

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2020

Public Authority: The City of Wolverhampton Council
Address: Civic Centre
St Peter's Square
Wolverhampton
WV1 1SH

Decision (including any steps ordered)

1. The complainant has asked the City of Wolverhampton Council for a copy of the file which concerns the sale of a house to her parents in August 1988. Having first refused to comply with the complainant's request due to an on-going legal dispute, the Council subsequently confirmed to the complainant that neither the Council nor Wolverhampton Homes holds the requested information.
2. The Commissioner's decision is that the City of Wolverhampton Council has complied with the provision of section 1 of the FOIA by informing the complainant that it does not hold the information she has asked for.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 2 April 2020, the complainant asked her sister to forward the following request for information to the Council:

"Dear Madam,

I hope you are well and keeping safe.

Thank you for all the information we have requested under subject access but I would be grateful if you could do a further search for me for the information relating to our house deeds [at a specified address] with your sales department etc. If you could manage to action this as soon as possible that would be appreciated."

5. The request was submitted to the Council later the same day with the following accompanying information:

"My sister [the complainant] has asked me to forward you her request for FOI regarding the purchase of our house by my parents in August 1988, although the process originally began in 1985. It was purchased by our mother [name redacted]. The address is below. Should you require further information please do not hesitate to contact us."

6. On 3 April 2020, the Council wrote to the complainant asking her to clarify what information she is seeking.

7. On 24 April 2020, the complainant wrote to the Council to provide the following clarification of her request:

"We are seeking a copy of the whole file regarding the sale of our house to my parents please."

8. The Council responded to the complainant's request on 1 May 2020, advising her that it was unable to deal with her request due to an ongoing legal dispute, and that it had been advised by Wolverhampton Homes that any correspondence relating to them must now be directed via the complainant's solicitor to theirs.

9. On 16 August 2020, following a complaint received from the complainant, the Information Commissioner wrote to the Council about this request.

10. The Commissioner's letter noted that the request was originally submitted on 2 April, with clarification being provided to the Council on 24 April. The Commissioner also noted that the Council had refused to respond to the request on 1 May and that Council's refusal did not comply with the provisions of the FOIA.

11. On the basis that the complainant had advised the Council that she was not satisfied with Council's response, the Commissioner asked the Council to treat the complainant's correspondence of 1 May 2020 as a request for an internal review and to arrange for the review to be carried out and communicated to the complainant within 20 working days.

12. On 3 September 2020 the Council wrote to the complainant to inform her of its internal review decision. The Council's review stated:

"Upon reviewing the case I find that the Council should have provided further explanation and quoted the relevant exemption from within the Freedom of Information Act, that being S31(1)(c) at the same time that we initially replied.

However, following on from further investigation work I no longer find that this exemption applies. In trying to ascertain further facts in the case it has become evident that the Council no longer holds the information requested. In accordance with our retention policy all house sale files are retained for 13 years post the sale date. As the transaction was completed in 1988 the files would have been destroyed approximately in 2001. I have confirmed with the service area (Wolverhampton Homes) that the files requested are no longer held by Wolverhampton Homes.

Under the requirements of Section 1 of the Freedom of Information Act 2000 I can confirm that under our duty of Section 1(a) neither the Council nor Wolverhampton Homes holds the information requested."

Scope of the case

13. The complainant contacted the Commissioner on 4 June 2020 to complain about the way her request for information had been handled.
14. Having examined the correspondence relevant to this complaint, the Commissioner informed the complainant that the focus of her investigation would be to determine whether the City of Wolverhampton Council handled her request in accordance with the requirements of the FOIA, and specifically, whether the Council holds the information she asked for in her request of 2 April 2020 which was clarified on 24 April.

