

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 October 2017

Public Authority: Barnsley Metropolitan Borough Council

Address: PO Box 634
Barnsley
South Yorkshire
S70 9GG

Decision (including any steps ordered)

1. The complainant has requested information from Barnsley Metropolitan Borough Council ("the Council") about officers involved in a conveyancing matter. The Council responded that the information is not held.
2. The Commissioner's decision is that, on the balance of probabilities, the information is not held.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 28 February 2017, the complainant wrote to the Council and requested information in the following terms:

The information I request is the names of persons involved in the conveyancing in 2003, either at BMBC, but more importantly the PCT to

ask if they were given or made aware of this Indenture, which states the covenants of the land and the ones relating to my property's rights.

5. The Council responded on 9 March 2017. It stated that the requested information was not held.
6. Following an internal review the Council wrote to the complainant on 13 March 2017. It maintained its original response.

Scope of the case

7. The complainant contacted the Commissioner on 14 March 2017 to complain about the way her request for information had been handled, and specifically that that Council was incorrect to state that no recorded information was held.
8. The Commissioner considers the scope of the case to be the determination of whether the Council holds the requested information.

Reasons for decision

Section 1(1) – General right of access to information

9. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
10. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of Information Tribunal decisions in applying the civil standard of the balance of probabilities.
11. In the circumstances of this case the Commissioner will determine whether, on the balance of probabilities, the Council holds recorded information that is relevant to the request.

The complainant's position

12. The complainant has requested the identities of council officers who were involved in conveyancing a property in 2003.

13. The complainant holds concerns about the process followed during the conveyancing, and in particular, that details about relevant covenants were not relayed from the original property owner to the new (an NHS primary care trust). This is of particular importance to the complainant, who owns neighbouring property, and as such wishes to establish whether there is a legal right of access. The complainant therefore wishes to identify the officers involved in the conveyancing so that they can be questioned about this.
14. The complainant appears to accept that the recorded information may no longer be held by the Council, but considers that the Council should take steps to consult with officers and identify whether the information can be recalled.
15. The complainant also appears to consider that if the Council no longer holds the recorded information, then it has failed to abide by its business and statutory obligations.

The Council's position

16. The Council considers that the only feasible way to identify the officers who were originally involved in the conveyancing matter is to access any documents relating to it. The Council has therefore undertaken the following searches for original documents:
 - Searched the 'Deeds Database', and found no records relating to the request. The search terms used were "Worsbrough". "PCT", "Health Centre", "NHS" and "Lift" (the name of the larger NHS programme that the conveyance related to).
 - Searched the 'Conveyancing Database', and found no records relating to request. The search terms used were "Worsbrough". "PCT", "Health Centre", "NHS" and "Lift" (the name of the larger NHS programme that the conveyance related to). The Council has clarified that this database was not started until 2005, which further limits the likelihood of any records being identified.
 - Consulted the SharePoint drive utilised by Legal Services, and found no records deriving from 2003.
17. The Council has advised that it is possible that previously recorded information will have been held and then destroyed after 6 years. This is in accordance with the Council's records management policy. The Council considers that once land title has been registered at the Land Registry, there is no business or statutory reason for the Council to retain the associated documents.

The Commissioner's conclusion

18. In the circumstances of this case the Council has informed the Commissioner of the searches for relevant recorded information it has undertaken. These searches have spanned the databases and software used to manage information relating to conveyancing. In response to these searches, no recorded information has been located. There is no evidence available to the Commissioner that indicates that these searches have been insufficient.
19. The Commissioner also notes that the complainant appears to accept that the information is not held in recorded form, and instead suggests that the Council should consult with officers to identify if information can be recalled. However, the terms of the FOIA do not impose an obligation on the Council to do this; the Council is only required to consider whether recorded information is held that would satisfy the request.
20. Whilst the complainant contests that there are clear business and statutory obligations for which the Council should hold the requested information, any such determination falls outside the Commissioner's role, which is limited to considering compliance with the FOIA.
21. Having considered the above factors, the Commissioner finds that the Council has complied with section 1(1).

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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
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Cheshire
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