

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 August 2023

Public Authority: London Borough of Havering
Address: Town Hall
Main Road
Romford
RM1 3BB

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Havering (Council), relating to a payment being made as part of the Private Sector Leasing scheme.
2. The Commissioner's decision is that, on the balance of probabilities, the Council has not conducted adequate searches for the requested information.
3. The Council also breached section 10(1), by failing to respond to the request within 20 working days.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Conduct a fresh search for the requested information and provide a new response to the complainant which is complainant with FOIA.
5. 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 the Act and may be dealt with as a contempt of court.

Request and response

6. On 15 August 2022, the complainant wrote to [the Council and requested information in the following terms:

"Could I please ask for [digital] copies of any printed documents, computer files, letters, emails, photographs, and sound or video recordings, from any Council department, that **references £1150 being paid for three-bedroom properties as part of the Private Sector Leasing scheme.**"
7. The Council responded on 28 November 2022. It stated that it did not hold information in the scope of the request.
8. Following an internal review the Council wrote to the complainant on 1 March 2023. It stated that it had disclosed any information it held in previous requests.

Scope of the case

9. The complainant contacted the Commissioner on 11 November 2022 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to consider whether, on the balance of probabilities, the Council holds any additional information within the scope of the request.

Reasons for decision

Section 1(1): General right of access to information

11. Section 1(1) of the FOIA states that 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 relevant to the request, and if so, to have that information communicated to them. This is subject to any procedural sections or exemptions that may apply. A public authority is not obliged under the Act to create new information in order to answer a request.
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 the circumstances of this case, the Commissioner will determine whether, on the balance of probabilities, the Council holds (or held at the time of the request) recorded information that falls within the scope of the request.
14. The Council advised that it searched its computer system for the requested information, this included checking a shared drive and its email system for any relevant correspondences regarding the property or the complainant, however nothing was located. It also explained that it checked manual records and still no information within the scope of the request was located.
15. The Commissioner has decided, on the balance of probabilities, that the Council has not conducted sufficient searches for the requested information. The Council's response seems to focus on the complainant and one property in particular, however the request clearly asks for information relating to three-bedroom properties as part of the Private Sector Leasing scheme.
16. The Commissioner requires the Council to conduct a fresh search for the requested information, ensuring it focuses on the wording of the request as seen in paragraph 6. It should then provide a new response to the complainant which is compliant with FOIA.

Procedural matters

17. The Council breached section 10(1) by failing to respond to the request within 20 working days.

Other matters

18. Although the Council is under no legal obligation under FOIA to provide an internal review, the Commissioner still considers it to be good practice. Each internal review should be completed with 20 working days, but should never exceed 40 working days.
19. In the circumstances of this case, the Council did not provide its internal review until after 40 working days, which the Commissioner deems unnecessary.
20. The Commissioner would also like advice that the Council should ensure in future, it is engaging with all of the Commissioner's queries when a case is been investigated.

Right of appeal

21. 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

22. 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.
23. 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

Amie Murray
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF