

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

**Decision notice**

**Date:** 25 January 2016

**Public Authority:** Cheshire West and Chester Council

**Address:** HQ Building  
Nicholas Street  
Chester  
CH1 2NP

**Decision (including any steps ordered)**

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1. The complainant requested from Cheshire West and Chester Council ("the council") confirmation that an agreement had been made and if so, a copy of the fully signed and certified lease agreed between Cheshire Academies Trust and the council. The complainant alleged that the council had not responded. The council explained to the Commissioner that it considered that it had responded, and had provided the information, albeit that it had provided it in response to an earlier, related request. The complainant continued to allege that the council had not provided the information. The Commissioner's decision is that the council did not identify and provide all the relevant recorded information within 20 working days in accordance with its obligations under the Freedom of Information Act 2000 ("the FOIA"). It therefore breached its obligations under section 10(1), 1(1)(a) and 1(1)(b). The Commissioner was satisfied that on the balance of probabilities no further information was held within the scope of the request. He does not require any steps to be taken.

**Request and response**

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2. On 20 April 2015, the complainant wrote to the council and requested information in the following terms:

*"I have received confirmation from the Council that a long term lease agreement has been agreed between the Council and Cheshire Academies Trust for Mill View Primary School. I have received two*

*separate confirmations of the existence of this lease agreement...However, both of these responses were accompanied by two different versions of the lease agreement. Neither copy was signed and certified by both parties and neither document constituted the agreed and certified lease...I therefore request:*

- *The Counciln s [sic] formal confirmation whether or not a lease, for Mill View Primary School, has been agreed between Cheshire Academies Trust and Cheshire West and Chester Council.*
- *If a lease has indeed been agreed, a fully signed and certified copy of the lease agreement between the parties*

## **Scope of the case**

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3. The complainant contacted the Commissioner on 20 May 2015 to complain about the way his request for information had been handled. He alleged that the council had not responded to his request.
4. For clarity, the council confirmed to the Commissioner that it had received a copy of the request dated 20 April 2015. It said that it had not provided a separate response to this because it considered that it was connected to a previous request made on 8 January 2015 and the complaint that was ongoing at the time. The council said that it treated the correspondence on 20 April 2015 as a request for "clarification" rather than a new request for information. When the complainant was asked about this, he continued to allege that the council had not provided the information he had requested and he asked the Commissioner to investigate.
5. During the Commissioner's investigation, the complainant complained that he was dissatisfied with the delayed response, and the fact that different information had been provided to him in a piece-meal fashion over a lengthy period of time.

## **Reasons for decision**

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### **Section 1(1)**

6. Section 1(1)(a) and (b) of the FOIA provides a general right of access to recorded information held by public authorities. Any person making a request for information to a public authority 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 unless a valid reason exists for not doing so under the legislation. Compliance with section 1(1) should be achieved within 20 working days in accordance with section 10(1).

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 was not held and he will consider if the authority is able to explain why the information was 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 balance of probabilities".<sup>1</sup>
8. As noted above, the council told the Commissioner that it considered that it had responded to the request on 20 April 2015 and that it had provided the information requested, albeit that it was responding to an earlier, related request. For clarity, the earlier request in question was made on 8 January 2015 in the following terms:  
  
*"On the 1<sup>st</sup> January 2015 Mill View Primary School converted to an independent academy. Please provide copies of any and all documents exchanged between the school and the Council in relation to the academy conversion. These documents should include (but not restricted to) the long term lease agreement, the land transfer questionnaire, the commercial agreement etc."*
9. The council responded to the request on 8 January 2015 on 10 April 2015. The council said that it received a request for a review of its response on 15, 22 and 28 April 2015. Of relevance to this decision notice is the fact that the complainant expressed dissatisfaction with the copy of the lease agreement provided to him in response to his request. He complained that it had only been signed by one of the parties and he required a copy of the actual agreement executed between the parties. He also said it was patently clear that the lease agreement was not executed as a "counterpart deed".
10. The council completed an internal review on 9 June 2015. The council said that it had sent the requested documentation which it referred to as "the executed counterpart leases". It responded to the concern raised about the lease agreement. The council said:

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<sup>1</sup> This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

*"It was noted that it is accepted that 2 parts of the lease – 1 signed by the Academy Trust and 1 signed by the Council have been received. The Review officers understand that this lease was executed as a counterpart lease and understand that there is no requirement for there to be a clause in the lease providing for it to be a counterpart".*

11. The Commissioner asked the complainant if he could explain why he remained dissatisfied with the information provided by the council. The complainant said:

*"It is vitally important to note that a legally binding lease agreement has to be both executed and delivered by all of the parties. My request therefore requires that the Council should provide confirmation of the existence of, and a certified copy of, the executed and delivered lease agreement between the parties. To date, it is a matter of record that the council has failed to provide this information..."*

*I must insist that the Council responds to my original request [and provides]:*

- 1. Clear confirmation whether or not the lease agreement between the Council and Cheshire Academies trust has been executed and delivered by both parties*
  - 2. If the lease has indeed been executed and delivered by both parties, a full and certified copy of the lease agreement between the parties".*
12. In response to the Commissioner's enquiries, the council said that it held a lease signed by a council officer and a counterpart lease signed by Cheshire Academies Trust Ltd. The council explained that leases are traditionally executed as a lease and counterpart. This means that two identical copies are produced; one is executed by the landlord and the other is executed by the tenant. Both signed copies are dated and exchanged at completion. The part executed by the tenant is the counterpart. The council said that there is not one single copy of the document signed by both parties. The council confirmed that the lease was executed.
13. The council clarified that it had sent a copy of the lease signed by the council to the complainant however it said that it had not sent a copy of the counterpart signed by Cheshire Academies Trust Ltd as it had suggested in its internal review. It apologised for the oversight and it provided confirmation to the Commissioner that it had now provided a copy of the counterpart lease to the complainant.
14. The Commissioner sought confirmation from the complainant on whether this had resolved his enquiry, however the complainant remained dissatisfied. He copied the Commissioner into an email he had

written to the council on 26 August 2016. He said that it is recognised as standard practice for counterpart lease agreements to include a counterpart clause along the lines of:

