

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 September 2014

Public Authority: Birmingham City Council
Address: Council House
Victoria Square
Birmingham
B1 7AB

Decision (including any steps ordered)

1. The complainant requested information regarding a concierge service which the council runs in his building. He requested details of how the concierge service was constituted.
2. The Commissioner's decision is that on a balance of probabilities no further information is held by the council for the purposes of section 1 of the Act.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 21 November 2013 the complainant wrote to the council saying that he was interested in receiving information from the council about the concierge service on his estate given the large amount of money he paid each year as an annual service charge.
5. The council wrote back asking the complainant to be more specific about the information which he wanted to receive.
6. On 7 January 2014 the complainant wrote to the council and clarified the information that he wanted in the following terms:

"1. When the Lyndhurst estate concierge service was first established there would be a record of what constituted it: a statement about the

purpose for which it was intended. Its objectives would have been set out: which reflected the consultation period?

2. Also, there would be a record of it having been registered for legal reasons? "

7. The council responded on 21 January 2014. It stated that after a search of the relevant service areas and systems it could confirm that the council does not hold the relevant information.
8. Following an internal review the council wrote to the complainant on 27 February 2014. It upheld the appeal stating that the panel felt that it would be reasonable to assume that information relating to the concierge service would be held along with details about the purpose and objectives of the service. It therefore asked the relevant service area to search its records and report back to the complainant.
9. On 4 March 2014 the council wrote back to the complainant. It said that following the internal review it had carried out further searches of the relevant area and could confirm that after a thorough search it did not hold the information.

Scope of the case

10. The complainant contacted the Commissioner on 29 April 2014 to complain about the way his request for information had been handled.
11. The Commissioner considers that the complainant is complaining that the council must hold further information.

Reasons for decision

12. Section 1 of the Act 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. When the Commissioner receives a complaint that a public authority has not provided any or all of the requested information, it is seldom possible to prove absolutely that there is no further information held. The Commissioner will apply the normal civil standard of proof in determining the case, i.e. he will decide on the balance of probabilities whether the information is held. 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.
14. Where the question is whether the council holds information or not the Tribunal has in the past outlined that where its searches are adequate the decision must be that the information is not held on a balance of probabilities. Even if further information might be held the Tribunal does not expect that an authority will search every scrap of paper it holds in order to determine whether further information is held or not. It expects that the authority will have carried out appropriate searches of the relevant areas to determine whether information can be found or not.
15. The Commissioner therefore wrote to the council and asked it to clarify what searches had been carried out to identify and locate the information.
16. The Commissioner firstly asked the council to clarify whether Lyndhurst Estate Concierge Service was a separate entity to the council such as a wholly owned, or a private company providing services on behalf of the council. The council confirmed that the service is not a separate legal entity to the council. It falls under the landlord services role carried out by the council. This department manages the council's tower blocks and decides how it will discharge its duties. It confirmed that the service for Lyndhurst was implemented in 1998. It does not have a constitution but it does have service standards. The council confirmed that a copy of the service standards had been provided to the complainant and that they are also available from the council website.
17. The Commissioner also asked the council to explain and describe the searches it had carried out for any information falling within the scope of the complaints request.
18. The council confirmed that the relevant service area carried out both electronic searches for committee reports and information held on personal computers. It also carried out manual searches of the relevant filing system. It also carried out searches on its email system and personal document files on individual officers computers.

19. It confirmed that electronic searches were carried out using the search terms 'concierge/security services'.
20. It confirmed that some information may have been held previously however due to office moves in 2004 and 2012 the information was destroyed in line with the council's retention schedule. It could not however confirm a date when the information would have been destroyed but considered that this would have been in 2012 when the office moved to smaller accommodation and the amount of paperwork needed to be reduced. There is no specific record of the destruction of the information other than for one document, regarding the Housing Engineer Service at the block, which it says was destroyed in line with the retention schedule. The council said however that it did not consider it likely that this file would have held any of the information requested in any event.
21. The council confirmed that there is no specific formal records management policy for information of this type. However similar policies are retained until the policy is superseded plus 6 additional years. It said that the last concierge review for all tower blocks was carried out in 1998. The Lyndhurst concierge service would not have been a separate policy. It would have been set up in the same way as existing concierge services set up at that time.
22. The Commissioner also asked the council whether copies might have been made of the electronic documents which had been deleted and whether these might be held in other locations. The council confirmed that this was unlikely, apart from committee reports. However it said that a complete and thorough search had been completed and that everything which had been located had been provided to the complainant.
23. As regard committee reports, the council said that without any defined date of decision it could not identify whether any report on the concierge service is held. The Commissioner understands by this that there was no indexing system which would allow it to identify whether any of the committee reports might include relevant information. The Council confirmed however that *"The relevant service area carried out both electronic searches for committee reports and information held on officer's personal computers. Also, a manual search of the filing system at the College Road Housing office was carried out. Searches were completed on our Outlook email system and 'My Documents' on individual officer's computers."*
24. The Commissioner notes that the complainant is charged over £700 per annum for the concierge service. The Commissioner would therefore have thought it natural that the purpose and nature of the service would

be clearly written down as the functions which the concierge service would carry out. This prevents arguments of the nature which has developed between the complainant and the council regarding the exact role of the concierge service in this case. It appears that this was also the council's conclusion at the internal review stage. However subsequent further searches again failed to locate any further information.

25. The council has not denied that this is the case, however its argument is simply that over time the role of the service is likely to have changed and there is no information held now given that the service was initially brought into being in 1998. Whilst the council is relatively sure that information of that sort would have been held at that time it would subsequently have been destroyed over the passage of time.
26. Whether information should or should not be held is not an essential question for the Commissioner. He simply needs to be satisfied as to whether, on a balance of probabilities, information was held at the time that the request was received.
27. Given the councils account of the history of the concierge service and the description of the searches it has carried out the Commissioner is satisfied that on a balance of probabilities no further information is held.

Right of appeal

28. 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

29. 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.
30. 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
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF