

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 July 2014

Public Authority: Calderdale Council
Address: Town Hall
Crossley Street
Halifax
HX1 1UJ

Decision (including any steps ordered)

1. The complainant has requested information relating to the enforced sale procedure of a specific property. The Commissioner's decision is that, on the civil standard of the balance of probabilities, Calderdale Council does not hold any further information than that already provided to the complainant. He does not require the council to take any steps to ensure compliance with the legislation.

Request and response

2. On 5 June 2013, the complainant wrote to Calderdale Council ('the council') and requested information in the following terms:

"Please provide me, [complainant's name], with all records (including but not limited to: documents, notes, minutes of meetings and e-mails) relating to the enforced sale procedure of my house, [address]. ([email address])

In particular I would like to see:

A copy of the complaint regarding a loose coping stone (names redacted as necessary under the Data Protection Act);

Details of the process that was followed in relation to arranging repair;

Details of consultation with The Enforcement Action Group; (*question 3*)

Details of the basis upon which a decision was made by the Chief Officer for Housing and Environment following consultation with this group, in particular details of the delegated authority to proceed and the actual delegated decision in this case, who took it and when and on what basis; (*question 4*)

Details of steps taken by the Building Control Department to find my contact details;

Copies of letters or other communications asking why the property is empty and asking what my intentions were regarding the property;

Any correspondence setting out the options available in order to bring my property back into use;

In addition I would like to have details of:

How many properties in Calderdale have financial debt to the council registered against them;

How many properties have a financial debt to the council registered against them of 1000 pounds or less;

How many properties have been subject to enforced sale procedures since the adoption of the 2010 – 2015 Empty Homes Strategy;

How many properties with 1000 pounds financial debt to the council, or less, registered against them have been subject to enforced sale procedures since the adoption of the 2010 – 2015 Empty Homes Strategy;

I would also like to see all policy and other documents regarding the decision process to adopt enforced sale procedures in general (I already have a copy of the Empty Homes Strategy).

3. The council responded on 2 July 2013 and provided some recorded information, provided some narrative information and stated 'N/A. No details are held' in relation to question 4 and explained that 'The group was acting within the remit of the strategy, approved by cabinet 15th March 2010.'
4. The complainant requested an internal review in December 2013 specifically in relation to the 'not applicable' responses. He said that;

"The omissions were predictably in the section in my list of requests which revealed you had failed to follow the Empty Homes Strategy procedure correctly when initially deciding to threaten auction of my house."

5. The council provided an internal review on 9 January 2014. It stated that it had reviewed the 12 questions asked and noted that although one question (*question 4*) was marked as N/A an explanation for this was given. It said that;

“As answered in the Original response the decision was made by the group acting within the remit of the strategy approved by Cabinet on the 15th March 2010. A copy of this cabinet report was sent with the original response on the 3rd July”.

Scope of the case

6. The complainant contacted the Commissioner on 14 February 2014 to complain about the way his request for information had been handled. He specifically said that his complaint is about the inadequate answers to questions 3 and 4 which are missing information.
7. The Commissioner has therefore considered whether the council holds any further information within the scope of questions 3 and 4.

Reasons for decision

8. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
9. 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 is not held and any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is 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 civil standard of the balance of probabilities.
10. The complainant alleges that the council has avoided giving details or minutes of the minuted meeting that he claims must be held, under the rules of the Empty Homes Strategy, before a house can be taken to auction by a council. He believes that;

"their selective choice of which questions in my FOI request to not answer is an attempt to conceal information which would show that Calderdale officials well understood that they acted beyond their powers (in putting my house to auction without going through Empty Homes Strategy steps, so as to retrieve their 600 pound bill for them removing one roof tile without serving notice on me)."

11. The Commissioner notes that the council provided the complainant with emails between officers in response to question 3 and a copy of the Empty Homes Strategy 2010 – 2015 in response to question 4.
12. The Commissioner enquired as to whether further information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. The council explained that the complainant's property was not the only property put forward to auction at that time and that whilst much correspondence goes back and forth between departments and officers, there are no officially formally minuted meetings recorded that are applicable to the property in question. It stated that the searches undertaken constituted direct communication with the Enforcement Action Group who provided the whole file on the property with nothing omitted. It also said that if information were held it would likely to be held as manual and electronic records and that no information had ever been held which had since been deleted or destroyed.
13. The Commissioner asked the council to explain whether a minuted meeting should be held, under the rules of the Empty Homes Strategy, before a house can be taken to auction by the council and if minutes weren't produced for the meeting(s) at which action relating to the complainant's property was discussed whether the council could explain why not. The council said that there is no requirement for minuted meetings to be held which is evidenced in the Empty Homes Strategy. It provided the Commissioner with a copy of the strategy which the Commissioner has read but been unable to identify a requirement to hold minuted meetings and the complainant has not stated where, within the strategy, this requirement is detailed. It explained that notes were taken by individual officers but these were not formal minutes and they will not mean very much to anyone other than the people in attendance because of the abbreviations used. It said that the notes are officer's action notes following the meetings which are applicable to officer's workloads. It further explained that such notes do not form the basis of why the decision to sell the complainant's property was made which is down to legislation and cabinet decisions, all of which have been provided to the complainant. The council confirmed that the aforementioned officer's notes were provided to the complainant.

14. In reaching a decision as to whether further information is held, the Commissioner also enquired whether there was any legal requirement or business need for the council to hold the information. The council stated that there is no business requirement or statutory need to hold such minutes.
15. The Commissioner also considered whether the council had any reason or motive to conceal the requested information. He appreciates that the complainant believes that the council has acted improperly but he has not seen any evidence of this. Therefore he has not identified any reason or motive to conceal the requested information.
16. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any further information relevant to this request. The Commissioner is therefore satisfied that on the balance of probabilities, the information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.

Right of appeal

17. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. 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.
19. 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
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Water Lane
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