

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2022

Public Authority: The Royal Borough of Kingston upon Thames
Address: Guildhall
Kingston upon Thames
Surrey
KT1 1EU

Decision (including any steps ordered)

1. The complainant has requested information from the Royal Borough of Kingston upon Thames ("the Council"), in relation to the Community Benefit Society (CBS) and the increase in rents for council houses being used by the CBS. The Council provide some information in relation to part 1 of the request, but advised it does not hold anything else. For part 2 of the request, the Council explained that it does not hold any information, as the CBS was not implemented.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further information in relation to the request.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

Request and response

4. On 15 August 2021, the complainant wrote to the Council and requested information in the following terms:

"1) Documents showing why the Community Benefit Society, which the Housing Sub Committee resolved on 23 January 2018 should be "established as soon as practicably possible with a target to become operational from April 2018", a decision which was subject to a Call In

and affirmed by Full Council on 27 February 2018, was not established, or implemented, or made operational.

For the avoidance of doubt, I am requesting records showing any discussions or decisions, formal or informal, about this matter that were made in each year from 2018 to date, whether by officers, councillors or anyone else.

2) Documents showing how the Council was able to increase the rents for council housing being used as temporary accommodation even though the CBS had not been established, as this was the entire justification for establishing the CBS. Your reply, dated 8 April 2019, to my FOI request (Your Ref: F0503) confirms that these rents were already 2-3 times council rents and I want to see records showing when they were increased, how this was achieved despite the CBS having not been established and any discussions or decisions, formal or informal, about doing this, whether by officers, councillors or anyone else."

5. The Council responded on 14 September 2021, providing one email in response to part 1 of the request. It explained for part 2 of the request that as CBS was not implemented, rents were not increased through the introduction of a CBS.
6. Following an internal review, the Council wrote to the complainant on 22 October 2021. It stated that it maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 28 February 2022 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether the Council holds the information for the purposes of FOIA.

Reasons for decision

9. 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."

10. Section 3(2) of FOIA states that:

“For the purposes of this Act, information is held by a public authority if—

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority.”

11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant’s evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held, and any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

12. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The Council’s position

13. The Council has explained that it does not hold any further information in relation to the request.

14. The Council has advised the Commissioner that the subject of the request has been previously dealt with by the First Tier Tribunal¹. It explained that the First Tier Tribunal had comprehensively addressed the issues raised and the outcome was that the appeal was dismissed.

15. The Council originally explained that it was unable to make a finding in respect of point 2 of the request, as it did not know which specific increase in rent that the complainant was referring to. The complainant has since made a further FOIA request, which goes into more detail regarding this point and the Council is addressing it.

¹ [Microsoft Word - 030 060922 Judge Cragg Rule 7A decision.docx \(tribunals.gov.uk\)](#)

The Commissioner's view

16. The Commissioner acknowledges the complainant's arguments and why they would consider that further information may be held. However, from the evidence provided, the Commissioner is satisfied that the Council has provided the complainant with the information that it holds in relation to the request.
17. The Commissioner also notes the findings of the Tribunal for the related case. He can see what the Tribunal found that the Council was not withholding information as there had not been a decision made to postpone/not continue with the CBS.
18. In the circumstances of this case, the Commissioner is satisfied that, on the balance of probabilities, the Council has provided the complainant with the information that it holds. As such, the Council has complied with the requirement of section 1(1) of FOIA.

Right of appeal

19. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. 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.
21. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF