

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 December 2020

**Public Authority:** Hinckley and Bosworth Borough Council

**Address:** Rugby Road  
Hinckley  
Leicestershire  
LE10 0FR

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to a property she has leased to the council. The council provided information however the complainant believes that further information must be held by it.
2. The Commissioner's decision is that, on a balance of probabilities, the council was correct to state that it holds no further information falling within the scope of the request. The Commissioner has, though, decided that the council did not comply with the requirements of section 10(1) in that it did not provide all of the information which it held which was not exempt to the complainant within 20 working days.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 6 August 2019 the complainant wrote to the council and requested information in the following terms:

*"Under the Freedom of Information Act, please could HBBC supply all information regarding [address redacted], from the last document you forwarded to the most recent. I do not require duplicates of previous items."*

5. On 14 August 2019 the council responded stating that it did not hold any of the relevant information, however it had contacted Charnwood Borough Council to obtain it and would respond in due course.
6. On 12th September 2019, the complainant contacted the council and said that it was in breach of the Freedom of Information Act as it had not responded to the request.
7. On 13th September 2019 the council disclosed an attachment to the complainant in response to her request. The complainant argues that this attachment contained: an empty pdf, a pdf of the email she had sent to the council on 12th September 2019, and a 3-page document of information. The complainant argued that this could not constitute all of the information falling within the scope of her request.
8. On 18 September 2019 the council responded to the further correspondence by stating that: *"In relation to your request for information relating to 102 Ashby Road, we have provided you with all the information that we can"*.
9. On 18 September 2019 the complainant requested that the council carry out an internal review of its response to her request.
10. Following the internal review, the council responded on 23 October 2019 and said no further information was held by it.

## Scope of the case

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11. The complainant contacted the Commissioner on 18 September 2019 to complain about the way her request for information had been handled.
12. The complaint initially related to wider issues than that considered here, including elements relating to the application of section 40(2) (personal data) and section 42 (information subject to legal professional privilege).

13. During the course of the Commissioner's investigations the Commissioner noted that some information had been supplied to her by the council which did not appear to have been disclosed to the complainant. The Commissioner therefore asked the council whether this was in error. The council confirmed that to be case, and a significant amount of further information was therefore disclosed to the complainant in August 2020.
14. Following this, in an email discussion with the complainant, the Commissioner clarified with the complainant that her main remaining issue was whether all of the information falling within the scope of the request, which is not subject to the two exemptions above, has been provided. The complainant specified the information which she considered should be held by the council which had not been disclosed in response to her request. The complainant therefore agreed that the scope of the Commissioner's investigation would be whether further information is held.
15. The complainant remains concerned that further information should be held which had not been disclosed, nor mentioned as being held by the council. She considers that this information would necessarily be held by the council if it had been acting in accordance with the terms of its lease for the property with her.

## **Reasons for decision**

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### Background to the case

16. The complainant is in a dispute with the council over damage caused to one of her properties which the council leases from her. She believes that the council has not acted in accordance with the terms required of it in the lease agreement, and that this led to the damage occurring to the property. She therefore requested all information held in relation to the property in order ascertain what supervision, inspections, and work on the property the council has carried out during the course of the lease.
17. Notably, the disclosed information did not include information such as inspection reports or invoices. The complainant has specified these types of documents as missing from the information which was provided to her. She argues that, under the terms of the lease, the council was under a duty to carry out regular property inspections to ensure that the property was being cared for appropriately.
18. The council previously argued that inspections were carried out by Charnwood District Council. The complainant however considers that the inspections which were carried out by Charnwood were not property

inspections, at last as she understood them as those that were required of Hinckley and Bosworth Council within the terms of the lease.

19. The council, however, argues that it has disclosed all of the information which it holds other than the information which it has exempted under section 42 and section 40(2).

### **Section 1(1)**

20. Section 1(1) of 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."*

21. In cases where a dispute arises over the extent of the recorded information that is 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 was not held, and any other reasons offered by the public authority to explain why the information is not held. She will take into account any reason why it is inherently likely or unlikely that the requested information was not held.
22. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities. This is in line with the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072)* in which it 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 clarified that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities.
23. It is important to note that 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.

24. It is also important to note that under the FOI Act, the council does not need to specifically confirm whether it has, or has not, been acting in accordance with the terms of the lease. If information is held which demonstrates that it has been carrying out the relevant inspections, then the council is under a duty to consider these for disclosure. However, if the council holds no records demonstrating that inspections did take place, or no invoices for work carried out, then all that is required under the Act is that the council confirms that no information is held. It does not need to provide any specific explanation as to why that information is not held, although doing so may obviously aid its argument that no further information is held.
25. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority (and/or the complainant) which is relevant to her determination.
26. During the course of her investigation, the Commissioner asked the council to describe the searches it carried out for information falling within the scope of the request, and the search terms used. She also asked other questions, as is her usual practice, relating to how it established whether or not it held further information falling within the scope of the request.
27. The council described the significant searches which it had carried out in trying to locate relevant information. It also described the key terms which it had used when searching its electronic records management systems. It also confirmed that it had carried out searches within the range of September 2018 (the date of the complainant's last FOI request) to 31 December 2019.
28. It said that it had carried out searches of its database, 'Uniform' as this search would capture all information held within that database system relevant to the property address.
29. It also said that it had also carried out a search of its 'Orchard Housing Management System' as all repairs jobs are electronically logged here and if an officer needs to add notes to a job, they have the option to do that within this system. It said that it disclosed these in its initial response to the request. It clarified that it opened the file for the relevant property address and exported the repair history from the system. It confirmed that Orchard is accessible by the Housing team and isn't held on personal computers.

30. It also said that searches were carried out on its 'Anite' database system, which is used by different council departments, as this searches every record relating to the property address on a networked resource.
31. It confirmed that it had carried out searches of its electronic folders and holding files and documents shared by the Council's Private Sector Housing Team. This is the place where all staff members within the Private Sector Housing Team have information stored relating to the property. All located information was disclosed.
32. It also confirmed that it carried out a search of all paper records kept within shared files which had the relevant address on the front cover. This is a local paper record held within a filing cabinet in the relevant Private Sector Housing team hub. It confirmed that this search would capture all information contained within this paper folder that has been received, made, or that information has been gathered from. All items in the paper folder are not dated and it cannot be determined when they were received. No records were found, however.
33. It also confirmed that it had searched the paper records in the relevant officer's personal filing system, including his own notebook. No relevant records were found.
34. It said that the complainant had advised originally that she only required the repair history and any notes that were associated with work to the shower. However, the whole housing department had now been asked to provide all emails/correspondence on the matter and it had provided all notes for all jobs.
35. It said that it is not aware of any information being deleted, and clarified that information held within its Orchard Housing Management System is not able to be deleted.
36. It said that it does not consider that it has a business purpose for retaining any of the information which the complainant believes has not been disclosed to her, nor does it consider that there is any statutory requirement for it to retain that type of information.
37. Following the disclosure of further information to the complainant in August 2020 the complainant highlighted that she specifically considered that the council should hold inspection reports relating to the state of repair of the property. She also considered that it should hold invoices for work carried out on the property. The Commissioner therefore wrote to the council and asked it to provide a specific and definitive response as to whether either of these two types of documents are held by it in relation to the relevant property. The council responded, on 5 November 2020, confirming that no further information had been located.

### Conclusions

38. In reaching her decision the Commissioner has considered the arguments submitted by both the council and the complainant. She notes the complainant's argument that inspection reports should be held by the council if it has been acting in accordance with the terms with its lease with the complainant. In the confirmation by the council that no inspection reports are held, the complainant may feel that the council has not abided by the terms of the lease. This is not, however, a matter for the Commissioner.
39. The question for the Commissioner to consider is not whether information 'should' be held, but whether relevant information 'is' held. Given the council's responses, the Commissioner considers that the council has provided a description of having carried out adequate searches in appropriate places to determine whether any further information is held falling within the scope of the complainant's request.
40. Given the description of the searches carried out by the council, and in the absence of evidence to the contrary, the Commissioner considers that there is no evidence that further information is held falling within the scope of the complainant's request for information.
41. This being the case, the Commissioner's decision is that, on a balance of probabilities, no further information is held by the council falling within the scope of the complainant's requests for information.

### **Section 10(1)**

42. Section 10(1) provides that –

*"Subject to subsections (2) and (3), 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."*

43. The complainant submitted her request for information on 6 August 2019. The council supplied some information to the Commissioner in response to her enquiries which it had not provided to the complainant in response to her request for information. It appears that this was an error on the council's behalf, as when asked whether this information had been disclosed it in response to the request it subsequently disclosed the further information to the complainant on 12 August 2020.
44. The council did not therefore comply with the requirements of section 10(1) in that it did not provide all of the information, which was not exempt, to the complainant within 20 working days.



## Right of appeal

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45. 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)

46. 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.

47. 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**  
**Head of FoI Casework and Appeals**  
**Information Commissioner's Office**  
**Wycliffe House**  
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