

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2023

Public Authority: London Borough of Lewisham
Address: Laurence House
1 Catford Road
London
SE6 4R

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Lewisham (the Council), regarding assessment information in relation to a property.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any additional information within the scope of the request.
3. The Commissioner also finds that the Council breached section 10(1) of FOIA by not responding within 20 working days.
4. The Commissioner does not require further steps.

Request and response

5. On 13 May 2022, the complainant wrote to the Council and requested information in the following terms:

"Please provide us with a copy of :

1. the assessment that was carried out in order to confirm that [address redacted], met the standards for licensable Houses in Multiple Occupation (HMO);

2. any concerns or advisories that were raised or noted that required action in order to satisfy the required standards; and a copy of any follow-up assessment that confirmed all standards were met in order to be registered with Lewisham Borough Council as an HMO.

Please provide this by email within the required timescale under the Act.”

6. The Council responded on 17 June 2022. It provided some information within the scope of the request and advised the remaining information was exempt under section 40 (Personal information) of FOIA.
7. Following an internal review, the Council wrote to the complainant on 20 July 2022. It stated that it was upholding its original decision.

Scope of the case

8. The complainant contacted the Commissioner on 16 June 2022, to complain about the way their request for information had been handled.
9. During the Commissioner’s investigation, the Council contacted the complainant and advised it was revising its response. It withdrew its claim that section 40 applied and it provided further information, including a schedule of works for the property in question.
10. The complainant explained to both the Council and the Commissioner, that they believed that a Fire Risk Assessment for the property was held by the Council and should have been disclosed.
11. The Commissioner has considered whether, on the balance of probabilities, the Council holds a Fire Risk Assessment for the property in question.

Reasons for decision

12. This reasoning covers whether the Council is correct when saying it does not hold the additional information.
13. The complainant explained that he believed the Council should hold a Fire Risk Assessment (FRA) for the property; this is because it is required by the Regulatory Reform Order (Fire Safety) 2005, when issuing a licence.

14. The Council explained that although the schedule of works refers to an FRA, this is standard wording and an FRA was not provided by the landlord for the property in question. It stated that, under the terms of the Regulatory Reform Act 2015, the Council is not able to require all landlords to submit an FRA. It would only apply where there are common parts to the property, which the landlord has access to without having to ask the tenant's permission to enter.
15. The Council explained it requests an FRA from all landlords, but those who are letting their properties on a joint tenancy are not required by law to provide them. The Council advised that it believed this is the case with the property in question.
16. The Council concluded that although it has the power to request an FRA, it does not have a legal right to require that one is provided in every case. In this case, it did not hold an FRA for this property.
17. The Commissioner is satisfied that the Council has provided clear and credible reasons for believing that it does not hold a FRA for the property in question. He is therefore satisfied that, on the balance of probabilities, the requested information is not held by the Council.

Procedural Matters

18. The Council did not respond to the request within 20 working days, therefore the Council breached section 10(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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF