

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 21 April 2022

**Public Authority:** Wealden District Council

**Address:** [informationgovernance@wealden.gov.uk](mailto:informationgovernance@wealden.gov.uk)

**Decision (including any steps ordered)**

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1. The complainant requested information about the carpet and waste bin cleaning contracts for two council managed properties. Wealden District Council (the Council) stated that it did not hold the information requested. The Commissioner's decision is that on the balance of probabilities the Council does not hold the information requested. However, in failing to respond to the request within the statutory timescale, the Commissioner has determined that the Council breached section 10(1) of the FOIA. The Commissioner does not require any steps to be taken.

**Request and response**

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2. On 1 October 2020, the complainant wrote to the Council and requested information in the following terms:  
  
"FOIA 2000 request for documentation showing that carpet cleaning and waste bin cleaning has been carried out at Cherry Tree Court & Hillside Drive since the communal cleaning contract began in 2013 and the cost associated with such actions"
3. Following a number of chase letters from the complainant, the Council responded on 25 February 2021 and stated that it did not hold the requested information as the services are included as part of a larger contract which does not provide the specific detail requested.

4. On 10 March 2021 the complainant requested an internal review of the Council's handling of the request. They suggested that the information should be readily available as "such costs are normally published on its supplier payment spreadsheet published quarterly". The complainant also suggested that if the Council maintained it did not hold the information it should contact the contractor to obtain the specific costs requested.
5. The Council provided the outcome of its internal review on 11 May 2021 and upheld its position that the information requested was not held.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 26 May 2021 to complain about the way their request for information had been handled.
7. The scope of the Commissioner's investigation into this complaint is to determine whether the Council holds any recorded information falling within the scope of the request of 1 October 2020.

### **Reasons for decision**

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#### **Section 1 – general right of access**

8. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
9. 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 he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
10. The complainant has suggested that the contractor would have submitted invoices for carpet and waste bin cleaning services. In addition, in their internal review request the complainant suggested that if the Council did not hold the information requested it should contact the contractor to obtain details of the costs involved.

11. The Council advised the Commissioner that no searches were conducted to ascertain whether any recorded information relevant to the request was held. This is because the costs of undertaking carpet and waste bin cleaning are included as part of a larger contract with the contractor. The contract is to provide a cleaning service to the Council's housing stock and covers a large number of sites. The Council advised that there are around 81 services specified within the contract which also contains a number of different criteria that the contractor must meet. When the contract was tendered the requirement was to provide an overall cost for the carrying out of "routine tasks" and it was not broken down further in terms of costing individual elements such as carpet cleaning and waste bin cleaning. The Council considers that it would be unreasonable to expect a more precise record keeping regime to be maintained in light of the fact that it is not information that it requires for any business or statutory purpose and it is not information that it needs. The Council also confirmed that it had contacted the contractor who also confirmed that it did not record the level of detail requested by the complainant.
12. In its internal review the Council advised that invoices submitted for payment by the contractor are published on its website. It confirmed that there are no invoices published in relation to carpet and waste bin cleaning because the contractor has not submitted any invoices for these tasks. This is because the activities in question are not individually priced, but form part of a wider contract. The Commissioner has viewed a sample of invoices and can verify that he found no invoices for carpet and waste bin cleaning. The majority of invoices simply refer to items such as "monthly contract cleaning", "routine cleaning", "charges in respect to cleaning" etc.

## **Conclusion**

13. The Commissioner's role is not to consider whether a public authority should hold information that has been requested but whether, on the balance of probabilities, it does or does not hold it. The Commissioner has taken account of the explanations provided by the Council, and in particular its statement that the contract covers a large number of sites and only contains overall costs for carrying out tasks within relevant "groups" such as routine tasks, periodic tasks etc. The Commissioner notes that the Council has also contacted the contractor who also confirmed that it does not record the level of cost detail which has been requested in this case.
14. Based on the evidence available to him, the Commissioner accepts that, on the balance of probabilities, at the time of the request, the Council did not hold any information falling within the scope of the complainant's request.

## **Section 10 – time for compliance**

15. 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.”

16. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.

17. The Council advised the Commissioner that it received a letter by post from the complainant on 17 November 2020 chasing a response to a request for information. It responded on 30 November 2020 advising that it had no record of receiving the original request and asked that they re-submit the request. The complainant responded on 14 December 2020 and provided a duplicate copy of their letter of 17 November 2020 rather than the original request. The Council’s response dated 25 February 2021 referred to a request for information dated 14 December 2020 for documentation showing that carpet cleaning and waste bin cleaning had been carried out.

18. In their internal review request the complainant provided further clarification of the information they were seeking access to, namely that they wanted information that carpet and waste bin cleaning had been carried out, and the costs associated with the activities. The Council confirmed in its internal review that no information was held because the activities/tasks formed part of a wider contract.

19. Whilst the Commissioner notes the explanations provided by the Council about the delay in responding to the request, it is clear that the Council did not deal with the request for information in accordance with the FOIA. The Commissioner finds that the Council breached section 10(1) of the FOIA by failing to respond to the request within 20 working days

## **Other matters**

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### **Section 45 – Internal review**

20. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 code of practice sets

out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.

21. In this case the complainant requested an internal review on 10 March 2021 and the Council provided the outcome of its review on 11 May 2021, 42 working days later. The Council advised that when the internal review request was sent (by post), the UK was in lockdown as a result of the Covid-19 pandemic. As no staff were in attendance at Council offices, this led to a delay in the Council taking receipt of, and subsequently responding to the letter.
22. While it would have been desirable for the Council to have responded within 20 working days, the Commissioner notes the Council's explanations about the delay in receiving and actioning the internal review request was partly due to the Covid 19 pandemic. The Commissioner understands the immense pressures placed on public authorities during the pandemic. He is sympathetic to the difficult decisions authorities had to make between prioritising front-line services and continuing to meet their obligations under the FOIA.

## Right of appeal

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23. 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)

24. 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.
25. 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 .....**

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