

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 December 2023

Public Authority: Department for Levelling Up, Housing and Communities

Address: Fry Buildings
2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information about the powers available to the Department for Levelling Up, Housing and Communities (DLUHC) to investigate and take action against Woking Borough Council's (the Council) councillors or members. DLUHC confirmed it held the information requested but that it was exempt under section 21. During the internal review process it became apparent that DLUHC had interpreted the request differently from the complainant. The Commissioner has therefore considered whether an objective reading of the request was carried out by DLUHC.
2. The Commissioner's decision is that there is only one objective reading of the request and that DLUHC interpreted the request in line with this objective reading. The Commissioner does not require any steps to be taken.

Request and response

3. On 26 June 2023, the complainant wrote to DLUHC and requested information in the following terms:

"Any information the Department holds as to the powers available to the Department or another person to investigate, take action against or

proceed in some other way against WBC's councillors or members of its executive (past as well as current) in relation to the circumstances giving rise to financial situation WBC is now in."

4. DLUHC initially responded on 26 June 2023 and stated that the request had been sent to its policy team to deal with as normal course of business as it considered the query to relate to a request for knowledge in someone's head as opposed to recorded information.
5. The complainant responded the same day and stated that they did not agree to DLUHC's interpretation of the request. The complainant confirmed they wanted to receive recorded information on the subjects set out in their initial request.
6. DLUHC wrote back to the complainant and explained that the information requested in relation to its 'powers' would be set out in statute, and such information was publicly available. It explained that the FOI team would be unable to interpret the scope of these 'powers'. DLUHC also suggested the complainant seek independent legal advice about the powers referred to in the request, or provide further context to help clarify the request if they considered DLUHC had misinterpreted it.
7. The complainant responded on 27 June 2023 and stated that:

"In terms of context, I'm not sure you need more than is in the first paragraph of my first email. However, if you do, then the 'explanatory memorandum' published by your Department on 25 May is helpful - link below:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1159181/Woking_Borough_Council_-_Explanatory_Memorandum.pdf

I don't think that my request necessarily or only involves an interpretation of statute. The explanatory memorandum, for example, contains various reference to powers available under statute without straying into that territory. I also don't think that my request is broad, as it focuses on persons responsible for the management of the finances of a particular local authority ie WBC. If it helps, however, you can start searching your files from 1 January 2022".

8. DLUHC issued a refusal notice on 26 July 2023 stating that the information requested was exempt under section 21, and provided a link to the Local Government Act 1999. It also provided a number of other links to publicly available information about the intervention at the Council which makes reference to legislation which empowers the Secretary of State to intervene. Finally, DLUHC provided additional

information about complaint mechanisms in relation to local authorities and their members and officers.

9. On 27 July 2023 the complainant wrote back to DLUHC and requested an internal review. They stated that they did not think DLUHC had provided the information requested as the links provided were “generic and most not relevant”. The complainant stated that they would like to receive records which address the Council’s particular circumstances and provided some examples of the type of information they were seeking access to.
10. The DLUHC provided the outcome of its internal review on 31 August 2023 and upheld its original response to the request. DLUHC stated that the clarification which the complainant had provided in their internal review request described different information to that which was outlined in the original request. As such, the information was not considered to be within the scope of the original request. DLUHC suggested that if the complainant was interested in receiving the information referred to in their internal review request they should submit a fresh request setting out the full scope of the information they wanted access to.

Scope of the case

11. The complainant contacted the Commissioner on 10 September 2023 to complain about the way their request for information had been handled.
12. In their complaint to the Commissioner the complainant did not challenge the application of section 21 by DLUHC. However, they confirmed that the information they were seeking access to was that referred to in their internal review request.
13. In light of the above, this decision notice covers whether DLUHC’s interpretation of the request is the objective reading.

Reasons for decision

Section 1 – general right of access to information

14. 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.”

15. In addition, section 8(1) of the FOIA states that:

“In this Act any reference to a “request for information” is a reference to such a request which –

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.”

16. Section 84 of the FOIA defines “information” in this context as being information “recorded in any form.”

17. The Commissioner’s guidance on interpreting requests¹ states that public authorities should respond to a request based on the particular wording of the request itself. Public authorities must interpret information requests objectively. They must avoid reading into the request any meanings that are not clear from the wording. If the request clearly specifies exactly what information or documents the requester wants, then there will only be one objective reading to the request.

18. In this case, the request describes particular distinguishing characteristics of the information being sought (ie the powers available to the Department or another person to investigate, take action against or proceed in some other way against WBC's councillors or members). The Commissioner considers the wording of the request was clear, unambiguous and not open to more than one possible interpretation.

19. The Commissioner notes that, prior to issuing its substantive refusal notice, DLUHC engaged with the complainant and advised that its powers were set out in statute and were therefore publicly available. In response, although the complainant stated that they did not think their request involved an interpretation of statute, they did not clarify or expand further on the type of information or documents they were seeking access to. They merely referred to the reference within a public document about the subject matter to “powers available under statute”. The only clarification the complainant provided was that the request focused on “persons responsible for the management of the finances of

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/>

a particular local authority ie WBC” and that their request was for information from 1 January 2022 to present.

20. In their internal review request dated 27 July 2023, the complainant stated the following:

“The links you have included are all generic and most are not relevant or are inapplicable (eg the LGO does not investigate complaints about actions affecting most inhabitants in a council's area). What I would like to receive are records which address WBC's particular circumstances. To give some obvious examples, on becoming aware of WBC's disastrous financial situation, I would expect notes will have been prepared between officials in the Department and between officials and Ministers considering the accountability of councillors or executives (former as well as current) for that situation. These are the types of record I would like to receive”.

21. DLUHC’s position is that the information that the complainant referred to in their internal review request is different to the information they originally requested and does not fall within the scope of the original request. DLUHC has advised the complainant that they would need to submit a new request if they were interested in access to the information as set out in their internal review request.

The Commissioner’s decision

22. The Commissioner considers that the objective reading of the request is that its scope covers information about what powers DLUHC has to investigate, take action against or proceed against the Council’s councillors or members of its executive. The Commissioner does not consider that any notes prepared by officials within DLUHC and exchanges between DLUHC officials and Ministers considering the accountability of councillors or members of the executive would constitute information specifically about what powers are available to DLUHC to take action against the Council.
23. The Commissioner considers that the request clearly described the recorded information that was sought by the complainant. It is his view that there is only one objective reading, which is the interpretation set out by DLUHC. Whether the complainant wants to make a new request, taking into account the information contained within this notice, is for them to decide.
24. This complaint has been brought to the Commissioner because the complainant and DLUHC have different interpretations as to the scope of the request. As the complainant has not disputed DLUHC’s application of section 21 the Commissioner has not gone on to consider whether section 21 has been appropriately applied to the information requested.

Right of appeal

25. 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

26. 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.
27. 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