

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2020

Public Authority: Westminster City Council
Address: Westminster City Hall
64 Victoria Street
London
SW1E 6QP

Decision (including any steps ordered)

1. The complainant has requested information from Westminster City Council ("the Council") regarding costs and details of work completed on a specific property in the borough. The Council responded to say it has provided the information it held within the scope of the request but the complainant believes that there is more.
2. The Commissioner's decision is that, based on the balance of probabilities, the Council does not hold further information that would fall within the scope of the request. However, as the Council responded to the request after 20 working days and released further information even later, it has breached section 10 and section 1 of the FOIA.
3. The Commissioner requires no further steps to be taken by the Council.

Background

4. The complainant is a leasehold owner of a property within a larger building owned by the City of Westminster.
5. For some time, the complainant, along with others who are leasehold owners in the building, have been paying the Council for works to be

completed in the building. These works are known as the R137 project and the S161 project. The complainant states that the leaseholders have been paying the Council based upon estimates and wishes to know the actual costings and figures for the projects.

6. The complainant made the request to the Council in order to check what she and the other leasehold owners have been paying for.

Request and response

7. On 13 February 2019, the complainant wrote to the Council and requested information in the following terms:

"I would be grateful if you could send me the following information pertaining to [address redacted] where I am a Leasehold owner.

Project R137

How was the work specified? And what work was contained in the contract specification?

Was there any variation from the contract specification?, what work was completed & what work is outstanding if any?

The detailed cost estimate or project budget, the final cost account of the project.

Payment/contribution made by council and payments by private owners for each flat in [address redacted] (to be clear I am not asking for any personal details of the flat owners, I am asking what contribution was paid by the private flat owners).

Project S161

How was the work specified? and what work was contained in the contract specification?

Was there any variation from the project plan? What work was completed & what work is outstanding if any?

The detailed cost estimate or project budget, the final cost account of the project.

Payment/contribution made by council and payments by private owners for each flat in [address redacted] (to be clear I am not asking for any personal details of the flat owners, I am asking what contribution was paid by the private flat owners)."

8. The Council initially responded on 24 May 2019 and provided some information falling within the scope of the request.
9. The complainant requested an internal review on 27 May 2019 where it was clear that the complainant was of the opinion that the Council had not fully addressed her request made on 13 February 2019.

10. The Council explained to the Commissioner that it treated this correspondence as a new request and conducted an additional search for information. The Commissioner would however accept the Council's response to the complainant's contact on 27 May 2019 as an internal review response.
11. The Council responded to this on 5 July 2019, it provided further information relating to Projects R137 and S161.

Scope of the case

12. The complainant contacted the Commissioner on 19 June 2019 to complain about the way her request for information had been handled.
13. The Commissioner started her intervention at that point to request that the Council complete an internal review of its handling of the request. It was at this point that the Council explained that it did not view the complainant's contact of 27 May 2019 as a request for an internal review, but as a separate request.
14. After the Council sent its further response, the Commissioner noticed it had released further information within the scope of the complainant's request. She therefore made enquiries about the Council's searches to ensure that no further information was held.

As the complainant believes the Council must hold more information, the scope of this case is to consider whether the Council held further information within the scope of the request.

Reasons for decision

Section 1 of the FOIA – information held/not held

15. Section 1(1) of the FOIA 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. 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 that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, she will consider any reason why it is inherently likely or unlikely that information is not held.

17. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The Council's position

18. As the investigation progressed, the Council found itself in a position to release more information to the complainant.
19. Throughout the investigation, the Council discovered more information that it held within the scope of the complainant's request and as it was discovered, it was disclosed to the complainant without any exemptions applied.
20. The Commissioner has investigated whether the Council holds recorded information relevant to the complainant's request by asking the Council questions about the searches it has made to locate the information which the complainant seeks and questions about the possible deletion or destruction of information which might be relevant to the complainant's request.
21. Firstly, the Commissioner asked the Council what searches had been carried out to check no further information was held within the scope of the request and why the searches completed were likely to retrieve any relevant information. The Council responded as follows:

"The department were forwarded a copy of the original requests (see Background, below) at the time of each and asked to provide the relevant information. On receipt of the correspondence from the ICO, the same department was required to search for information in relation to the specific queries. Therefore staff would have searched their (electronic) records in relation to the project references. In terms of additional documents there are individual invoices and reconciliation statements, but as the applicant has asked specifically for "detailed cost estimate or project budget, the final cost account" it is considered that individual invoice documents are outside of the scope of the request and it is the final figure which is being sought, This was disclosed to the applicant in the response letter on 5 July 2019."

22. The Commissioner also asked the Council if it could confirm whether the final accounts for project S161 and R137 had been made available since the request had been made and to provide these to the Commissioner if this was the case. In response to this, the Council said:

"Contract R137 was billed at final account in March 2015 (Information attached). Contract S161 has not yet been billed at final account, the final account bills are intended to be issued within the next few months. As a result the latter are not available"

23. The Council has now confirmed to the Commissioner that it is confident that it has now provided everything it holds within the scope of the request.

The Complainant's position

24. The Commissioner understands that the complainant is sceptical that the Council has identified all the relevant information it holds, given that, each time the Council has been approached by the Commissioner, it has found more information to release.
25. In particular, the complainant is concerned about the *final* costings of the projects. In response to receiving more information from the Council, the complainant wrote to the Commissioner and said the following:

"The request in my letter was specific. I cannot see in the council's response any final accounts detailing what work has been completed and paid for and what is still outstanding. As I tried to explain, the council has charged us and we have paid in full on Estimated costs for the major works. We need to see details of the final accounts telling us what has been paid. The Council's response of the 5th July does not seem to provide this. If I have missed something, then please point it out to me.

This was my complaint to the ICO in the first place. Yes the Council has sent us some information but not the specification and details of the final accounts."

26. The complainant also said:

"I am not too sure what to make of the council's additional information on the final cost of Project R137...I wanted to know specifically what the contractor was asked to do and what was finally done as I understand that not all the work was completed due to some access problems. Also I wanted to know the actual verses the estimated cost for the project as we paid on the

estimated and if the work was not completed then it stands to reason that we the Lessees are due a refund.

The same applies to Project S161. We need to know what we have paid for. From June 2016 to May 2018 we paid £444.45 every month, a total of £10,666.76, again on estimates. Nearly 17 months later one would like to know what the actual cost is."

27. In light of the complainant's comments, the Commissioner contacted the Council to ask it about the *final* costings of both the R137 and S161 projects. The Council responded to say that it does not hold the information relating to the final costings.
28. The Council provided the Commissioner with a letter that it sent to the complainant in August 2019, stating that it expected the final account to be issued within the next six months. However, the Council has not confirmed that it has been issued yet.

The Commissioner's view

29. The Commissioner would like to explain that she is only able to make a decision on whether the Council held the information at the time of the request. Also, the terms of the FOIA only relate to the provision of information as it is recorded, regardless of its accuracy or validity.
30. As the Council has discovered further information within the scope of the request, the Commissioner is of the view that at the time of the request, it did hold some further information. However, this has been disclosed. In terms of the final costings, the Council did not hold this at the time of the request but expects to issue this before the end of the financial year.
31. Therefore the Commissioner's view is that the Council does not hold anything further that would fall within the scope of the request, made on 13 February 2019.

Section 10 of the FOIA – Timeliness of response

32. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
33. The complainant made the request on 13 February 2019. The Council has explained that it did not receive a request until 23 April 2019, which did not include the original request of 13 February 2019. The Council provided its response on 24 May 2019, but also released further information on 5 July 2019.

34. The Commissioner understands that there is some uncertainty about the date the request was made due to the initial request being directed to City West Homes. However, even if the full request was only received by the Council in May 2019, further information was released on 5 July 2019. In any case, this is much later than 20 working days after it received the request, the Commissioner finds that the Council is in breach of section 10 of the FOIA.

Right of appeal

35. 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@justice.gov.uk

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

36. 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.
37. 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

Phillip Angell
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