

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

**Date:** 14 October 2015

**Public Authority:** Cheshire East Council  
**Address:** Westfields  
Middlewich Road  
Sandbach  
Cheshire  
CW11 1HZ

**Decision (including any steps ordered)**

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1. The complainant has requested the name of the person who requested a property search on a specific address. The Commissioner's decision is that, on the balance of probabilities, Cheshire East Council does not hold the requested information. He does not require any steps to be taken to ensure compliance with the legislation.

**Request and response**

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2. Following previous correspondence between the council and complainant in relation to property searches carried out for [address redacted], on 27 May 2015 the complainant made the following request for information:  
  
"Re: Request for Search Request Form Information, 23/11/06 for a local authority search on [address redacted]. **Who requested this search?**"
3. The council responded on 27 May 2015, 10 June 2015 and 11 June 2015 to re-affirm the position, as stated in its outcome of a previous internal review undertaken in December 2014 (council ref: 809438), that it does not hold the requested information. It explained to the complainant that the search made in 2006 was not a local authority search but was a personal search where the information was viewed only and that the council only holds a record of the register viewed by the personal search

company. A copy of the record of the register viewed had been previously supplied to the complainant and shows that the search was made by 'LCS' but does not contain an individual's name. The council's email of 11 June 2015 stated the following:

"As has been explained previously, the search made in 2006 was not a Local Authority Search.

You employed a private search company who undertook a personal search. These are two totally separate processes.

I will repeat what I and [name redacted] have advised you previously in December 2015 and many times since. On 23rd November 2006 – A personal Search company (LCS) came and viewed the registers (search number - 06/4639) but they did not seek from the Local Authority any printed details of the Con29 document.

Your solicitor did not make a request to Macclesfield Borough Council for a Local Authority Search to be undertaken in November 2006. They do not have to. Instead they should have requested a third party or personal search company to supply said information.

No other request was made directly to the Council for any further reports at that time.

The person instructed by your solicitor visited the customer centre and viewed the register. We do not have a record of who that person was.

We have supplied you with a copy of search number 06/4639. This was the previous search which was viewed by the person who was employed by your solicitor to undertake the search.

The Freedom of Information Act and the Environmental Information Regulations relate to the disclosure of held information by public authorities. We cannot disclose information which we do not hold. I cannot add any more information to what we have already advised you. As such this matter will not be considered further by Cheshire East Council and you now need to take this issue up with the ICO as I requested you should on 24<sup>th</sup> December 2014 and then again on 7<sup>th</sup> January 2015."

## Scope of the case

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4. The complainant contacted the Commissioner on 25 June 2015 to complain about the way her request for information had been handled. She provided reasons why she believes the name she is seeking must be held by the council.

5. The Commissioner has considered whether, on the balance of probabilities, the council holds the name of the person who requested a search on 23/11/06 for [specific address].

## Reasons for decision

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6. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
7. 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 argument. 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. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
8. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. He asked the council to bear in mind that the complainant believes that the name of the individual who carried out the search must be held by the council for the following summarised reasons:
  - The complainant has stated that she has seen online that, by law, the name of someone conducting a search must be given to the council and stored by the council.
  - In October 2014, before officially requesting the name, [name redacted], from the council's Planning department, told the complainant that she could not provide her with the name due to the Data Protection Act and that she would need to make an information request.
  - That the search request form sent to her included a blank page and that [name redacted] stated that she had the form and a name was on it but she could not provide it due to the Data Protection Act.

- On 17 July 2015 the complainant spoke to [name redacted] again who again said that the name could not be provided as it needed to be protected but that it was not someone known to her personally.
9. The Commissioner also asked the council whether the council officer the complainant refers to has been asked whether she knows if the name is held and whether she has been asked to conduct a search.
  10. The council explained that submissions for searches (both local authority searches and register viewings) could be submitted in three formats in 2005/6, those being fax, email or post. It said that once a local authority search had been loaded onto the data base, the paper copy was stored in the basement until they were due to be destroyed. It said that many companies submitting a register viewing request did so by email.
  11. The council said that the officer referred to has confirmed that there is a company name shown on the November 2006 input screen on the relevant database. It confirmed that this information was conveyed over the telephone to the complainant and that screen prints of both the input screen and output search report were provided to her. It said that the council officer has also searched the computer system "Swiftsearch" to trace all of the relevant search reports and to provide a copy of the search reports relating to the specific address and has twice undertaken a search of the file store in Macclesfield Town Hall basement. The council said that over 3 hours were spent searching through old boxes of files to establish if the original personal search submission was still held in the basement and confirmed that no submission request for a personal search is held in any of the files stored in the Macclesfield Town Hall basement file store.
  12. The council has said that, as there is no paper copy in the basement, it can only assume that the original search request to view the register was sent from the personal search company via email. It explained that the emails went to a Macclesfield Borough Council email account and that its ICT department has confirmed that this email account was deactivated 12 months after it ceased being used. It said that was because a new mail box for Cheshire East Council was set up for the service on or after 1 April 2009. It also said that similar email accounts for both Congleton and Crewe & Nantwich Borough Councils have also been deactivated.
  13. The Commissioner has been informed that the council has found three searches relevant to this address. One of which was a full local authority search for which the paper copy is still held and has been provided to the complainant on several occasions. Two searches were personal

searches and the records for these viewings are retained on the council's database. The council said that it has the output report for the viewings and a screen print of the customer details, but they do not contain the level of detail being requested in this case (i.e. an individual name), and there is no need or reason for the council to retain any other information.

14. In reaching a decision as to whether the requested information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold the information. The council said that for local authority searches, it has to retain the information for a period of time deemed appropriate by its insurance company, for purposes of evidence if there are any claims made by solicitors. However, for personal searches there is no statutory or business need to retain the information. This is because once the personal search company has viewed the data it is then their interpretation of that which will then be used to produce their own report for a solicitor. The council explained that public authorities have no liability for a personal search company's interpretation of the data they have reviewed; the onus is on the companies themselves who retain insurance provisions for any claims against them where their interpretation is found to be deficient.
15. Although the council has not specifically addressed the complainant's statement that the council officer implied she has seen the name of the person who requested the search and could not provide it due to data protection reasons, the Commissioner considers it possible that there may have been a misunderstanding in relation to whether the name relates to a company or an individual from that company.
16. During the Commissioner's investigation, and after enquiries were made to the council, the complainant has also made the following summarised submissions:
  - The council said the name was lost when Macclesfield Borough Council became Cheshire East Council.
  - She has been informed by a solicitor that a Mr [name redacted] did the search and that the Solicitors Regulation Authority has said that Mr [name redacted] was a bogus solicitor. The council has informed the complainant that Mr [name redacted] name is not on the search request form. The complainant has said that the name on the form

must be known if the council are stating whose name is not on the form.

- The council's factsheet for its Property Search Service<sup>1</sup> states that the name of the person making the request must be provided.
  - It does not make sense for the council to know the name of the company who requested the search but not the individual. The name of the search requester is a 'required field' and a search could not be made without it.
  - She has the right to take legal action against the person who requested the search and she needs to know the truth.
  - She has provided a copy of the council's screen print of the search request and said that it looks like a blank piece of paper has been placed over the name.
  - She requested that ICO subpoena the name from the council. She has also asked that the ICO and/or police ask the council officer in a face to face interview with the original document directly for the name which she believes is in the council officer's filing cabinet in her office and on her computer.
  - She has accused the council officer of lying and protecting a fraudster. She has also alleged that another individual has committed property fraud and this individual could be the same person as the council officer. She has reported the matter to the police.
  - She has written to the council's chief executive and an MP about this issue and has made further requests for the same information.
17. The Commissioner has considered the complainant's submissions. He accepts that if the search request was made by email to Macclesfield Borough Council then the email will have been deactivated. He does not agree with the complainant that because the council can confirm who's name is not held that it must hold a name. He notes that the council's

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<sup>1</sup> <http://www.cheshireeast.gov.uk/pdf/procedure%20-%20process%201%20property%20search%20register%20viewings%20fv%20version%203%20-%2009%20december%202011.pdf>

Property Search Service<sup>2</sup> document was implemented in June 2011, which predates the search request in this case, therefore the document does not prove that an individual name must be held. He also considers it feasible that the council can hold the name of the company requesting a search but not the individual, particularly given the council's explanation as to the difference between requirements for a personal search and a local authority search. He has viewed the council's screen print of the search request but does not agree that it looks like a blank piece of paper has been placed over the name.

18. The Commissioner also considered whether the council had any reason or motive to conceal the requested information. He understands that the complainant believes that property fraud has been committed against her but is not a position to evaluate whether this is the case. He has not seen any evidence of wrongdoing surrounding its records management obligations and has not identified any reason or motive to conceal the requested information.
19. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold the name of the individual who requested the search in this case. He considers that the council's explanation and searches demonstrate that it holds the name of the company who requested the search, rather than the name of an individual from that company. The Commissioner is therefore satisfied that on the balance of probabilities, the information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

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<sup>2</sup> <http://www.cheshireeast.gov.uk/pdf/procedure%20-%20process%201%20property%20search%20register%20viewings%20fv%20version%203%20-%209%20december%202011.pdf>

## Right of appeal

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20. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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.
22. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**