

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 July 2016

Public Authority: London Borough of Southwark
Address: PO Box 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Southwark ("the Council") for a copy of leaseholder application forms for loan/charging orders in respect of debts for major works/service charge used between 2010 - 2015.
2. The Commissioner's decision is that the Council does not hold a copy of leaseholder application forms for the charging orders in respect of debts for major works/service charge used between 2010 - 2015.
3. The Commissioner requires the Council to take no steps.

Request and response

4. On 26 September 2015, the complainant wrote to the Council and requested information in the following terms:
"Please provide me with a copy of all your leaseholder application forms for loan/charging orders in respect of debts for major works/service charge used between 2010-2015".
5. The Council responded on 13 October 2015 and withheld the information under section 40 of the FOIA.
6. Following an internal review the Council wrote to the complainant on 10 November 2015. It maintained its previous decision.

Scope of the case

7. The complainant initially contacted the Commissioner on 10 November 2015 to complain about the way her request for information had been handled. In that case, the scope of the complaint was limited and the Commissioner's investigation focused on whether the Council correctly applied section 40 to the following information:

*"Please provide me with a copy of the leaseholder application forms for **loans** in respect of debts for major works/service charge used between **2013 -2015**". [Commissioner's emphasis]*

8. The Commissioner's decision on whether the Council handled that request in accordance with the FOIA is set out in the decision notice FS50604998.
9. After the decision notice on FS50604998 was issued, the complainant returned to the Commissioner and requested a decision notice to be issued on the remaining part of her request which was for the following information:

*"Please provide me with a copy of the leaseholder application forms for **charging orders** in respect of debts for major works/service charge used between **2010 -2015**" [Commissioner's emphasis]*

10. During the Commissioner's investigation into FS50604998, the Council confirmed that it did not hold a copy of leaseholder application forms for charging orders in respect of debts for major works/service charge used between 2010-2015.
11. This notice will consider whether the Council was correct to say that it does not hold the information detailed in paragraph 9.

Reasons for decision

12. Section 1(1) of 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".

13. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
14. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
15. The Council explained that there is no application form for a charging order as a charging order is an outcome from a court hearing after judgement and not a process for which an application is made.
16. The complainant has disputed this and argued that the information would be held. She accepted that charging orders would be made in court. However, she argued that charging orders would be negotiated before any litigation is commenced.
17. She referred the Commissioner to a document which she believes shows that a charging order repayment is available to leaseholders if they qualify.
18. However after looking at this, the Commissioner does not believe that it provides evidence that the Council would hold information relating to leaseholder application forms for charging orders in respect of debts for major works/service charge used between 2010 -2015.
19. Without any evidence to the contrary, the Commissioner has decided that on the balance of probabilities, the requested information subject to this decision notice is not held by the Council.

Right of appeal

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

Website: 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

Rachael Cragg
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