

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 July 2018

Public Authority: Wirral Metropolitan Borough Council

Address: Town Hall
Brighton Street
Wallasey
Merseyside
CH44 8ED

Decision (including any steps ordered)

1. The complainant has requested from Wirral Metropolitan Borough Council (the Council) supporting evidence for the comments that a Councillor made in a meeting held on 18 December 2017. The Council provided the information that it holds in the form of two web links from the Council's web-page. However the complainant considered that further information must be held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold further information within the scope of the request and therefore has complied with its duties under section 1(1) of the FOIA.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 31 December 2017, the complainant wrote to the Council and requested information in the following terms:

"In a recent cabinet meeting Cllr George Davis spoke about a shortage of band H houses on Wirral. The meeting took place on Monday 18th December 2017. Could you please provide me with the supporting evidence for these comments. This may be in the form of a brief or email provided to Cllr Davies or a website reference detailing the evidence or a survey or research undertaken by the Council. Whatever evidence the Council has to support this statement would be most helpful."

5. The Council responded on 5 January 2018. It stated that *"...this information is already available in the public domain. It is part of the agenda reports pack that accompanied the meeting on 18 December 2017."* The Council provided the web-links from its website which provide access to the documents mentioned by the Council.
6. On 1 February 2018, the complainant requested the Council to conduct an internal review, stating that the documents that were referred to do not provide the requested information, which was the supporting evidence to Councillor's Davis's comments.
7. Following an internal review the Council wrote to the complainant on 14 February 2018. It upheld the original response, stating that the Council did not hold any additional recorded information to provide.

Scope of the case

8. The complainant contacted the Commissioner on 16 February 2018 to complain about the way his request for information had been handled.
9. The focus of this notice is to determine whether the Council handled the request in accordance with the FOIA. In particular this notice covers whether the Council was correct in stating that it did not hold any recorded information further to what was already provided to the complainant.

Reasons for decision

Section 1(1) – General right of access

10. Section 1 of the FOIA provides a general right of access to recorded information held by public authorities. Any person making a request for information to a public authority is entitled to be informed in writing by the public authority within 20 working days whether it holds information of the description specified in the request, and if that is the case, to

have that information communicated to him unless a valid reason exists for not doing so under the legislation.

11. 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. She will also consider the actions taken by the authority to check what recorded information within the scope of the request it held and she will consider if the authority is able to explain why the information was not held.
12. For clarity, the Commissioner is not expected to reach a categorical conclusion on whether the information was held. She is only required to make a judgement on whether the information was held "on the balance of probabilities".¹

The complainant's position

13. The complainant asserts that he has been unable to access evidence in support of the comments that Councillor Davis made in a meeting in December 2017. He maintains that his "*his research shows that the Council's figures do not show that Wirral has a low number of band H houses.*"
14. Therefore, the complainant contacted the Council to enquire whether Councillor Davis was provided with additional information on this matter. The complainant maintains that this information might consist of a waiting list, a brief, a survey or research.

The Council's position

15. In its response to the Commissioner's investigation letter, the Council explained that the links provided to the complainant contained all the documents that Councillor Davis had access to, prior to the meeting of 18 December 2017.
16. The Council maintained that further information does not exist and that "*the Councillor merely surmised and gave an opinion based on what was in that paperwork. Councillors will often give a view or a statement based on their understanding of the issue at hand after reading background papers or committee reports and we have no control over how they may base an opinion.*"
17. However, on the Commissioner's instruction the Council contacted Councillor Davis through the political office manager to enquire whether

¹ This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others / Environment Agency* (31 August 2007) EA/2006/0072

there was further information held, falling within the scope of the request. The political office manager explained that the comments made in that meeting reflect the Councillor's opinion based on his understanding of the matter and not on the basis of any additional background information.

18. The Council confirmed that no information, falling within the scope of the request, was deleted or destroyed.

The Commissioner's conclusion

19. The Commissioner has examined the submissions of both parties.
20. The Commissioner has considered the searches performed by the Council, the information it disclosed, the Council's explanations as to why there is no further information held and the complainant's concerns.
21. On the balance of probabilities, the Commissioner considers that the Council does not hold any further information to that already provided and, therefore, concludes that the Council complied with section 1(1) of the FOIA.
22. In light of this finding, the Commissioner does not require the Council to take any steps.

Right of appeal

23. 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

24. 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.
25. 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

Ben Tomes
Team Manager
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SK9 5AF