

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 October 2021

**Public Authority:** Stoke-on-Trent City Council  
**Address:** Civic Centre  
Glebe Street  
Stoke-on-Trent  
ST4 1HH

### Decision (including any steps ordered)

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1. The complainant has requested information about a fire door replacement programme from Stoke-on-Trent City Council (the "Council").
2. The Council provided some information to the complainant, late, and the Commissioner finds that it breached section 10(1) (Time for compliance) by failing to comply with section 1(1)(a) (General right of access) within the statutory time period. The complainant was of the opinion that more information should be available, however, the Commissioner's decision is that, on the civil standard of the balance of probabilities, the Council has provided all the information that it holds. No steps are required.

### Background

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3. The Council has explained:

*"Kier Stoke was a Joint Venture between Kier and Stoke-on-Trent City Council that delivered repairs and maintenance services to the council's housing stock. The Joint Venture with Kier ended on 02 February 2018 as the council established Unitas Stoke-on-Trent Ltd which took over the delivery of the repairs services from 03 February 2018. Unitas is a private limited company that is wholly owned by the council, with the council being the sole shareholder".*

4. According to Companies House<sup>1</sup>, the Commissioner understands that Kier Stoke provided housing maintenance services on behalf of the Council under a partnering agreement which ended on 3 February 2018. Kier Stoke has ceased trading.

## Request and response

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5. Following earlier correspondence on the same subject matter, on 12 February 2019, the complainant wrote to the Council and requested information in the following terms:

*"... I will summarise this new request as follows:*

- i) I have been given to understand that £1.9m was made available to the City Council for the fire-door replacement programme. Less than £800,000 of expenditure on this programme so far has been acknowledged by the Council what happened to the rest of the £1.9m?*
  - ii) Why, when purchasing the replacement fire-doors from Kier, did the Council accept their valuation at over £400 each, given the manifestly poor quality of the doors?*
  - iii) Why have you omitted to test every new door following the failure of the one tested by BRE in 2017 to reach required standards? Is Councillor [name removed]'s dismissal of this failure as a 'one-off' grounded in logic or, perhaps, in some expert knowledge of the doors possessed exclusively by him?*
  - iv) Regarding Cllr [name removed], is it appropriate that he should be a member of the board of Kier-Stoke and its successor Unitas, while simultaneously a Council cabinet member?*
  - v) Finally, in the post-Grenfell context, does the Council feel its handling of the whole fire-door replacement programme has been satisfactory?"*
6. On 20 March 2019, the Council raised a query with the complainant. It asked where he had sourced the figures in part (i) of the request.
  7. On 24 April 2019, the complainant responded. He advised that the overall figure was "generally known from around 2011 onwards". He added:

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<sup>1</sup> <https://find-and-update.company-information.service.gov.uk/company/06391459/filing-history>

*"If, however, you dispute this figure, then perhaps you will let me know exactly what was the budget set aside for the door replacement programme. I would like documentary evidence of the exact amount, as you will appreciate that this is an instance where transparency is required".*

8. At this point, the complainant further asked the Council:

*"... perhaps you could obtain from Kier Stoke details of the supplier, the Model, and the price paid by Kier Stoke for these new doors. And then forward to me their response".*

(He also made a new information request about expenditure by the Council on consultants' fees; the Commissioner advised him she would not be considering that request in this investigation).

9. On 24 October 2019, the Council responded. It advised that it was unable to provide any further clarification about the figures referred to at part (i) of the request. In respect of the remaining parts it advised that these were not valid requests under the terms of the FOIA as they were not requests for recorded information.
10. On 22 December 2019, the complainant requested an internal review.
11. The Council sent the outcome of its internal review on 28 January 2020. It maintained its original position.
12. On 29 March 2021, during the course of the Commissioner's investigation and in direct response to her enquiries (reproduced in bold below), the Council disclosed some related information to the complainant. He was advised as follows:

***"Does the Council hold any information about the costs / quality of the fire doors? & Do you hold any information about the testing of the fire doors which may assist the complainant?"***

*The council has considered these two questions together, as the quality of the doors is closely related to the testing of them. Please find attached a copy of the information that has been located by the council's finance department. This shows the budget and spend from 2016-17 to 2019-20 for fire safety, however this is the spend for all fire safety and not just the fire doors. Also approval may have been given to spend more on fire safety works but the budget would not have been changed on the council system in the first year. As we cannot split out the spend that was specifically for the doors only, please find attached a spreadsheet containing costs of fire doors for the 11 high rise flats. This is a total of 1,245 fire doors at a cost of £673,035.98. You can see within the spreadsheet that the unit cost for each door type is:*

- FD30 apartment entrance door/frame - £415.52
- Lobby door/frame - £826.54

***Do you hold any information about Councillors and potential conflicts of interest?***

*Please find information relating to Councillor [name removed]'s declaration of interests and declaration at meetings within the two links provided below:*

*Declaration of interests: [link removed]*

*Declaration at meetings: [link removed]*

***Are there any reports about the fire-door replacement programme which may hold relevant information?***

*Having contacted Unitas, (Keir Stoke no longer exists), the Council has located three reports in connection with the fire-door replacement programme. They are attached above, and are as follows:*

- BRE report (2013)
- Faithful and Gould report (2015)
- BRE report (2017)

*The council's democratic services have also searched for information that may be held in connection with this request, but no information relevant to its scope was located".*

(Some names and addresses were withheld from the disclosed information which have not been disputed by the complainant).

13. On 18 April 2021, following the above disclosure, the complainant advised the Commissioner:

*"I have to say that I am not entirely satisfied that they have answered my questions.*

*Specifically, the actual cost of each door. The Council asserted in 2017 that all doors fitted in the tower blocks are recorded in its asset management register and can be traced back to the original manufacturer and supplier. So surely this information, along with the price paid for each door, should be available.*

*Four of the five documents have previously been sent to me by the Council. The only document I had not previously seen is the 'Fire Safety Spend'. I find this too unspecific - 'works to buildings' is vague - and too limited by its chronology. That is, the new doors were fitted before 2013, but the document commences in 2016. Also, there is no*

*context - it is not clear which department produced the document, or which officers worked on it. It lacks authenticity".*

14. On 19 April 2021, the Commissioner advised him she would:

*"... ask whether or not the 'fire safety spend' figures are available for any earlier dates ... [and] whether or not the costs of each door are recorded in the asset management register.*

*Regarding 'authenticity', you were advised that the figures were located by the council's finance department. I would not expect the Council to provide the names of whoever produced the data.*

*... If there is anything else which you think I have not covered please will you let me know as soon as possible".*

15. On 12 May 2021, the Council again wrote to the complainant. It advised him:

*"... We can confirm that the asset register referred to in the response is a technical record, and it contains a unique door identifier that links to a sign-off record, not a record relating to costs. The register details the type, make, sizes and ratings, as appropriate, of installed products; along with dimensions and locations of fittings used and any other key details that may affect future maintenance, or replacements. Therefore as mentioned already, the register is not concerned with unit or overall costs. Such costs would be established at the point any future works or replacement is required.*

*...*

*Pre 2013 actual costs / payments are not available as was established through our extensive searches. This is consistent with the Council's responses provided to you in approximately 2018. We have provided the cost information that we hold, which is the latest years overall budget spends (2016/17 – 2019/20). We also reference a previous response, where we included an indicative per-door cost; but also an explanation as to why this is a 'supply' or budget cost of a door and not the overall 'installed-cost' to install each of the doors.*

*Unitas and the Council are of the opinion that efforts have now been exhausted in order to determine and locate whether the requested 'earlier' information is held".*

16. On 23 May 2021, the complainant wrote to the Council saying:

*"Regarding the asset management register, the Council stated to me in August 2017 that 'all fire doors are recorded within our asset management register and can be traced back to the original manufacturer, supplier and installer, including the operative and date*

*fitted, noting any repairs required and materials used.' Your description of the register is not consistent with this.*

*Regarding my request for earlier figures, I need more precision on your two references: firstly the 'responses provided ... in approximately 2018'; and secondly the 'previous response' apparently including an 'indicative per-door cost' and an explanation as to why this is a "supply" or budget cost of a door and not the overall "installed-cost" to install each of the doors'.*

