

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 February 2018

Public Authority: Coventry City Council

Address: Council House
Earl Street
Coventry
West Midlands
CV1 5RR

Decision (including any steps ordered)

1. The complainant has requested information on the cost of renting property from the council prior to a transfer of housing stock to a housing association by the council in 2000. The council said that it does not hold the requested information.
2. The Commissioner's decision is that, on a balance of probabilities, the council was correct to say that it does not hold any information falling within the scope of the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 12 June 2017 the complainant wrote to the council and requested information in the following terms:

"Please would you kindly provide the average weekly rent for a two bedroom Council House in 1998 and 1999 (Pre Whitefriars' Transfer) for Poole Road, Radford, Coventry."

5. The council responded on 16 June 2017. It said that it did not hold the information as the council no longer has access to its historical electronic storage systems.
6. The complainant requested that the council carried out a review of its decision. He pointed out that the council's response was effectively that the information was held by the council, albeit in its archives, and therefore the council's response was not correct. He asked the council to arrange for the information to be recovered and provided to him.
7. Following an internal review the council wrote to the complainant on 7 July 2017. It said that after further investigation it had discovered that there was no information held as the requested information was deleted after 6 years in accordance with its records management policies.

Scope of the case

8. The complainant contacted the Commissioner on 24 July 2017 to complain about the way his request for information had been handled.
9. He considers that the council's initial response was that the information was held. He therefore argues that the subsequent response that the information was destroyed previously is potentially evidence that it destroyed the information after it had received his request, once it understood that the requestor was entitled to the information.
10. The Commissioner therefore considers that the complaint is that the information should be held by the council or that it was held at the time that the council initially received the request.
11. The complainant has suggested that the council may have deleted the information once it recognised he was entitled to access to it. He argues that the information is relevant because it may be evidence that a fraudulent transfer of housing stock was made by the council to the housing association in 2000. The Commissioner has seen no evidence to this effect, has no powers to investigate this, and she does not make any comment on this allegation.
12. The allegation that the information was destroyed after the request was received is however effectively an accusation that a criminal offence may have been committed by the council under section 77 of the Act. The council's position is that it was simply mistaken in its initial response that the information was held on its historical systems, and that it was not in fact held.

13. The Commissioner has seen no evidence that would lead her to conclude that any deliberate deletion of the data occurred in order to prevent the complainant from obtaining the information. Additionally the explanation provided by the council explains why it would not have held any relevant information at the time that the request was received by it.
14. Given the responses of the council to her questions the Commissioner has not therefore investigated this aspect of the complaint further. She has therefore concentrated on considering the complaint under section 50 of the Act.

Reasons for decision

Section 1(1)

15. Section 1(1) of the Act states 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."

16. The Commissioner has considered whether the council has complied with section 1(1)(a) and (b) of the Act.
17. In coming to a decision in this case the Commissioner has considered the supporting evidence which was provided to her by the complainant in support of their submission that the requested information is held.
18. During the course of the Commissioner's investigation, on 30 November 2017 the Commissioner asked the council the following questions to determine what information is held relevant to the scope of the complainant's request:
 - What searches have been carried out to check no information was held within the scope of the request and why would these searches have been likely to retrieve any relevant information?
 - Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.
 - If searches included electronic data, which search terms were used and please explain whether the search included information held

- locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.
- If no or inadequate searches were done at the time, please rectify this now and let me know what you have done
 - If the information were held would it be held as manual or electronic records?
 - Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?
 - If recorded information was held but is no longer held, when did the council cease to retain this information?
 - Does the council have a record of the document's destruction?
 - What does the council's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the council describe the way in which it has handled comparable records of a similar age?
 - Please provide a copy of the relevant section of your retention and deletion policy, highlighting where the section which you consider is relevant to the deletion/destruction of the requested information in line with the policy.
 - If the information is electronic data which has been deleted, might copies have been made and held in other locations?
 - Is there a business purpose for which the requested information should be held? If so what is this purpose?
 - Are there any statutory requirements upon the council to retain the requested information?
19. On 16 January 2018 the council responded to the Commissioner's questions. The council firstly explained that in September 2000 all housing stock was transferred out of local authority control to Whitefriars Housing. It said that as part of the transfer, full management, ownership (including rent settings) and maintenance of the stock was transferred.
20. The council said that no searches had been carried out for relevant information because the council's Housing Options Team had confirmed that as part of the transfer all records were transferred out of the local authority control to Whitefriars at the time of the transfer of stock. It said that the only remaining involvement of the council in this respect is the facilitation of the Coventry Homefinder system, which can be found on the Councils website at <http://www.coventry.gov.uk/homefinder>. This allows applicants to sign up and bid on social housing properties across the city.
21. It said that it believed that any records it would hold would be held in paper form/manual records, however no members of staff from that time remain working for the council who can confirm this to be the case.

22. It said that the only information retained at the time of the transfer relate to housing benefit applications. Prior to the transfer payments were made into housing benefit accounts, however when Whitefriars took over responsibility payments were made to Whitefriars' bank account as they had in effect become the social landlord. It said that these housing benefit records were the only records retained, but that the only way that these records would hold rent information is if an individual had made an application who had been asked for their rent liability as part of their application assessment. However the Housing Benefit Team had confirmed that the current software system only holds records from 2005 onwards. The Commissioner checked with the council by telephone on 18 January 2018 whether an earlier archived system is held. The council confirmed in writing that no archive is held.
23. It said that the council's Legal Department had confirmed that some records would have been retained in archive but these relate solely to the legal documentation relating to the transfer of the stock.
24. The Finance Department had confirmed that due to the length of time since the transfer, any records from that time would have been destroyed in line with the financial retention and disposal procedures. They would have been destroyed 6 years after the end of the financial year in which the records were created.
25. It confirmed that it has not carried out any further searches because all records were transferred in September 2000.
26. The council confirmed that it would not hold any record of the destruction of any data held given the transfer of the data with the housing stock to Whitefriars in 2000.
27. Further to this it confirmed that although it does not have a specific section within its retention and deletion policy relating to housing stock, its financial information section details that records are only retained for a period of 6 years plus the year in which they were created. It also confirmed that there is no statutory requirement to retain the requested information.
28. The council therefore confirmed that no information is held falling within the scope of the request as all relevant information has either been destroyed in accordance with its retention and deletion policy, or it was transferred to Whitefriars when its stock was transferred in 2000. It added that the complainant may wish to ask Whitefriars if relevant information is held.

Conclusions

29. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)* in which it was stated that "*there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records*". It was clarified in that case that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner will apply in this case.
30. In discussing the application of the balance of probabilities test, the Tribunal stated that, "*We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed.*" The Commissioner has therefore taken the above factors into account in determining whether or not the requested information is held on the balance of probabilities.
31. The Commissioner is also mindful that even where the public may reasonably expect that information should be held this does not necessitate that information is in fact held.
32. In coming to a conclusion upon this case the Commissioner has considered what information she would expect the council to hold and whether there is any evidence that the information was ever held. In doing so the Commissioner has taken into account the responses provided by the council to the questions posed by her during the course of her investigation. The Commissioner is also mindful of the Tribunal decisions highlighted at paragraphs above. The Commissioner considers that on the balance of probabilities no information is held relevant to the scope of the complainant's request.
33. The Commissioner considers that the stock transfer in 2000 placed the whole of social housing with Whitefriars, and that records relevant to the complainant's request were also transferred as part of the change in ownership at that time. The council has made checks where relevant information might have been retained beyond that point and has confirmed that the information would have been destroyed in accordance with its retention and deletion schedule or, alternatively,

that in the case of records held by its Legal Department, it would not fall within the scope of the request.

34. The Commissioner has not been able to identify any evidence suggesting that the council would retain the relevant information for a period of over 15 years following the transfer of its social housing to Whitefriars. From that point its responsibilities were transferred outside of its control, and given the time which has passed since then it is not unexpected that any relevant information which might have initially been retained would no longer be held.
35. For the above reasons the Commissioner has decided that the council complied with section 1(1)(a) of the Act in informing the complainant that no relevant information was held falling within the scope of the request. The council was therefore unable to provide any information to the complainant in accordance with section 1(1)(b) of the Act.

Right of appeal

36. 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

37. 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.
38. 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

Ian Walley
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