Reasons for decision

Section 1 of the FOIA

15. Section 1 of the FOIA states that

"(1) 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 sought to determine whether the Council holds the information which the complainant has asked for. To make this determination the Commissioner applies the civil test which requires her to consider the question in terms of the balance of probability. This is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.
17. The Commissioner has investigated whether the Council holds a copy of the file which concerned the sale of the complainant's house to her parents. She has done this by asking the Council questions about the searches it has made to locate the file and questions about its possible deletion/destruction.
18. The Council responded to the Commissioner's enquiry by noting that it has dealt with other complaints from this requestor involving the Information Commissioner's Office. These have concerned requests for information under the FOIA and subject access request under the Data Protection Act. Additionally, the Council has also dealt with other complaints raised by or about the complainant.
19. The Council told the Commissioner that the majority of the complainant's concerns relate to the boundary between her property and the adjacent property. The Council believes this issue has now been resolved.
20. In respect of the complainant's request for "a copy of the whole file regarding the sale of our house to my parents", the Council has confirmed to the Commissioner the position described in its internal review that no information is held.
21. The Council has made clear that the record in question was, in its entirety, a paper file created by the City of Wolverhampton Council at the point of the sale in 1988.
22. This file was held by the Council until approximately 2015. That date marked the end of the retention period for documents of this type following the completion of the sale. The file was then securely destroyed. The Commissioner notes the discrepancy in the dates provided for this action to the requestor in their letter of 3 September 2020 (see para 12) and to the Commissioner here in response to her enquiries.
23. The Council assures the Commissioner that at no point was the file transferred to an electronic format and therefore no electronic searches could be carried out.

24. The Council's housing stock is now managed by an Arm's Length Management Organisation called Wolverhampton Homes. This organisation began to use electronic records for recording property sales during 2015.
25. The Council has confirmed the deletion of the paper-based file with the Property Team at Wolverhampton Homes and the Councils Record Manager. This confirmation means that it was not considered necessary for the Council to carry out further searches.
26. The Commissioner notes that the complainant has made clear that she seeks 'a copy of the whole file' concerning her property.
27. The complainant has acknowledged that the Council may not hold the hardcopy of the file, but she asserts that 'they certainly have extracts of it in electronic file'. She points to the fact that the Council gave her a copy of the deeds to her property in July 2017, and also it has sent papers to the Land Registry regarding her house.
28. The Commissioner put the complainant's assertion to the Council.
29. The Council fully accepts that it provided the complainant with a copy of the deeds to her property in 2017. It says, '...this was not provided from any records that were held by Wolverhampton Homes, instead a copy was obtained from Land Registry and subsequently provided'.
30. In the Council's words, the complainant was given a copy of the deeds in good faith. It points out that the complainant is not a tenant of Wolverhampton Homes and the cost of acquiring the deeds from the Land Registry was not passed on.
31. The Council notes that the complainant submitted her request under the provisions of the Freedom of Information Act. It therefore points out that Wolverhampton Homes would have been entitled to rely on section 21 of the FOIA¹ to refuse to provide a copy of the deeds. It notes that the complainant could have obtained that document from the Land Registry herself at her own expense.

¹ Section 21 of the FOIA provides an exemption to disclosure where information is reasonably accessible to the applicant, otherwise than under section 1 of the FOIA, even though it is only accessible on payment.

32. The Council spoke with officers working in the Property Team at Wolverhampton Homes about its provision of the deeds to the complainant. Those officers confirmed that Wolverhampton Homes only obtains information from the Land Registry for its own purposes in respect of such historic cases because no other information would be held.
33. Wolverhampton Homes therefore confirms that it does not hold the information requested by the complainant and that the information provided to the complainant in 2017 was from the Land Registry and not from its own records.
34. The Commissioner has considered the Council's representations in this matter. She notes the discrepancy between the dates for the destruction of the relevant file given by the Council in its internal review response to the complainant and in its response to the Commissioner's enquiry. The Commissioner is minded to accept the internal review response as being the correct date when the file was likely destroyed as it more accurately reflects the destruction policy in place. Nonetheless, for the purposes of satisfying the section 1 analysis, the actual date of destruction is tangential to whether the file actually exists as the Commissioner is satisfied that the file has, in fact, been destroyed.
35. Aside from this discrepancy, the Commissioner finds the Council's representations to be credible and persuasive. The Commissioner's decision is therefore, on the balance of probability, the Council has complied with section 1 of the FOIA by informing the complainant that it does not hold the information she has asked for.
36. The Commissioner is satisfied that on the balance of probability, the Council does not hold information from the file relating to its sale of the complainant's property to her parents in 1988.
37. The Commissioner recognises that the Council is likely to hold information for its own purposes, not least about its many dealings with the complainant which do not fall within the scope of this request. The Commissioner notes that the Council has dealt with information requests made by the complainant under the FOIA and Data Protection Act and complaints made to the Local Government Ombudsman.

Right of appeal

38. 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

39. 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.
40. 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
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