*It would obviously be helpful if you could attach copies of the relevant letters in a format which I can access. It would also be helpful if you could explain the legal basis for the unavailability of 'pre-2013 actual costs/payments'".*

17. On 17 June 2021, the Council responded. Regarding the asset register it advised the complainant:

*"Whilst the description is not word-for-word the same as that provided in 2017, which you have quoted above, it is clear from the two descriptions that they refer to the same register. They are not, in our view, inconsistent –the most recent description goes further in what it details about the register in an attempt to respond fully to your query to the Council".*

18. Regarding the letters referred to it said:

*"Please can you confirm which letters you are not able to access. Please confirm the dates/times of the emails when we provided you with these, so that we can establish which they were, and look to providing you with these in an appropriate format that you can view, sorry for any inconvenience caused".*

19. Regarding the unavailability of some of the data it explained:

*"The Council can confirm that the pre-2013 actual costs/payment information, falls under the definition of 'finance/expenditure/capital works information', and this information has exceeded its retention period of six years and therefore the Council is no longer required to retain such information. To concur with this, this information has not been located in the course of dealing with your enquiries into this matter, as has been explained previously".*

20. On 17 June 2021, the complainant responded to the Council saying:

*"The inconsistency to which I referred relates to the 'original manufacturer and supplier' of the fire doors, to which your authority asserted the fire doors can be traced back. Your definition of the register omits this. It is possible, given the wording of the original*

*communication, that this information is not actually included in the register, but is available elsewhere. So, for example, this information might be partly included in the register - that is, you use the word 'make' rather than 'manufacturer' - and partly elsewhere. In which case, where is the information regarding the original supplier of the doors recorded?*

*Regarding my request for more precision, I was referring to your email of 12 May where you referred to the Council's responses to me in 'approximately 2018'. I have gone through my papers and cannot find any responses on this issue, namely the unavailability of 'pre-2013 actual costs payments'. My other query arising from your 12 May email is about the 'previous response' to which you refer. This response apparently included 'an indicative per-door cost; but also an explanation as to why this is a "supply" or budget cost of a door and not the overall "installed-cost" to install each of the doors'. It would help if you could specify the date of this response, so that I can be certain that I have received it and that it contains this information".*

*Finally, regarding my request for a legal explanation of the 'retention period of six years' to which you refer. I believe it is reasonable that you should provide this explanation, given that my concern is clearly with the quality and costs of fire doors which have been officially deemed unsatisfactory".*

21. On 28 June 2021, the Commissioner wrote to the complainant. She advised him that she could only consider the wording of this particular request and not any subsequent enquiries. She asked whether he would consider withdrawing this complaint as his request was 'drifting' from its original wording.
22. On 3 July 2021 he responded. He refused to withdraw his complaint and advised as follows:

*"The relevance of the asset management register is that I was informed by the Council in 2017 that it provided information about the replacement fire-doors. In the same communication they stated that each fire door can be traced back to the original supplier. I have made it clear to them since December 2017 that I would like to know the price paid by Kier-Stoke (their repair and maintenance company) for these doors, and to which supplier it was paid. If one accepts the Council's assertion that cost is not included in this register, it would nevertheless be helpful to know who supplied them. Hence my question; if the supplier is recorded information (as they have stated), where is this information recorded.*

*As for this request not falling within your scope, I would remind you that on 8 March this year I responded to your email on this subject*

*stating that I believe the Council should be required to provide the actual price paid initially for the replacement doors, and to which supplier they were paid - that is, they should respond to the request I made in my letter of 24 April 2019, which you have acknowledged. I had emphasised this in my original letter to the ICO dated 12 March 2020, where I stated that the second issue ... is how much Kier Stoke actually paid for the replacement front doors ... and from which supplier or manufacturer they bought them. In my letter of 29 January 2021 to ICO ... I reiterated that I had been trying to obtain clear information from the City Council on the budget allocated for the door replacement programme; and the actual prices paid for the doors themselves, preferably verified by receipted invoices.*

*As for the request for recorded information on the budget and spending on the project, my reaction is one of surprise that a large local authority apparently does not hold financial records for projects undertaken over six years ago. Hence my question as to whether there is any legal basis for this. For example, does a Council have a legal obligation to produce recorded financial information only for the previous six years? Or, does the law require Councils to erase such data after six years? Obviously if such is the case, and I had been made aware of it at an earlier stage, I need not have made this request for information”.*

