

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2022

Public Authority: Lewisham Homes Limited
Address: Old Town Hall
Catford Road
Catford
London
SE6 4RU

Decision (including any steps ordered)

1. The complainant has requested information regarding potential metal theft on their property.
2. The Commissioner's decision is that Lewisham Homes Limited ("Lewisham") has breached section 1(1) FOIA as it does hold information relevant to the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the Decision made by the First Tier Tribunal, please ensure that information containing personal data is not disclosed.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 29 July 2021, the complainant wrote to Lewisham and requested information in the following terms:

“Under the freedom of information I requested confirmation to confirm or deny this theft which not been forthcoming. Could you please clarify either yes or no was the lead stolen from the above for mentioned property.”

6. Lewisham responded on 15 September 2021 and denied holding the requested information.
7. Following an internal review, Lewisham wrote to the complainant on 27 January 2022. It stated that it was maintaining it's original position and did not hold any additional information.

Scope of the case

8. The complainant contacted the Commissioner on 28 March 2022 to complain about the way his request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine whether the requested information is held by Lewisham.

Reasons for decision

10. 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.

11. In scenarios such as this, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.

12. 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.

The complainant's position

13. The complainant provided the Commissioner with a redacted police record which confirmed that two suspects were arrested due to Lead theft on 21 June 2008 within the requested area. Upon inspections of a group of properties (one of which was the complainants request) a quantity of lead was found below a trap door leading to the roof.
14. The complainant believed that this evidence indicated that such a crime had been committed and Lewisham should hold information regarding theft of lead from the requested address.

Lewisham's position

15. Lewisham advised that everything regarding Major Works contract with Breyer is stored on a project database. All employees (Lewisham Homes, Contractors and consultants) had access to this database, which was a day to day tool for running the contract.
16. Lewisham went on to explain that each block/property was stored with its own data subset which contained all schedules, pricing, notes and documentation in relation to the planned and completed work.
17. Lewisham informed the Commissioner that searches were conducted on the property and on each dataset for "roof and any reports of lead theft". The Lewisham advised that nothing was identified.
18. Lewisham confirmed that all property information is stored on the [name redacted] database or in shared folders on the Lewisham Homes Property Services drive. Electronic searches of shared drives using key words such as "lead theft" were completed and no relevant documents were found.
19. Lewisham did however identify a First Tier Tribunal, Property Chamber Residential Property Decision (the Decision report) which contained information regarding lead theft from roofs in the requested area. Lewisham advised this was not disclosed to the complainant "due to it not holding substantial evidence."

The Commissioners Position

20. Whilst the Commissioner understands that the whole Decision report made by the First Tier Tribunal does not appear relevant to the

requested, he does believe that the part of the Decision report Lewisham submitted to the Commissioner does hold information relevant to the request.

21. Whilst he understands that Lewisham believes the report does not hold substantial evidence, it cannot advise requesters it does not hold any information within the scope of the request, when in fact it does.
22. For the above reason the Commissioner believes that the Decision report should have been disclosed to the complainant, with appropriate steps taken to ensure that no personal data is disclosed.
23. The Commissioner is satisfied that information within the scope of the request was held by Lewisham and was not disclosed under section 1(1) FOIA meaning Lewisham was in breached of section 1(1) FOIA.
24. The additional evidence provided by the complainant which also referenced such a crime taking place within the requested area, along with the Decision report from Lewisham is a strong indication that the Crime did take place.

Section 10: Statutory time for compliance

25. Section 10(1) of the Act states:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

26. The original request was made on 29 July 2021 and Lewisham did not respond until 15 September 2021 therefore it has breached section 10(1)

Other matters

27. Whilst the complainant had advised they only wanted the above request investigated in this Decision Notice, the Commissioner is mindful that originally all three requests were sent by him to Lewisham for review.
28. Lewisham’s submission to the Commissioner seemed to only answer the required questions to one request (shown above), despite three requests being investigated at the time. The Commissioner would like to remind Lewisham that it needs to ensure it is providing strong submissions for each individual request in future.

Right of appeal

29. 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

30. 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.
31. 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

Catherine Fletcher
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