*"This Agreement may be executed in any number of counterparts, each of which will be an original and all of which will together constitute a single agreement".*

15. He pointed out that a related document, the Mill View Transfer Agreement, contained such a clause. He said that as the lease agreement did not appear to contain such a clause, the complainant required formal confirmation that the lease had been delivered and confirmation of the date when it was delivered. He said that without this information, he could not be sure that the lease was legally binding. He said that there was no reason why the council could not provide that confirmation along with providing, in a single transmission, copies of all the documents that purport to constitute the single legal agreement.
16. The Commissioner asked the council to respond to the complainant's concerns. The council replied directly to the complainant. It said that it had attached both copies of the lease agreement, both dated 19 December 2014. It said that following execution by the parties the lease was completed on 19 December 2014, which the council said was the date upon which it became legally binding. It enclosed a copy of a letter from the council's solicitor to Cheshire Academies Trust's solicitors dated 5 January 2015, confirming completion of the lease of Mill View Primary School. It said that the lease dated 19 December 2014 is now registered at the HM Land Registry against the council's title. It provided an official copy which it had obtained.
17. The complainant informed the Commissioner that he remained dissatisfied with the response, and the further information provided. The complainant supplied details of a high court case relating to deeds here:  
<http://www.out-law.com/en/articles/2011/october/deeds-not-delivered-despite-signatures-rules-high-court/>
18. The article discussed a finding by the High Court highlighting that deeds are more formal than contracts and must be signed, witnessed and 'delivered' to the other party, meaning that the parties must show in some way that they wish to be bound by the documents. In brief, in this particular case, the ruling was that guarantees and warranties given by the directors of a company did not take effect despite the signing, witnessing and handing over of documents, because the court found that the deeds had not been delivered. The court found that the documents were amended with notes indicating what changes should be made, rather than with precisely-worded changes that would constitute

part of a deed. It found that as the company would have expected a fresh version of the document to be produced, the deed had not been delivered. The court ruled that the critical thing is that the person who has signed the deed must have separately indicated that he intends to be bound by the deed. The article includes a quote from the law firm Pinsent Masons as follows:

*“Those seeking to rely on deeds must take care to ensure that it is always clear that a document has been delivered. This could be done by including a statement in deeds confirming that they are delivered when dated, or by requiring the parties at a ‘completion’ to confirm by email or orally that they intend to deliver and be bound by the deeds they have executed”.*

19. The complainant said that the council had not so far produced information that shows that both parties wished to be bound by the deed documents in question. He said that without this information, the council could not confirm that the lease had been legally agreed. He said that the council should either provide information that confirms the legal delivery of the deeds as defined by the high court case (evidence that both parties intended to be bound by the deeds) or confirm that it does not hold any further information that confirms legal delivery of the lease deed by both parties. He said that neither the signed, dated copies of the leases nor the solicitor's letter about completion represented evidence of legal delivery. He pointed out that the solicitor's letter included the following comment “I look forward to receiving your client's signed parts of the leases by return”. He said that the council had not provided a copy of any formal response to this letter from the Trust's solicitors.
20. The Commissioner consulted further with the council following the complainant's comments. The council confirmed that there was no further information it could provide to satisfy the complainant's request. It said that its position was that the completed leases it had provided is evidence of the legal delivery by both parties and shows that both parties intended to be bound by its provisions on 19 December 2014. It said the only other information it had identified was a copy of a letter from the Cheshire Academies Trust's solicitor to the council enclosing the trust's part of the lease dated 6 January 2015. This letter anticipated receipt of the council's completed part of the lease in return. The council said that while it has no objection to providing this letter to the complainant, in its view, it is not within the scope of the request which is why it has not been previously identified.
21. The council said that it had discussed the complainant's request with all the relevant legal officers involved in drafting and executing the lease and transfer agreement. It said that these officers had revisited their



electronic and paper records several times during the course of this request and could confirm that there was no further information to be provided that would satisfy this request. The council confirmed that no information had been deleted, destroyed or mislaid.

22. It is clear that the council did not initially provide the relevant recorded information it held because it only made the signed copies of both leases available to the complainant during the Commissioner's investigation. However, this information has now been provided. In view of this, the Commissioner finds that the council breached its obligations under sections 10(1), 1(1)(a) and (b) to identify and provide the requested recorded information within 20 working days.
23. The outstanding issue is that the complainant disputes the council's assertion that the signing and exchanging of the leases between the parties was evidence of legal delivery and showed that both parties intended to be bound by the deeds. It is not the Commissioner's role to assess whether or not the agreement was legally agreed. The Commissioner's role is limited in this instance to considering whether or not there is any further recorded information that the council could provide to satisfy the request. On the balance of probabilities, there is no clear evidence available to the Commissioner to indicate that the council did hold any further information. It has been able to explain why this is the case, consulted relevant staff and conducted searches.
24. For clarity, the letter identified dated 6 January 2015 from the Cheshire Academies Trust solicitor is similar to the letter from the council's solicitor. It is apparent that the complainant would not regard this as proof of legal delivery or agreement in view of his comments. The Commissioner therefore agrees with the council that this letter does not fall within the scope of the request and he has therefore not ordered the council to disclose it as part of this decision notice, although he notes that the council is willing to provide it upon request to the complainant should he wish to view it.

## Right of appeal

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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: 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)

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** .....

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