23. In response the Commissioner advised him:

*“The asset management register was not part of your original request of 12 February 2019. The Council has further engaged with you on this matter but it is outside the scope of my investigation. In any event, you have been advised that costs are not included in the register.*

*Kier Stoke is not a public authority so does not have to deal with FOIA requests\*. The Council can also not be required to ask Kier Stoke for information, they only have to provide what they already hold (unless it is exempt from disclosure).*

*... I doubt that the Council will know what Kier Stoke paid for the doors or where they purchased the doors from. We cannot require them to ask Kier Stoke for this information. However, if they did hold this information then it is something which can be considered for disclosure”.*

(\*At this point, the Council’s relationship with Kier Stoke, and whether information held by Kier Stoke could possibly have been held on behalf of the Council, was not clear to the Commissioner. In any event, Kier Stoke was no longer providing its services to the Council and had ceased

trading prior to this request being made so it could not have been contacted).

24. Regarding his final point she advised:

*"This is something which is new [sic] request and I cannot add it in to my investigation. It is a request which the Council will need to deal with separately. If they have a records management policy covering this type of information then I would expect them to provide this to you (I understand that financial information is generally required to be kept for 6 years plus the current year). The Council is not obliged to answer your questions, only to provide recorded information".*

25. On 19 July 2021, the complainant wrote to the Commissioner advising:

*"It is true that the asset management register was not specifically mentioned in my request of 12 February 2019. But the register per se was not intended to be the focus; its relevance is that the Council have asserted that it contains information about the doors, and in the same communication, that each door can be traced back to its original supplier. Therefore, the original supplier is recorded information - recorded, that is, either in the register or elsewhere..."*

*On your second point, where you doubt that the Council will know what Kier Stoke paid for the doors or where they purchased them from:*

*Kier Stoke at the time were based in a building which also housed the Council's Housing Assets Team. The company was a 'joint venture' with Stoke City Council... The employees of Kier Stoke became employees of Unitas Stoke-on-Trent in 2018 when the ten-year joint venture between the former and Stoke City Council ended. Unitas Stoke-on-Trent are based in the Civic Centre, Stoke, as are Stoke City Council.*

*It is possible that Stoke Council did not know what Kier Stoke paid for the doors and to whom. But I believe that they ought to be asked if they hold or did hold this information; particularly in view of their acceptance of Kier Stoke's valuation of over £400 for each door.*

*Finally, my 'new request' regarding the apparent 'six-year rule'; the period which you understand financial information is required to be kept for plus the current year.*

*I only became aware of this 'rule' after receiving one of the Council's replies this year. Given that I have been attempting to get financial information from them since 2017, it seems very odd that they made no mention of this 'rule' until four years later. They have certainly not provided to me a records management policy relating to this type of*

*information. I would certainly expect to receive, alongside this, some indication of its legal basis. But as things stand, your comment taken in conjunction with those of the Council leaves things unclear”.*

26. At her request, on 13 August 2021, the Council provided the Commissioner with a sample from one of the asset registers. This included some details which she considered may actually fall within the scope of the request so she asked:

*“Part of my investigation includes the request for “original manufacturer and supplier” of the doors which I would suggest can be found in the asset registers. Whilst the information seems to be made up of many different components as there are so many elements to the doors, nevertheless that information should be considered for disclosure”.*

27. As a result, the Council disclosed relevant information to the complainant from the asset registers. The Commissioner therefore considers that any make / model information held about the fire doors has now been provided. Suppliers / costs were not recorded.
28. The complainant continued to liaise and make further enquiries of the Council throughout the Commissioner’s investigation which has resulted in delays to the investigation.

