

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 February 2017

Public Authority: Burnley Borough Council

Address: Town Hall
Manchester Road
Burnley
Lancashire
BB11 9SA

Decision (including any steps ordered)

1. The complainant has requested information from Burnley Borough Council relating to the compulsory purchase of his former home and the disparity in the amount of money he received in comparison with other property owners.
2. The Commissioner's decision is that Burnley Borough Council has complied with its duty under section 1 of the FOIA to provide the complainant with recorded information which it holds and which is relevant to his requests for information. She has also decided that the Council has complied with section 1 by informing the complainant that it does not hold recorded information where this is relevant to his requests.

Request and response

3. The complainant has submitted three multi-part requests for information to Burnley Borough Council between 24 September and 8 October 2015. The information which the complainant seeks relates to the compulsory purchase of his former home and the disparity in the amount of money he received in comparison with other property owners. The terms of the complainant's requests are:

Request 1:

"Please answer the following questions: -

Question 1000. In May 2003 you valued the above property at £12,000. What were the number of properties used in the sample to arrive at that figure? I asked for this information in April 2003 but you did not answer the question.

Question 1001. European Contract Principle (ratified into English Law) state in article 4.107 (ex art. 6.107) – Fraud that (1) A party may avoid a contract when it has been led to conclude it by the other party's fraudulent representation, whether by words or conduct, or fraudulent non-disclosure of any information which in accordance with good faith and fair dealing it should have disclosed (2) A party's representation or non-disclosure is fraudulent if it was intended to deceive (3) in determining whether good faith and fair dealing required that a party disclose particular information, regard should be had to all circumstances, including (d) the apparent importance of the information to the other party. This information has been asked for on several occasions. The Fraud Act Chapter 35 3 Fraud by failing to disclose information states that a person is in breach of this section if he - (a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and (ii) to cause loss to another person or to expose another to a risk of loss. Do you accept that fraud has been committed?

Question 1002. If you do not think fraud has been committed please explain why?

Question 1003. How many houses were in the sample you used to arrive at that figure?

Question 1004. Can you send me a list of these properties and the value you placed on them.

Question 1005. Can you send me a map showing where those properties were located.

Question 1006. Can you send me a copy of the guidelines you were using to accomplish this task"

Request 2:

"Question 1007. You state in your letter of the 27 November 2013 that "the compensation represented an assessment of the market value of your interest in the property at the date of compulsory purchase". This is a clear admission you were assessing market value. Please let me know how exactly how you assessed market value? Please supply all

figures and documents to back up your approach and also the internal guidelines used.

Question 1008. You state that "the compensation paid accords with the tone of other compensation settlements in the area from that period"

Question 1009./ Mr xxx, [a named person] had his house valued at £15,000 to my £12,000. In the final settlement he receives £27,000 to my £8,500 so what you say does not ring true. Please send me the sample of houses you used to ascertain the comparable value of his house. Full details are requires of houses, values, dates, etc."

Request 3:

"Question 1000.1 The clearance programme on Hirst Street started in about 2000. The Council started negotiating the sale of properties in about April 2003. Why were details of samples not made available at that time?

Question 1000.2 When a Council causes blight to an area the law says house owners must be compensated. Please send me full details of your compensation scheme to cover the blight you were responsible for.

Question 1000.3 When [a named person] came to the meeting in May 2003 why did he not bring along a sample. The Council were collecting details of sales but [a named person] would not divulge them. The paragraph below shows [a named person's]. Why did [a named person] ignore this?"

4. After much correspondence passing between the complainant and the Council, the Council carried out an internal review. The outcome of the Council's review was sent to the complainant on 29 April 2016.
5. The Council informed the complainant that questions 1001 and 1002 were not requests for information and therefore they fell outside the scope of the FOIA. In respect of question 1005, the Council stated that, "We do not hold a map as requested and this information is available by other means", and therefore it is subject to the application of section 21 of the FOIA.
6. The Council advised the complainant that it did not hold information relevant to questions 1000.1 and 1000.3. It also advised him that information relevant to questions 1008 and 1009 comprises the personal data of third parties and is therefore subject to its application of section 40(2) of the FOIA.

