

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 July 2022

Public Authority: London Borough of Wandsworth (the Council)

Address: Town Hall
Wandsworth High Street
London
SW18 2PU

Decision (including any steps ordered)

1. The complainant has requested decision records on the appointment of the Local Authority Appointing Officer and the written statement of the decision made by this officer to appoint a Third Surveyor in respect of a party wall notice. The Council provided some information in response to the request but the complainant argued that this information did not fulfil their request and that the Council would hold further recorded information that did.
2. The Commissioner's decision is that, on the balance of probabilities, the further information sought by the complainant is not held. The Commissioner also finds that the London Borough of Wandsworth has breached section 10(1) of the FOIA by failing to provide a response to the request within 20 working days.
3. No steps are required.

Request and response

4. On 7 May 2021, the complainant wrote to the Council and requested information in the following terms:

"We wish to make a freedom of information request for council decision records on the following:

1. The appointment/designation of [redacted] (Head of Building Control) in the statutory role of the Local Authority Appointing Officer within the meaning of the Party wall etc act. Please provide the record (e.g. minutes) and date of the decision to make him the Local Authority Appointing Officer for Wandsworth Borough Council and when the appointment took effect. Also please advise whether the appointment in this role has been continuous to the date or any dates or termination and reappointment in this role.

2. The record of the written statement of the decision made by the local authority appointing officer to appoint [redacted] as Third Surveyor in respect of a party wall notice served on [redacted] (time period for decision was between June 2017 and August 2017). In particular:
 1. A record of the decision including the date it was made
 2. A record of the reasons for the decision
 3. Details of any alternative options considered and rejected by the officer when making the decision.
 4. A record of any conflict of interest declared by any Executive Member (Cabinet Member) who is consulted by the officer which relates to the decision
 5. In respect of any declared conflict of interest, a note of dispensation granted by the Council's Chief Executive.
 6. A record of any other conflicts of interest considered or any persons within Wandsworth Council having business or personal connections to [redacted], including relatives."

5. The Council responded on 6 September 2021. In response to point 1 of the request, it explained that the Council had delegated the role of Local Authority Appointing Officer to the Head of Building Control, and that the role runs with the post and not a named individual person. It also provided an explanation in response to point 2(2) of the request. It provided some information within the scope of the part 1 of the request in the form of a link to the Council's Constitution and Scheme of Management¹, letters of appointment of the Third Surveyor and email correspondence with the Third Surveyor. The Council stated that the remainder of the information in respect of points 2(3) – 2(6) was not held.

¹ [Council Constitution - Wandsworth Borough Council](#)

6. The complainant wrote to the Council on 15 October 2021 to request an internal review. The complainant stated that in relation to point 1 of the request they had not been provided with Council decision records on the delegation by the Council of the role of local authority Appointing Officer to the Head of Building Control. They also stated that they had not received recorded information within the scope of points 2(1) and 2(2) of their request, specifically, "the record of the decision as made at the time by the Appointing Officer". Furthermore, the complainant stated that the information provided in response to point 2(1) was incorrectly dated. The complainant was dissatisfied with the responses they received to points 2(3) – 2(6) of their request.
7. Following an internal review the Council wrote to the complainant on 10 December 2021. In relation point 1 of the request it stated that the complainant had been correctly directed to the information held by the Council that was publicly available, and provided a link to the Council's Scheme of Delegation². The Council also quoted the relevant sections of the Scheme in its response. The Council revised its response to point 2(1) of the request and provided the correct date. The Council upheld its responses in relation to points 2(3) – 2(6) of the request.
8. The Council noted that the complainant had raised further information requests in their request for internal review and that the Council would respond separately.

Scope of the case

9. The complainant contacted the Commissioner on 11 March 2022 to complain about the way their request for information had been handled. The complainant was dissatisfied with the response received to part 1 as they believed the information provided did not fulfil the request, and believed more information should be held under part 2(1-6) of their request. The complainant was also dissatisfied with the delays experienced in obtaining an initial response and internal review outcome from the Council. As there is no statutory requirement for a public authority to complete an internal review within a set time period, this issue will be considered in the Other Matters section.

² [PART 3 - Appendix F - Scheme of Delegations to Officers.pdf \(wandsworth.gov.uk\)](#)

10. The scope of this case is to consider whether further information was held within the scope of the request and the time it took the Council to process the request.

Reasons for decision

Section 1

11. 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.
12. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.
 13. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
 14. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, and/or other explanations offered as to why the information is not held.

The complainant's position

15. On 11 March 2022 the complainant wrote to the Commissioner to set out their grounds for complaint in the following terms:

"In my original request [at point 2 of the request] I asked for the documentary record of 'the decision' Under the Openness of Local Government Bodies Regulations 2014 (regulations 7 and 8) a written record containing a number of items was required to be produced by the officer making the decision as the decision (if properly made) would affect the rights of individuals including myself and my husband. (This is because the decision, if made correctly, would have put in place a quasi arbitrator called a 'third surveyor' under the Party Wall Act 1996 who neighbouring individual home owners involved in the process can call upon to decide on matters in dispute between the individuals

involved.). We have not been provided with a documentary decision record that includes the information required by these regulations. Furthermore, the internal reviewer (the local authority's appointed lawyer) states she is satisfied they have provided "a decision". We want the original written decision not a collection of emails with a recently-drafted explanation. The written decision containing the information required in regulation 7 of these regulations was required to be made available to the public so we should be able to be provided with this.

