

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 October 2017

**Public Authority:** Birmingham City Council  
**Address:** Council House  
Victoria Square  
Birmingham  
B1 1BB

#### Decision (including any steps ordered)

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1. The complainant has requested a copy of the report from 2012, for a residential address in Birmingham, which states and details that the property meets the Birmingham Empty Property Repairs standard. Birmingham City Council provided some information however the complainant considered that more information must be held.
2. The Commissioner's decision is that Birmingham City Council does not hold any further information.
3. The Commissioner does not require the council to take any steps.

#### Request and response

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4. On 11 October 2016 the complainant wrote to Birmingham City Council ('the Council') and requested information in the following terms:  
  
*"I hereby request a copy of the property report for [address] that is dated the year 2012. The property is a Birmingham City Council bungalow."*
5. The council responded on 25 October 2016 and asked for more specific detail about the report referred to. The complainant responded on the 14 December 2016 with the following clarification "A copy of a report dated 2012 for [address] carried out by / for Birmingham City Council's Empty Properties Team, or another report dated 2012 (for [address]), which states (and details) that the property meets the Birmingham Empty Property Repairs Standard."

6. The Council responded on 23 January 2017, providing the Void Repairs Record Sheet, explaining that this is the document that is signed to confirm that the work has been completed to the Birmingham Empty Property Standard ('BEPRS'), and a spreadsheet of repairs report for the property.
7. The complainant requested an internal review on 13 February 2017, stating that the information appeared incomplete. Following an internal review the Council wrote to the complainant on 7 March 2017 and upheld its original position. It stated that "*the information provided is the information held by the Council for the purposes of FOIA*" and that "*the repair work carried out to the void property was under the terms of the contract by an external repairs company where there is no requirement to produce a report in the manner sought by the requester.*"

### Scope of the case

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8. The complainant contacted the Commissioner 25 March 2017 to complain about the way his request for information had been handled. The complainant argued that further information must be available due to inconsistencies between the state of the property and the BEPRS. Stating that the information supplied "*appears to be incomplete since there ought to be a list/report of all the checks carried out before the repairs on the property and a list/report of all the checks carried out after the repairs on the property; as well as the repairs carried out on the property. Also, the reports need to be authorised by a senior representative; if the reports were audited, then the repair and check details may be in the audit documentation.*"
9. The Commissioner considers that the scope of the case is whether all of the recorded information relevant to the request has been provided.

### Reasons for decision

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10. Section 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 within the scope of the request, and if so, to have that information communicated to him.
11. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes 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. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. The Commissioner asked the Council on what basis it was certain that it did not hold the requested information. The Council explained that it pays a fixed amount to contracted repair partners to bring empty properties ('voids') up to the BEPRS standard regardless of the cost to the contractor to undertake works. In signing the contract the repair partner agrees that it will ensure that each property meets the standard. Importantly for this case the Council stated that it does not inspect voids prior to handing them over to repair partners, and it only inspects a percentage after repairs.
14. The Council explained that "[address] *was not inspected. This process is where a council officer views the property with the contractor and a "snagging list" is completed. The contractors then complete the works before the Council will accept the void back. Although the inspections are recorded on our system no audit reports are collated.*"
15. The contracted repair partner is responsible for inspecting void properties and creating schedules of repairs. The Council explained that *"Any documentation relating to the scheduling of the works would have been internal to the contractor and has been provided to the requestor, as in this instance we were able to access this."*
16. The Council provided an extract of the repair contract for void properties. It states that *"It will be the responsibility of the Service Provider to carry out an inspection of the dwelling and draw up a schedule of works to bring that dwelling up to the Clients Void Property Repair Standard."* (Note that the Service Provider is the repair partner and the Client is the Council). This confirms the Council's position that the repair partner is responsible for inspecting void properties and the resulting schedule of works.
17. The Council confirmed that there is not a business purpose or a statutory requirement to hold an audit report of the completed repair work.
18. The Council confirmed that it has not previously held any further and relevant information that has been destroyed.
19. The Council explained that the issue of repairs on the property is the subject of an ongoing disagreement between itself and the complainant. The complainant has exhausted the Council's complaints

procedure and the issue is currently under review by the Housing Ombudsman.

*The Commissioner's View*

20. The Commissioner understands the reasons why the complainant considers further information should be held, however the Commissioner can only consider what is actually held.
21. The Commissioner considers that the process to bring properties up to BEPRS standard explains why no further information is available.
22. She appreciates that the issue of repairs on the property is the subject of an ongoing disagreement. However, it is outside the Commissioner's remit to determine if the requested information regarding this matter should be held, and even if it should be, she cannot require a public authority to create information under the FOIA.
23. Having considered the Council's responses to the complainant, the Commissioner is satisfied that the Council does not hold any further recorded information within the scope of the request. In this case, the Council has provided all that it holds and has clearly explained to the complainant and the Commissioner why it does not hold anything further. Therefore, the Commissioner's decision is that the Council has met its obligations under FOIA and the Commissioner does not require the Council to take any steps.

## Right of appeal

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24. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

25. 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.
26. 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**