

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 November 2022

Public Authority: Swansea Council
Address: Civic Centre
Oystermouth Road
Swansea
SA1 3SN

Decision (including any steps ordered)

1. The complainant has requested a copy of the original Legal Charge document (not a land registry copy) between the Council of the City and County of Swansea and the other party involved.
2. The Commissioner's decision is that on the balance of probabilities that Swansea Council ("SC") holds no further recorded information relevant to the complainant's request and has complied with section 1(1) of FOIA.
3. The Commissioner does not require SC to take any further steps.

Request and response

4. On 23 February 2022, the complainant wrote to SC and requested information in the following terms:

"Copy of the original Legal Charge dated 21st December 2015 between the Council of the City and County of Swansea and [name redacted] of [address redacted] –File ref: FAW/DGC.206229 Sealed by the Council

of the City and County of Swansea and signed by [name redacted] AND NOT A LAND REGISTRY COPY.”

5. SC provided a response on 16 March 2022 as follows:-

“the document you requested would have been provided to [name redacted]’s solicitor at the time of completion. The copy held by the Land Registry will be exactly the same as that already provided.”

6. On 16 March 2022, the complainant in response to the reply from SC requested an internal review.

7. Following an internal review, SC wrote to the complainant on 25 March 2022. It stated:

“In response to your review the legal department has confirmed the following:-

It is standard that the Council requires the borrower’s solicitors register the security at the Land Registry therefore we would not have nor retain the original Legal Charge.

Security over registered land takes effect when it has been registered and the lender is entered as proprietor of the charge in the charges register of the borrower’s title. The Lender can rely upon the electronic version held by HMLR as evidence of registration.

A legal mortgage is an actual disposition and not a contract for a disposition and so is not governed by section 2 of the Miscellaneous Provisions Act.

The Council would not be required to execute the Legal Charge.”

Scope of the case

8. The complainant contacted the Commissioner on 28 March 2022 to complain about the way his request for information had been handled as they believed SC does hold the information requested.

9. The complainant provided a copy of correspondence addressed to SC from the solicitors involved in the original transaction stating they had enclosed a copy TR1 document and legal charge document. Additionally, the complainant believes that SC refer to the "Legal Charge" as a "Mortgage" to avoid producing the relevant documentation in accordance with the provisions of Section 1(3) of the Law of Property (miscellaneous provisions) Act 1989.

10. The Commissioner has considered whether SC has fulfilled its obligations under section 1 of FOIA.

Reasons for decision

11. Section 1(1) of FOIA states that anyone who requests information from a public authority is entitled under subsection
 - (a) to be told if the authority holds the information and, under subsection
 - (b) to have the information communicated to them if it is held and is not exempt information.
12. FOIA only covers information that is held by a public authority, and it cannot create the information to respond to a request.
13. The Commissioner has reviewed the requests and responses from SC and is satisfied that on a balance of probabilities they do not hold the information.
14. SC advised the complainant that it did not hold the information as copies of legal charge documents are registered by the solicitors with HM Land Registry and therefore, it does not hold copies of original documents. SC additionally advised that security over registered land takes effect when it has been registered by the solicitor and the lender can rely upon the electronic version held by HMLR as evidence of registration.
15. HM Land Registry is the definitive record of the chain of ownership for Land and property transactions in England and Wales and holds digital copies of original documents for all related transactions including any Legal charges or secured loans registered against properties and can alert any potential buyer of the existence of debts. The documents are therefore considered a public document and can be assessed by any interested party who can then see the terms of any arrangement.
16. Having checked the internet, it is the Commissioner's understanding that there is no specific requirement for either party to keep original documents although it may be advisable to do so. The alternative document holder would be the buyer's solicitor who lodges the documents.
17. The Commissioner sees no reason to doubt the Council's explanation as to why it does not hold the information within the scope of the request. Other than provide a letter that SC received a copy of the legal charge document in 2015, the complainant has not provided any further

evidence or reasoning that would indicate that SC does hold legal charge information.

18. Having considered all the circumstances, the Commissioner has decided that, on the balance of probabilities, the Council does not hold information within the scope of the complainant's request.

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

Catherine Fletcher
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