Further, [at point 1 of the request] we asked for the documentary record of the assignment/delegation of the role of Appointing Officer (Under the Party Wall Act, section 20) to the head of Building Control at the time the decision was made. The local authority and the internal review response state the information is available on the website but it is not. I have searched thoroughly (as explained in the correspondence attached here and in subsequent emails). Under the Local Government Act 1972 section 100 G(2) the list of delegated officer responsibilities and which officer holds the responsibility needs to be publicly available. The internal review has only cited extracts from an overview document giving the broad responsibilities of functions. However, that same document and other documents on the council's website clearly state that detailed schemes of management apply to the various functions/departments where the specific responsibilities of officers are listed. No mention is made in the documents on Wandsworth Council's website of the Appointing Officer and who within the council has been assigned this task. Hence the council has failed to provide this information and it is not available on their website."

The Council's position

16. In order to investigate this complaint the Commissioner asked the Council a number of questions about the steps it had taken to locate information falling within the scope of the request, and asked it to respond to the grounds of complaint as outlined above. The Commissioner has set out the questions below and the Council's answers:

17. Questions:

With regards to point one³ of the complainant's request:

³ "1. The appointment/designation of [redacted] (Head of Building Control) in the statutory role of the Local Authority Appointing Officer within the meaning of the Party wall etc act. Please provide the

18. **Question:** Is there a business purpose for which the requested information should be held? If so what is this purpose?

Response: Under section 100G(2) of the Local Government Act 1972 the Council is required to maintain a list specifying those powers of the council which, for the time being, are exercisable from time to time by officers of the council in pursuance of arrangements made under the 1972 Act or any other enactment for their discharge by those officers. The Council does keep this list and has referred the requestor to a link to it on its website: [PART 3 - Appendix F - Scheme of Delegations to Officers.pdf \(wandsworth.gov.uk\)](#)

19. **Question:** Are there any statutory requirements upon the Council to retain the requested information? As noted above, in their complaint to us, the complainant has made references to the Openness of Local Government Bodies Regulations 2014, the Party Wall Act 1996 and specifically in terms of point one of the request, to section 100 G(2) of the Local Government Act 1972. With regards to the legislation cited is there a requirement for the Council to hold the information in a recorded form ie for audit purposes?

Response: Under section 100G(2) of the Local Government Act 1972 the Council is required to maintain a list specifying those powers of the council which, for the time being, are exercisable from time to time by officers of the council in pursuance of arrangements made under the 1972 Act or any other enactment for their discharge by those officers. The Council does keep this list and has referred the requestor to a link to it on its website: [PART 3 - Appendix F - Scheme of Delegations to Officers.pdf \(wandsworth.gov.uk\)](#)

20. With regards to point two⁴ of the complainant's request:

record (e.g. minutes) and date of the decision to make him the Local Authority Appointing Officer for Wandsworth Borough Council and when the appointment took effect. Also please advise whether the appointment in this role has been continuous to the date or any dates or termination and reappointment in this role."

⁴ 2. The record of the written statement of the decision made by the local authority appointing officer to appoint [redacted] as Third Surveyor in respect of a party wall notice served on [redacted] (time period for decision was between June 2017 and August 2017). In particular:

1. A record of the decision including the date it was made
2. A record of the reasons for the decision
3. Details of any alternative options considered and rejected by the officer when making the decision.
4. A record of any conflict of interest declared by any Executive Member (Cabinet Member) who is consulted by the officer which relates to the decision
5. In respect of any declared conflict of interest, a note of dispensation granted by the Council's Chief

21. **Question:** Is there a business purpose for which the requested information should be held? If so what is this purpose?

Response: For business purposes the Council retains letters of appointment of surveyors. These have been disclosed to the complainant.

22. **Question:** Again, please confirm whether there are any statutory requirements upon the Council to retain the requested information? As noted above, in their submission to us, the complainant argued that regulations 7 and 8 of the Openness of Local Government Bodies Regulations 2014 required the Council to hold recorded information of the nature sought by this part of the request. With regards to the legislation cited is there a requirement for the Council to hold the information in a recorded form ie for audit purposes?

Response: There are no statutory requirements on how to record decisions and actions taken by the Council exercising its powers under the Party Wall Act 1996

Regulations 7 and 8 Openness of Local Government Regulations 2014 relates to "a decision" which "would otherwise have been taken by the relevant local government body, or a committee, sub-committee of that body or a joint committee in which that body participates, but it has been delegated to an officer of that body" Decisions in relation to Party Wall are not decisions taken by committee or subcommittees or delegated by committee or subcommittee to officers therefore regulations 7 and 8 of Openness of Local Government Regulations 2014 do not apply.

