

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 17 April 2020

**Public Authority:** Buckinghamshire Council  
**Address:** The Gateway  
Gatehouse Road  
Aylesbury  
HP19 8FF

#### Decision (including any steps ordered)

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1. The complainant requested information from Aylesbury District Council ("the Council"), which now forms part of the new Buckinghamshire Council, about the date that a change to the council tax banding for a specific property was approved. The Council initially considered that the request was not a valid request for the purposes of the FOIA. Following the Commissioner's intervention, the Council revised its position and issued a response under the FOIA; its position was that the information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the requested information. However, by failing to inform the complainant that it did not hold the information within the statutory time for compliance, it breached section 10(1) of the FOIA.
3. The Commissioner does not require the Council to take any steps.

#### Request and response

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4. On 18 June 2019, the complainant wrote to the Council to request information of the following description:

*"I need to know the date at which the Council approved the V.O.A's recommendation to raise the band from D to E on the... property and, more especially, the date from which such recommendation was to become effective? Please might you advise me of the two dates in question?"*

5. On 1 July 2019, the Council responded and stated that the Valuation Office Agency ("VOA") had advised the Council that the council tax band on the relevant property must be increased from band D to band E on 25 November 2018, and that the council tax inspector amended the band on 25 November 2018.
6. On 5 July 2019, the complainant wrote again to the Council and stated that he had been advised by the VOA that the increase would take effect from the date the Council Tax List was next updated. He therefore clarified that he was seeking "*the date of the relevant Council Tax List update (not before 25 November 2018)*" and that "*an extract from the Minutes, authenticating the update, is to be preferred*". He also referred to the fact that he required the information under the FOIA.
7. On 22 July 2019, the Council responded. It stated it had received the Council Tax List on 25 November 2018 and the new rate "*would and was [sic] effective*" from that date.
8. On 25 July 2019, the complainant wrote to the Council as follows:  
  
*"It is agreed that the VOA up-rated this property w.e.f 25 November, 2018. However, the VOA clearly stated that this was to come into effect 'from the date the Council Tax List is next updated'. Thus, there must be a Council minute authorising Revenues and Benefits to put the VOA recommendations (not instructions) into operation. The date of the authorisation, minuted or otherwise recorded, is what I need to and to which I am entitled".*
9. The Council has explained to the Commissioner that it responded to this letter by telephone during August, when it explained to the complainant that there were no minutes.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 11 September 2019 to complain about the way his request for information had been handled. The Commissioner advised the Council that an investigation had been opened.
11. On 18 November 2019, the Council stated to the Commissioner that it did not consider the complainant's request was valid for the purposes of the FOIA.
12. On 7 February 2020, the Commissioner asked the Council to reconsider its handling of the request, particularly in view of the fact that the

complainant had specifically referred to the FOIA in his letter of 5 July 2019.

13. Specifically, the Commissioner considered that the first part of the request of 18 June 2019 ("*the date at which the Council approved the V.O.A's recommendation to raise the band from D to E*"), had not been adequately responded to under the legislation, despite the complainant having clarified, on 5 July 2019 and 25 July 2019, that he expected the approval, or authentication, to be recorded in Council minutes, or similar.
14. On 13 March 2020, the Council revised its position and considered the first part of the request of 18 June 2019 under the FOIA. It wrote to the complainant and advised him that the information he had requested was not held in recorded form. Specifically, it stated:

*"There are no minutes as such as it is quoted in legislation"*.
15. The complainant was dissatisfied with this. The Commissioner asked the Council to provide details of the searches it had carried out for information falling within the scope of the request. She also asked the Council to clarify the above response, asking what it was that was "*quoted in legislation*" and which legislation was being referred to.
16. The Commissioner added that an objective reading of the complainant's request of 18 June 2019 was that it included the date that any decision was taken to update the list; she therefore asked for further explanations of the Council's decisions and processes with regard to the relevant update, specifically asking the Council to cover why the Council did not, on this occasion, require any authorisation, or similar, that might have been recorded in minutes or mandated in writing.
17. On 31 March 2020, the Council issued a further response, which it provided both to the Commissioner and to the complainant. It explained that it had received "*instruction by way of electronic schedule*" from the Valuation Office on 26 November 2018 relating to the re-banding of the property from band D to band E; however, at that date, it had not been its practice to retain these schedules.
18. The Council explained that since February 2019, however, its practice has been to store such communications from the Valuation Office. It had therefore located a schedule relating to the re-rating of the property back from band E to band D, received on 29 July 2019, and provided this to the complainant in case it was helpful to him. It also offered further explanations of its procedures, which the Commissioner has considered further on in this notice.

19. The complainant remained dissatisfied with the Council's handling of his request. This notice covers whether the Council holds the information requested by the complainant, and its compliance with the statutory time limit to respond.

## Reasons for decision

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### Section 1(1) – is the information held?

20. 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 or her.*

21. In cases where there is a dispute over whether information is held, the Commissioner applies the civil test of the balance of probabilities in making her determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
22. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held, and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is held.
23. In this case, the complainant considered that the Council would be likely to hold the information he had requested. He has provided the Commissioner with a copy of a letter to him from the VOA, about the property in question, dated 18 November 2018, stating that the property was being re-banded from band D to band E. The letter states that "*the increase will not be backdated, but effective from the date the Council Tax List is next updated*".
24. The Commissioner understands that the complainant is aware of the date from which the update to the list took effect. However, he considered that the date that the update itself was agreed or actioned, and/or the date that the Council's Revenues and Benefits department was authorised to make the recommended change to the banding,

would be held by the Council. The Commissioner agrees with the complainant that, if that information was held by the Council, it would be within the scope of the complainant's request of 18 June 2019.

25. The Commissioner's remit is not to determine whether information should be held, but only whether, on the balance of probabilities, the requested information was held by the Council at the date of the request. She has considered the Council's explanations.
26. In its communication of 31 March 2020, the Council stated that, on receiving the schedule from the VOA on 26 November 2018, an inspector updated the property list accordingly, "... showing the increased band was to take effect from the day of the schedule, which was 25 November 2018". It issued any revised bills the following day (27 November 2019).
27. The Council explained that there was no requirement for it to have met for the purposes of agreeing whether to follow the instruction from the Listing Officer, and therefore no minutes, nor any other record of a meeting, were held.
28. Regarding the relevant legislation, the Council explained that:

*"... the Local Government Finance Act 1992 provides guidance on the roles of the Valuation Officer and the Local Authority in relation to the setting and amending of valuation bands for the purpose of Council Tax. The Listing Officer, who is responsible for keeping an up to date valuation list, is duty bound to inform the local authority where an error or amendment is required. On receiving this instruction, the billing authority will update their records."*
29. The Council explained that the relevant department received an instruction by way of electronic schedule on 26 November 2019, and that it was authorised, in law, to action it accordingly.
30. The complainant evidently expected the Council to hold evidence of the relevant date in recorded form. However, the Commissioner is satisfied in this case that, having carried out adequate and appropriately-targeted searches, the Council established that the relevant schedule received from the VAO (which she considers would be likely to fall within the scope of the request) had not been retained, since it is only from February 2019 that it has retained information of this type.
31. The Commissioner is also satisfied with the Council's explanations as to why no record of any meeting exists regarding the VAO's recommendation, or instruction, being actioned.

32. The Commissioner is satisfied that the searches carried out by the Council would have been likely to retrieve relevant information if it were held. She has therefore determined that, on the balance of probabilities, the Council was correct to state that it did not hold the requested information regarding *"the date at which the Council approved the V.O.A's recommendation to raise the band from D to E"*.

### **Section 10(1) – time for compliance**

33. As previously stated in this notice, section 1(1)(a) 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 of the description specified in the request"*.
34. Section 10(1) of the FOIA states that 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"*.
35. From the facts of this case, the Commissioner is satisfied that the Council did not comply with section 1(1) within the statutory time for compliance and therefore breached section 10(1).
36. Since it subsequently informed the complainant that the information was not held, she does not require the Council to take any steps.

### **Other matters**

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37. The Commissioner notes that, in this case, the Council failed to recognise that the complainant's request for information complied with the requirements of section 8 of the FOIA<sup>1</sup> and was, therefore, valid for the purposes of that Act. She would remind the Council of the need to comply with the procedural sections of the FOIA, going forward.
38. She also notes that, despite the Council stating that it had made efforts to clarify, over the telephone, what information the complainant was requesting, its own responses to him lacked clarity. While noting the Council's efforts to be of assistance to the complainant, she would remind the Council of the need to provide clear and consistent responses to requesters, in a timely manner.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2000/36/section/8>

## Right of appeal

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39. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. 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.
41. 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  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**