## **Scope of the case**

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29. The complainant contacted the Commissioner on 9 March 2020 to complain about the way his request for information had been handled. He said:

*“Stoke-on-Trent City Council have refused to give the exact budget for the fire door replacement programme for their tower blocks of flats and how all of this money was actually spent. The programme commenced in 2011. They have also refused to state from which company or individual Kier Stoke (a company in partnership with the Council) obtained the doors which were fitted, and how much Kier Stoke paid for them. Kier Stoke's Directors at the time included at least one Stoke City Councillor. Despite the Council accepting Kier Stoke's valuation of over £400 each, the doors proved unsatisfactory, with the one tested by BRE Global in 2017 failing to reach required standards. A budget of £1.9m for the project was widely quoted at the start of the programme, and subsequently. The Council have refused to confirm or deny this amount and to give any alternative figure”.*

30. He advised that in order to resolve his complaint the Council:

*"... could state the exact amount of money set aside for the door replacement programme, how it was spent, from whom Kier Stoke obtained the replacement doors which they then supplied to the Council, and how much Kier Stoke paid for these doors".*

31. There were subsequent delays caused by COVID-19 and impracticalities around the submission of the necessary documentation by the complainant and the temporary closure of the Commissioner's office. His complaint was therefore put 'on hold' until such time as these could be addressed.
32. On 4 October 2021, following further correspondence, the complainant provided the Commissioner with his remaining grounds of complaint which can be summarised as follows:
  - Whether the Council holds the actual budget for the tower block fire-door replacement programme
  - Whether the Council holds the name of the supplier(s) and/or the price paid by Kier Stoke for the replacement doors
33. Any other issues raised by the complainant are outside of the scope of this request and have not been considered.
34. In light of his original grounds of complaint, and the correspondence as shown above, the Commissioner will consider below whether the Council holds any further information regarding the budget set aside for the door replacement programme, and any details regarding the original supplier and/or price paid by Kier Stoke for the fire doors.
35. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

## **Reasons for decision**

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### **Section 1 – General right of access** **Section 10 - Time for compliance**

36. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it

holds that information and, if so, to have that information communicated to them.

37. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
38. The complainant did not receive notification that the Council held the make/model of the fire doors until 23 August 2021. The Commissioner therefore finds that the Council has breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.
39. In this case, the complainant also suspects that the Council holds information from which it could answer the request. The Council's position is that it does not.
40. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
41. 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 not held. 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 proof of the balance of probabilities.
42. Furthermore, the FOIA does not provide an obligation on a public authority to create information, provide explanations or to put thoughts into recorded form in order to respond to a request.
43. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the Council holds any further recorded information within the scope of the request. Accordingly, she asked the Council to explain what enquiries it had made in order to reach the view that it did not hold the information.
44. Regarding the budget costs the complainant has argued:

*"My query had been about the original budget set aside for the programme back in 2011. As I have explained, £1.9m was the figure*

*generally quoted at the time. I would have thought that the correct figure would be recorded, that it must surely be compulsory to cost such a major programme in advance. Indeed this practice seems to be acknowledged by the IRT [Information Rights Team]'s email to me of 12 May this year [2021], when they point out that 'costs would be established at the point any future works or replacement is required'".*

45. He also explained that in June 2017 he had written to the Council's Director of Property Services and asked for the overall cost of the door replacement programme. In August 2017, he was advised that:

*"The door replacement programme was completed over a number of years, and alongside a number of other fire protection measures. As such it is not recorded as a separate item of spending in our Fire Safety works programme".*

46. On 29 March 2021, he was provided with a spreadsheet (and other budgetary information) which contained the actual cost of doors along with the following explanation:

*"Please find attached a copy of the information that has been located by the council's finance department. This shows the budget and spend from 2016-17 to 2019-20 for fire safety, however this is the spend for all fire safety and not just the fire doors. Also approval may have been given to spend more on fire safety works but the budget would not have been changed on the council system in the first year.*

*As we cannot split out the spend that was specifically for the doors only, please find attached a spreadsheet containing costs of fire doors for the 11 high rise flats. This is a total of 1,245 fire doors at a cost of £673,035.98".*

47. The complainant seems to consider that this latter response contradicts the earlier one from August 2017, ie that there is a budget for the fire-door replacement programme. However, the Commissioner considers the latter response to evidence that the Council holds no actual budget just for the "door replacement programme" *per se*. However, the Council has been able to itemise the actual costs of the doors to itself and, to try to assist the complainant, it has provided them to him. This is not the same as the Council having a specific budget for a fire-door replacement programme.
48. The complainant was also dissatisfied with the dates of this information, saying that the figures provided only dated from 2016. This was put to the Council who explained:

*"Pre 2013 actual costs / payments are not available as was established through our extensive searches ... We have provided the*

*cost information that we hold, which is the latest years overall budget spends (2016/17 – 2019/20)".*

49. In correspondence with the complainant it further explained:

*"The Council can confirm that the pre-2013 actual costs/payment information, falls under the definition of 'finance/expenditure/capital works information', and this information has exceeded its retention period of six years and therefore the Council is no longer required to retain such information. To concur with this, this information has not been located in the course of dealing with your enquiries into this matter ...".*

50. The complainant was dissatisfied with this explanation and argued:

*"... they introduced the 'six-year rule' only this year, without legal explanation. Six years back from 2017 however, when I first asked about the original budget, would presumably have covered the information I had requested".*

51. The Commissioner is unable to comment regarding his earlier 2017 information request, she is only able to consider this particular one. Regarding this request, the cost paid by the Council for the doors was not what he has specifically requested, albeit the request has 'drifted' down that road during the ongoing correspondence. What was requested, and what is therefore being considered in this investigation, was the budget for the "door replacement programme", which the Council advises is not held as it is part of the overall fire safety budget, as well as the cost paid by Kier Stoke for the doors from its supplier/s.

52. The Council advised the complainant in 2017 that the overall cost of the door replacement programme was not a separate budget, which reflects the current position. The Commissioner is unaware as to whether or not the complainant requested the cost of the doors to Kier Stoke back in 2017 as that has not been within the remit of this complaint. However, whether the information is held in respect of this current request has been considered here and the Council maintains that this is not held. It is further noted that any relationship the Council had with Kier Stoke no longer existed at the time of this request, the related services having passed to Unitas.

53. In his correspondence with the Council, the complainant also argued that:

*"The Council asserted in 2017 that all doors fitted in the tower blocks are recorded in its asset management register and can be traced back to the original manufacturer and supplier. So surely this information, along with the price paid for each door, should be available".*

54. The Commissioner queried this and the Council responded to her saying:

*"We can confirm that the asset register ... contains a unique door identifier that links to a sign-off record, not a record relating to costs. The register details the type, make, sizes and ratings, as appropriate, of installed products; along with dimensions and locations of fittings used and any other key details that may affect future maintenance, or replacements. Therefore as mentioned already, the register is not concerned with unit or overall costs. Such costs would be established at the point any future works or replacement is required".*

55. The complainant disputed this as he says he was previously told that:

*"... all fire doors are recorded within our asset management register and can be traced back to the original manufacturer, supplier and installer, including the operative and date fitted, noting any repairs required and materials used".*

56. The Commissioner has viewed complete samples from the asset register and the complainant has now been given relevant extracts to comply with the make / model elements of his request. The remaining information he is asking for is not recorded therein. It is unfortunate that the complainant disagrees with this, or thinks he was led to believe otherwise, but the Commissioner can only consider disclosure of information that is actually recorded not what someone thinks should be recorded or what they expected to be recorded.

57. The complainant has also suggested that the Council obtains the details he requires from Kier Stoke itself. However, that company is no longer trading and wasn't trading at the time of the request. Furthermore, the Council has advised all searches for information that it has undertaken were done through Unitas. When Unitas took over from Kier Stoke it evaluated all the information available from Kier Stoke and only retained that information which it required. Therefore, any Kier Stoke information which has been retained by Unitas has been subjected to searches during the course of this investigation.

