

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 26 February 2015

Public Authority: Newport City Council
Address: Civic Centre
Newport
NP20 4UR

Decision (including any steps ordered)

1. The complainant requested all photographs relating to a particular property. Newport City Council ('the Council') provided some photographs with its initial response and subsequently disclosed additional photographs it located. The Commissioner has investigated and is satisfied that the Council has complied with its obligations under section 1 of the FOIA and, on the balance of probabilities it does not hold any further information relevant to the request. However, in failing to provide the information requested within the statutory time for compliance, the Council breached section 10(1) of the FOIA. The Commissioner does not require any steps to be taken.

Request and response

2. On 23 September 2014 the complainant wrote to the Council and requested information in the following terms:

"We would like every photograph of [address redacted], land, buildings, access road & fields please.

We would also like to know what complaints have ever been lodged with NCC from the public or NCC staff".

3. The Council responded on 5 November 2014 and provided five CDs containing the photographs requested and provided details of complaints received about the property and land.
4. On 6 November 2014, the complainant wrote to the Council stating that he did not believe that he had been provided with copies of all the photographs held.
5. On 14 November 2014 the complainant wrote to the Council again and requested an internal review into its handling of the request.
6. The Council provided the outcome of its internal review on 4 December 2014. It confirmed that it had provided copies of all the photographs it held and asked the complainant to clarify why he considered additional photographs were held.
7. On 4 December 2014 the complainant wrote to the Council and confirmed that the photographs he was interested in were of cast iron fire-places situated upstairs in the property. He also advised that the Council's Conservation Officer had previously confirmed that he had photographs of these within his files.
8. The Council responded on 22 December 2014 and advised that it had come to light that a number of photographs of the property had not been transferred from a camera onto its computer system for storage. The Council provided the complainant with a CD containing the additional photographs located. The Council stated that the images located were not of cast iron fireplaces in the upstairs of the property.

Scope of the case

9. The complainant contacted the Commissioner on 11 December 2014 to complain about the way his request for information had been handled. He stated that he considered the Council had not disclosed all of the photographs it held of the property and indicated that he had been asking for the information since December 2010.
10. During the course of the Commissioner's investigation, the complainant referred to earlier requests he had submitted to the Council for photographs of the property, going back to 2010. The Commissioner explained that he considered each request on its own merits and that this complaint had been set up to consider his request of 23 September 2014. As such, the Commissioner confirmed he would be unable to investigate any concerns the complainant had about the Council's handling of any earlier requests for information. The complainant expressed concerns that the Council had not provided all the information

held relevant to his request of 23 September 2014 and the delay in the Council providing the information requested.

11. In light of the above, the scope of the Commissioner's investigation into this case is to determine whether the Council holds any additional information relevant to the request of 23 September 2014, namely photographs of the property in question, and the delays in the Council's handling of the request.

Reasons for decision

Section 1 – general right of access

12. Section 1 of the FOIA states that any person making a request for information 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.
13. 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 arguments. 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 is held; he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
14. The Council provided the Commissioner with details of the searches it conducted in order to locate information relevant to the request. The Council advised that it only holds photographs of private property for specific purposes, the main ones being when planning applications, conservation applications or building regulations applications are made or when reports are received of unauthorised works (planning enforcement). The Council stated that the only other reason for it to hold photographs of private property would be if there had been an application for grant works, disabled adaptations via the Council, works to protected trees or reports of dangerous structures. The Council confirmed that no such instances have occurred for the property in question.

15. The property in this case is a listed building. As such, the Council advised that it held photographs taken by Cadw¹ at the time of listing and ones taken by the Council's conservation officer as part of later condition surveys for the purpose of maintaining its Buildings at Risk Register.
16. The Council confirmed that all planning application, enforcement and building control data is stored on an electronic document management system (Information at Work) filed against the applications. Records are also plotted on the Council's geographical information system (GIS). The Council confirmed that on receipt of the initial request comprehensive searches of these systems were undertaken which identified the locations below as potentially holding information relevant to the request. All photographs identified within these files/locations were disclosed with the Council's initial response on 5 November 2014.
- Two building control files held for the property – these records are held electronically. Although officers have paper working files containing submitted plans for ease of use, photographs are not printed and are held electronically only.
 - Twelve planning application files held for the property. Again, although officers have paper working files containing submitted plans for ease of use, photographs are not printed and are held electronically only.
 - Five planning enforcement records – these records are held electronically only.
 - Conservation records – these records are filed electronically against Cadw's unique listed building reference number.
 - Public Rights of Way – a public right of way runs through the site, however, no photographs were identified in any public right of way records.
17. The Council advised that listed building records are all saved against Cadw's unique reference number and searches were conducted using this number. In addition, searches were undertaken of the conservation officer's email mailbox using the property name.

¹ Cadw is the Welsh Government's historic environment service working for an accessible and well-protected historic environment for Wales

18. Following the initial disclosure of photographs the complainant contacted the Council to advise that he believed additional photographs were held which had not been disclosed. In an email to the Council dated 4 December 2014, the complainant stated that the photographs he believed the Council held but which had not been disclosed were of cast iron fire places in the upstairs of the property. He stated that the Council's conservation officer had previously confirmed that he had such photographs "in his files". The Council subsequently identified additional photographs of the property which were held on a camera in its possession, which had not been transferred to its computer system. The Council confirmed that the additional photographs did not show the fireplaces in the upstairs of the property, however, it disclosed the photographs to the complainant on 22 December 2014.
19. The Council advised the Commissioner that its conservation officer recalled a discussion with the complainant about the likely presence of fireplaces in the upstairs of the property, prior to it being damaged by fire. However, his recollection is that he advised the complainant that there were photographs on file that provided evidence that such fireplaces *existed*, rather than confirming that photographs of the actual fireplaces were held. The Council confirmed that it does not hold photographs of the fireplaces. However, the Council advised that it had disclosed photographs which were taken after the fire damage to the property which did not show the fireplaces in their original form but instead showed evidence of their locations within the property.
20. The Council advised the Commissioner that, to its knowledge, no photographs of the property had been deleted. In addition, following the discovery of additional photographs on one camera in December 2014, the Council confirmed that all cameras held were checked and no additional photographs were identified. The Council's position is that, following disclosure of these additional photographs all information held relevant to the request has been disclosed.
21. Based on the representations provided by the Council the Commissioner is satisfied that it has carried out adequate searches of all places 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. Based on the searches undertaken and the other representations provided by the Council, the Commissioner is satisfied that, on the balance of probabilities, the Council holds no further recorded information relevant to the scope of the complainant's request other than that which has already been disclosed to him.

Section 10 – time for compliance

22. Section 10 of the FOIA states that, subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
23. The request in this case was submitted to the Council on 23 September 2014. Some information was disclosed on 5 November 2014 and other information was disclosed on 22 December 2014. In failing to provide the requested information within 20 working days of receipt of the request, the Council breached section 10(1) of the FOIA

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 1234504

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

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