23. **Question:** Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.

Response: The FOI was allocated to the relevant directorate and the Council's Head of Building Control was asked to respond. For reference, this officer was familiar with the underlying matter, having dealt with it himself. All records are held electronically and within structured case files. The officer reviewed the case file and extracted all relevant information.

Executive.

6. A record of any other conflicts of interest considered or any persons within Wandsworth Council having business or personal connections to [redacted], including relatives."

24. **Question:** If searches included electronic data, which search terms were used and please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

Response: As above, the information is contained within a structured electronic case file on a networked drive and the person undertaking the search had first-hand involvement with the case. As such, no search terms were needed.

25. **Question:** If the information is electronic data which has been deleted, might copies have been made and held in other locations?

Response: No information relating to the case would have been deleted.

The Commissioner's position

26. At point 1 of their request the complainant has asked for information at a granular level. The Council has provided the complainant with a copy of the Scheme of Delegation to Officers and directed them to pages 3 and 6 which explain that the Scheme of Delegation "describes broad areas of responsibility rather than detailing specific statutory functions" and "under this scheme, Directors may delegate functions allocated to them to Assistant Directors and heads of service and other officers". In the Council's interpretation of the legislation cited by the complainant to the Commissioner in respect of this request, (section 100G(2) of the Local Government Act 1972) it are not required to hold information in greater detail than what has been provided. The Commissioner is satisfied that the Council has no business need and, in its own interpretation, statutory need to hold the specific information sought in part 1 of the request. The Commissioner's view is that this provides a rational explanation for why the specific information requested would not be held. While not as detailed as what has been requested by the complainant, it is the Council's view that the Scheme of Delegation provided is sufficient for outlining the Council's internal governance. Therefore, the Commissioner's view is that, on the balance of probabilities, the specific information requested is not held.
27. The complainant received some information in response to points 2(1) and 2(2) of their request however maintained their position that further information should be held at a granular level. In their complaint to the Commissioner, they state that the Council has a statutory obligation under section 7 and 8 of the Openness of Local Government Bodies Regulations 2014 to hold this information. The Council's interpretation of the legislation is that it does not apply in this circumstance. Furthermore, per the Council's interpretation of the Party Wall Act 1996 there are no statutory requirements on how decisions are recorded. The

Commissioner is satisfied that the Council has no business need and, in its own interpretation, statutory need to hold the specific information sought in part 2 of the request. The Commissioner's view is that this provides a rational explanation for why the specific information requested would not be held. Therefore, the Commissioner's view is that, on the balance of probabilities, the specific information requested by points 2(1) and (2) is not held.

28. At points 2(3) – 2(6) the complainant has asked for a number of items. The Council states that this information is not held. In the Commissioner's view the searches the Council undertook for the information were proportionate and focused and it is reasonable to assume that these searches would have recovered any relevant information. This is because the individual who undertook the searches was well acquainted with the matter and would have known where and how to locate any information falling within the scope of the request.
29. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

Section 10

30. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt".
31. The complainant wrote to the Council to make an information request on 7 May 2021. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with FOIA. The Commissioner finds that the Council has breached section 10(1) by failing to respond to the request within 20 working days.

Other matters

32. The complainant has made references to legislation outside of the jurisdiction of the Commissioner under which they believe the Council is obligated to hold the requested information. As the Commissioner does not regulate this legislation it is inappropriate for him to comment on whether the Council's interpretation and application of this legislation is correct.

33. The Commissioner wrote to the Council to request an explanation for the delays faced by the complainant in obtaining a response to their request. The Council's response is as follows:

"The delays in responding to the applicant cannot be excused and we would like to convey our apologies to the complainant for these. They were the result of staff oversight and general pressures of work. Whilst the Council did take an approach of prioritising resources towards pandemic related matters (as the ICO had recognised might be necessary) during the initial stages of the pandemic, it has very much moved back to a 'BAU' approach in coordinating and chasing up FOI responses for FOI applications. Moreover, in addition to the reporting of FOI performance at senior management level, the Council is in the process of implementing a new case management system, with a view to maximising its FOI compliance; not least, with respect to minimising delays."

The Commissioner expects the Council to ensure that such delays are not repeated in the future.

34. The complainant raised concerns over the length of time taken to complete an internal review. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice⁵ explains that such reviews should be completed within a reasonable timeframe. The Commissioner expects that most internal reviews should be completed within 20 working days, and even for more complicated requests, reviews should be completed within a total of 40 working days.⁶ The Commissioner's view is that, in this instance, the Council took a maximum of 40 working days to provide its internal review outcome.

⁵ [Freedom of Information Code of Practice - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362822/freedom-of-information-code-of-practice.pdf)

⁶ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

Right of appeal

35. 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

36. 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.

37. 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

Jonathan Slee
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