58. In response to her enquiries regarding the searches for information that it had undertaken, the Council advised that :

*"We can confirm that searches on data drives for old programmes have been conducted. A variety of search parameters were used including 2012, 2013 2012-13, 2012/13 Fire doors, fire doors programme, fire, fire costs, fire door costs, 2012 programme, 2012 capital programme, and we have not located any other cost information for earlier timeframes than what we have already provided. These searches were focussed around the key words that*

*were relevant to the request and so would have retrieved results for the information being requested.*

*As well as the searches mentioned above, officers have conducted searches of their own files and emails, including archived information. This had only generated information within the parameters of the request that has already been provided to [the complainant].*

*We can confirm that our finance team have no records from prior to Unitas's existence and, as indicated before, all data relevant to the Unitas operations were migrated to new server space in 2018. Unfortunately we do not hold any other information about the nature of the searches that were conducted historically as there is no business need to retain this information, and some officers that would have conducted the searches are no longer employed by the Council.*

*... The electronic searches that were undertaken have been described above. The only paper records that we hold in relation to the installation of the fire doors are the notes that are recorded at the time the doors are installed. These notes are used to populate the asset register. An extract of which has already been provided to you. The installers notes do not contain any financial information ...".*

59. It further advised:

*"No unit cost of the doors and original supplier details were passed on from Kier Stoke to the Council".*

And:

*"Any searches that were conducted in order to locate the requested information within the scope of the request were undertaken by Unitas".*

60. It explained that its electronic data is stored on a shared drive on Council servers and that no other copies would be held in other locations. Furthermore, it advised that the Council's IT policies do not allow Council staff to store electronic data in any other locations.

61. Regarding the retention of financial information the Council explained to the Commissioner that:

*"... pre-2013 actual costs/payment information, falls under the definition of 'finance/expenditure/capital works information', and this information has exceeded its retention period of six years and therefore the Council is no longer required to retain such information. Further cost information has not been located in the course of dealing with your enquiries into this matter".*

62. It provided the Commissioner with an extract from its retention and disposal schedule in relation to this type of information evidencing that this is retained for 6 years after completion.
63. It also explained that, as the requested information is of a financial nature and would be used solely for the purposes of invoicing and accounting (and that its retention period for this sort of data is six years), there is no ongoing business requirement for it to be retained. There is also no statutory requirement to retain this type of information for any longer.

*The Commissioner's conclusion*

64. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs, above, the Commissioner is required to make a finding on the balance of probabilities.
65. When dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the decisions it makes to hold some, but not other, information. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not, on the balance of probabilities, the public authority holds the requested information.
66. While appreciating the complainant's frustration that the Council does not hold further information within the scope of his request, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085)<sup>2</sup> which explained that the FOIA:  
  

*"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".*
67. The Commissioner considers that the Council contacted the relevant party to consider whether or not any information was held in respect of the request, ie Unitas, which it wholly owns and which provides the work

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<sup>2</sup><http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

for this area of its business. Based on the information provided, and the wider evidence provided to her on the searches it has conducted for relevant information, and on its reasons for believing certain information is not held, the Commissioner is satisfied that, on the balance of probabilities, no further recorded information within the scope of the request is held. She is therefore satisfied that the Council has complied with the requirements of section 1 of the FOIA in this case.

## Other matters

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68. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

### *Request handling*

69. The Council initially advised the complainant that it considered most of his original request was not valid under the terms of the FOIA as it did not consider it to be a request for recorded information. The Commissioner did not further consider this in the notice above as it was not a point raised by the complainant.

70. The Commissioner would like to remind the Council that, according to her guidance<sup>3</sup>:

*"If the request is not sufficiently clear to enable the authority to locate or identify the requested information, then its duty to provide advice and assistance will be triggered and it must go back to the requester to ask for further clarification".*

### *Publication scheme*

71. Section 19 of the FOIA requires every public authority to adopt and maintain a publication scheme which has been approved by the Commissioner, and to publish information in accordance with the scheme. Public authorities should look to provide as much information as possible on a routine basis.
72. One of the classes of information which should be made available is "Our policies and procedures"<sup>4</sup>. The Commissioner expects this to include
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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

<sup>4</sup> [https://ico.org.uk/media/for-organisations/documents/1262/definition\\_document\\_local\\_authorities.pdf](https://ico.org.uk/media/for-organisations/documents/1262/definition_document_local_authorities.pdf)

items such as a public authority's "Record's Management Policy", or equivalent. She notes that this policy is not available on the Council's website and she can see no obvious reason why it should not be made available.

73. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft Openness by Design strategy<sup>5</sup> to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy<sup>6</sup>.

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<sup>5</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

<sup>6</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

## Right of appeal

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74. 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: 0203 936 8963

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)

75. 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.

76. 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** .....

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**