7. In respect of question 1003, the Council informed the complainant that it had already provided information in response to this question and that to provide more would involve the release of personal information.

Scope of the case

8. The complainant initially contacted the Commissioner 11 January 2016 to complain about the way his request for information had been handled.
9. The Commissioner reviewed the documents supplied to her by the complainant in support of his complaint. Having carried out this review the Commissioner decided that the scope of her investigation would be to determine what information was held by the Council at the time the requests were made.
10. The Commissioner advised the complainant that she agreed with the Council that his questions 1001 and 1002 were not requests for recorded information and therefore these questions will not be investigated.
11. The Commissioner informed the complainant that her decision would be made in respect of his requests under questions 1000, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1000.1, 1000.2 and 1000.3.

Reasons for decision

12. Section 1 of the FOIA states that
 - “(1) 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. The Commissioner has sought to determine whether the Council holds information which the complainant seeks.
14. In making this determination, the Commissioner applies the civil test of the balance of probabilities. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.

15. The Commissioner has investigated this complaint by asking the Council a number of questions about the searches it has made to locate the information which the complainant seeks. The Commissioner's investigation also included questions about the possible deletion/destruction of information which might be relevant to the complainant's request.

The Council's representations

16. The Council has informed the Commissioner that everything it holds on this matter is held on a paper file. The Council has advised the Commissioner that this file was checked for information falling within the scope of his requests.
17. Additionally the Council checked an electronic spreadsheet for information in scope of the requests and also carried out a general search of its computer-based file. The Council used the complainant's surname as a search term for information about the compulsory purchase of his property.
18. The Council did not search its email records because the officer who dealt with the compulsory purchase order no longer works for the Council.
19. It is the Council's position that, should it hold recorded information which is relevant to the complainant's request it would more than likely be held in its paper-cased file.
20. The Council has advised the Commissioner that no recorded information in respect of the compulsory purchase of the complainant's property has been deleted or destroyed. It also advised her that it has no business purpose which requires the retention of any information falling within the scope of the complainant's requests.
21. The Council has assured the Commissioner that the complainant has already been given a list of properties which were compulsory purchased and that the map it referred to in its response to the complainant is 'Google Maps' which is online and is therefore available to the public.
22. In respect of the complainant's request numbered 1003, the Council assures the Commissioner that it holds no personal data concerning the complainant which has not already been provided to him.
23. The Council has clarified its position in respect of its answer to the complainant's question 1000.1. It has assured the Commissioner that no information has been withheld in reliance on section 40(2) because it is personal data.

24. Instead, the Council has made clear that the samples are not held and therefore not available. Additionally, the Council has advised the Commissioner that, when the [named person] attended the meeting referred to by the complainant, the 'sample' was not available for him to take because the Council did not hold it.

The Commissioner's decision

25. The Commissioner has considered the representations made by the Council in respect of the complainant's requests. In the absence of evidence to the contrary, the Commissioner is obliged to accept the Council's position that it does not hold information relevant to the complainant's requests, other than the information the Council has already supplied to him.
26. The Council's representations are plausible and reasonable and they are likely to accurately reflect the information the Council holds.
27. The Commissioner is satisfied that the Council, on the balance of probabilities, does not hold any further information in respect of the compulsory purchase of the complainant's former property.
28. It is the Commissioner's decision that the Council has complied with section 1 of the FOIA.
29. The Council has assured the Commissioner that it has not withheld any information in reliance on section 40(2) of the FOIA, despite its initial response made to the complainant's questions 1008 and 1009. In view of this assurance that no third party personal data has been withheld from the complainant, the Commissioner has not considered the Council's initial and apparently misplaced reliance on section 40(2).

Right of appeal

30. 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

31. 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.
32. 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