

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 January 2021

Public Authority: Dorset Council

Address: County Hall
Colliton Park
Dorchester
Dorset
DT1 1XJ

Decision (including any steps ordered)

1. The complainant has requested information relating to specific properties. Dorset Council disclosed some information and confirmed that further information was not held.
2. The Commissioner's decision is that Dorset Council failed to disclose information within the statutory time limit and breached section 10(1) but that it disclosed all the relevant information it holds and complied with section 1.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 21 August 2019 the complainant wrote to Dorset Council (the "council") and requested the following information:

"...we now request all the information the council hold on ourselves [redacted] and on the properties [redacted] Weymouth"
5. The council responded on 6 September 2019. It stated that it held no additional information beyond that previously provided to the complainant's solicitor.
6. Following an internal review the council wrote to the complainant on 27 May 2020. The council disclosed additional information to the complainant.

Scope of the case

7. On 15 June 2020 the Commissioner confirmed with the complainant that their case had been accepted for investigation.
8. The Commissioner confirmed with the complainant that her investigation would consider whether the council had disclosed all the relevant information it holds. The Commissioner is mindful that the request, at least in part, is likely to identify the complainant's own personal data. The complainant has been invited by the council to pursue this element of their request under the subject access request provisions of the Data Protection Act 2018. Those parts of the request that relate to the complainant's own personal data have been excluded from the scope of this investigation and decision notice.

Reasons for decision

Section 1 – duty to provide information

9. 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."

10. In this case the council has stated that it has disclosed all the relevant information falling within the scope of the request that it holds. The complainant disputes this.
11. In scenarios where there is some dispute between a public authority and a complainant about the amount of information that may be held, following the lead of a number of First-tier Tribunal (Information Rights) decisions, the Commissioner applies the civil standard of the balance of probabilities.
12. For clarity, the Commissioner is not expected to prove categorically whether the information is held; she is only required to make a judgement whether on the balance of probabilities a public authority holds any information within the scope of the request.
13. In order to make this judgement the Commissioner approached the council with a number of questions she routinely asks in such scenarios. The questions and a summary of the council's response are set out below.

What searches have been carried out to check no information was held within the scope of the request and why would these searches have been likely to retrieve any relevant information?

14. The council confirmed that searches were carried out in its Assets and Property Department, the Planning Department, and the Legal Department.
15. The council explained that, when the request was first received, staff in Legal and Planning were consulted and asked to check the information they hold. It explained that it was decided that all relevant information had already been provided to the complainant's solicitors and was therefore exempt under section 21 of the FOIA.
16. The council explained that, as part of the Internal Review, a meeting was held between the complainant and various subject matter experts to identify whether the council held further information that was not reasonably accessible by other means. The council explained that it had inherited information from Weymouth & Portland Borough Council ("WPBC") on 1 April 2019, who previously owned and managed the buildings concerned. The council confirmed that the conclusion of that meeting was that the only information outstanding and not reasonably accessible to the complainant was in relation to:

"works undertaken on the building by WPBC employees and officers from 1985-2019".

17. The council confirmed that the information identified above was provided to the complainant as part of the internal review.

Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.

18. The council explained that, as part of the Internal Review, Officers working in the following departments were consulted:

- Assets & Infrastructure
- Planning
- Legal

19. The council confirmed that, as a result of those consultations, the following assets were searched to locate any information held about "works undertaken on the building by WPBC employees and officers from 1985-2019":

- The property maintenance database used by the former WPBC was searched by selecting the relevant properties from an index of former WPBC owned assets stored in the system. Searching this system was an effective way of locating relevant information because it details maintenance history of the council's property assets.
- The network drive used by the former WPBC Assets & Infrastructure team was searched for relevant documents. This drive would have been used by Assets & Infrastructure for general storage of electronic files before SharePoint was implemented.
- A SharePoint site used by Assets & Infrastructure. This would hold details on any major structural works carried out, contractor callouts and certificates.
- Archived paper records in an offsite storage facility. This was intended to identify older records that predated the former WPBCs use of electronic document management systems.

If information was held would it be held as manual or electronic records?

20. The council confirmed that both manual and electronic records were searched, although due to its retention policies, manual records would be unlikely to still exist in relation to building works that formed the focus of the Internal Review.

What does the council's formal records management policy say about the retention and deletion of records of this type?

21. The council confirmed that property maintenance records are generally only retained for a period of 6 years

Is there a business purpose for which the requested information should be held? If so what is this purpose?

22. The council confirmed that it needs to keep records of works undertaken to council properties to ensure:

- it can rely on evidence of works undertaken in the event a fault or accident occurs;
- it can effectively schedule maintenance works; and
- it can evidence the meeting of certain legal obligations (e.g. with regard to asbestos works).

23. In addition to the standard questions set out above, the Commissioner also directed the council to address some specific queries raised by the complainant.

24. The complainant also alleged that the council might have concealed information with the intent of blocking their access to it under the FOIA. In effect, the complainant suggested that the council may have committed an offence under section 77 of the FOIA.

25. Section 77(1) of the FOIA states:

“(1)Where—

(a)a request for information has been made to a public authority, and

(b)under section 1 of this Act... the applicant would have been entitled (subject to payment of any fee) to communication of any information in accordance with that section,

any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled.”

26. In keeping with her standard operating procedure the Commissioner referred the complainant's allegations to her Criminal Investigations Team which found that there was no evidence to suggest a section 77 offence had been committed.

Conclusions

27. Having considered the available evidence, including the complainant's concerns and the council's responses to these, the Commissioner is satisfied that, on the balance of probabilities, the council has disclosed all the relevant information that it holds and complied with section 1 of the FOIA.

Section 10(1) – Time For Compliance

28. Section 10(1) of the FOIA states:

“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.”

29. In this case the complainant submitted their request on 21 August 2019. The council disclosed information to the complainant following its internal review of 27 May 2020.
30. The Commissioner finds that the council failed to disclose all the relevant information it holds within the statutory time limit and that it breached section 10(1) of the FOIA. As all the information held has been disclosed the Commissioner does not require the council to take any steps.

Other matters

31. Although they do not form part of this decision notice the Commissioner wishes to note the following matters of concern.

Section 45 Code of Practice – Internal Review

32. The code of practice issued under section 45 (the “code”) sets out the recommended practice for authorities dealing with requests under the FOIA. In relation to internal reviews, paragraph 5.4 of the code states:

“Requests for internal review should be acknowledged and the applicant informed of the target date for responding. This should normally be within 20 working days of receipt.”

33. Paragraph 5.5 states:

“If an internal review is complex, requires consultation with third parties or the relevant information is of a high volume, public authorities may need longer than 20 working days to consider the issues and respond. In these instances, the public authority should inform the applicant and provide a reasonable target date by which they will be able to respond to the internal review. It is best practice for this to be no more than an additional 20 working days, although there will sometimes be legitimate reasons why a longer extension is needed.”

34. In this case the complainant requested an internal review on 8 September 2019 and the council issued its review response on 27 May 2020. The Commissioner considers that the council’s practice in this case did not conform to the recommendations of the code. She expects that, in its future handling of requests, the council will follow the recommendations of the code and have regard for her guidance as to best practice.

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

Andrew White
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