requesting an internal review of a 20 point request made on 21 December 2012 and responded to by Ascham Homes on 25 June 2013.
4. Ascham homes responded on 13 August 2013. It said that it is not in possession of, and thus cannot provide, the three items of information requested. It also provided the following explanation:

“[Names individual’s] previous response set out the criteria for selecting suitable properties to have solar panels installed, namely that they were houses with a south facing pitched roof on which a 2.4 KWh system could be installed generating at least 2084 KW of electricity in the first year. She also stated that the two contractors were instructed to identify sufficient suitable properties to complete 500 installations each by 31st March 2012 with as many as possible by 3rd March 2012. These were the only factors and criteria used by the contractors to include potentially suitable properties in the scheme.

As I have stated in my review of [names individual’s] responses above, there was no decision to exclude [named property] from the solar panel scheme but the contractors achieved the required number of suitable properties without including your property.”
5. The complainant requested an internal review on 11 September 2013 asking Ascham Homes to confirm whether or not it consulted with the contractors about the existence of such policy documents and asking for a copy to be provided if the contractors have such a policy.
6. The internal review request was acknowledged on 17 September 2013.

Scope of the case

7. The complainant contacted the Commissioner on 30 July 2014 to complain that Ascham Homes had not complied with her request and not provided an internal review.
8. The Commissioner wrote to Ascham Homes on 4 December 2014 requesting that it provide an internal review response within 20 working days.
9. Ascham Homes wrote to the Commissioner on 13 January 2015 stating that “no such review will take place as the letter of the 13th August 2014, was a review of the case reference COR/48540”.
10. The Commissioner has considered whether Ascham Homes holds the information within the scope of the request.

Reasons for decision

11. Section 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 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 Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by Ascham Homes, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. He pointed out that although the request is worded in terms of 'exclusion', any information relating to 'inclusion' in the scheme could be relevant and that this may also include documents held by the contractors on behalf of Ascham Homes.
14. Ascham Homes said that it has no recorded information that falls within the scope of the request. It explained that this is in part evidenced by the fact that the tenant of the property took this matter to the High Court and it stated at that point that no such policy document exists, and no decision to exclude this property was taken. It said that it had examined the evidence that it submitted to the High Court in that case and that such evidence explains its case for not holding the information, or having a requirement for the information, and that the complainant was not excluded in any secret negotiations over the scheme.
15. Ascham Homes said that if any information were held it would be electronically and that it had searched all its hard drives and emails stored on its server. It explained that these searches would not find any information because if there was it would have been made clear when the matter was taken to the high court.
16. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal

requirement or business need for Ascham Homes to hold the information. Ascham Homes said that there is no business case for this information to be held as the contractors were told to go out and choose 500 properties and that is what they did. It also said that there are no statutory requirements to hold this information.

17. The Commissioner also considered whether Ascham Homes had any reason or motive to conceal the requested information but he has not seen any evidence of this. Therefore he has not identified any reason or motive to conceal the requested information.
18. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept Ascham Home's position that it does not hold any information relevant to this request. The Commissioner is therefore satisfied that on the balance of probabilities, the information is not held. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

Other matters

Internal Review

19. As he has made clear in 'The Guide to Freedom of Information'¹, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner's view of a reasonable time for completing an internal review is 20 working days from the date of the request for review, or 40 working days in exceptional cases. In this case the Commissioner notes that complainant first requested an internal review of the request made on 22 July 2013 on 11 September 2013 but no internal review took place. Ascham Homes should ensure that internal reviews are carried out promptly in future.

¹ https://ico.org.uk/media/for-organisations/documents/1642/guide_to_freedom_of_information.pdf

Right of appeal

20. 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@hmcts.gsi.gov.uk

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

21. 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.
22. 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