

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 November 2017

**Public Authority:** Cheshire East Council  
**Address:** Westfields  
Middlewich Road  
Sandbach  
CW11 1HZ

#### Decision (including any steps ordered)

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1. The complainant has requested information regarding the planned future use of two council depots. Cheshire East Council responded that it did not hold the requested information.
2. The Commissioner's decision is, on the balance of probabilities, that Cheshire East Council does not hold the requested information. However, she considers Cheshire East Council has breached section 10(1) (time for compliance) of FOIA.
3. The Commissioner does not require Cheshire East Council to take any steps as a result of this decision notice.

#### Request and response

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4. On 31 January 2017, the complainant wrote to Cheshire East Council ('the Council') and requested information in the following terms:

*"Did you manage to find anything out about the Commercial Road refuse depot in Macclesfield?"*

*A reliable and well informed contact within the council keeps mentioning that this and the Lyme Green depot are to be sold, but each time we make enquires we are knocked back. As such, I am making a freedom of information request in regard to the council's long term plans for the Lyme Green and Commercial Road Depots. Given the amount of public money wasted already*

*on the Lyme Green failed waste transfer station planning application, I feel the council need to release the required detail.*

*Please can you provide the minutes of all council meetings where the future of Lyme Green has been discussed since the planning application for a waste transfer station was submitted by CEC. Also please provide any internal or external reports or recommendations prepared by or on behalf of the council in regard to the future use, management and asset management of this property in the last 3 years.*

*On Commercial Road, please provide the minutes of any meetings where the future of this asset has been discussed during the last 3 years, together with any internal or external reports or recommendations prepared by or on behalf of the council in regard to the future use, management and asset management of this property over the same period."*

5. The Council responded on 1 March 2017 with a narrative regarding the status of the sites:

*"The current position with both of these sites is they are operational assets and they are being used for the Council's purposes. The Council has no plans at all to dispose of these assets at this present time. It is understood from your correspondence that this position has already been confirmed to you."*

6. The complainant requested a review on 1 March 2017 stating that the response did not answer his request:

*"There is absolutely no information in your reply that relates to my enquiry."*

7. Following an internal review the Council wrote to the complainant on 17 March 2017 with further information, stating that:

*"there are no plans at present to dispose of either the Commercial Road Depot or the Lime Green Depot. Therefore no meetings or discussions have taken place regarding this matter. Consequently Cheshire East Council holds no information falling within the scope of the request."*

## Scope of the case

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8. The complainant contacted the Commissioner on 4 April 2017. He complained that the Council must hold some information due to a number of actions relating to the Lyme Green depot which he states have occurred, implying there will have been meetings held to discuss the future strategy of the site:

*"The council did agree to sell the Lyme Green Depot mentioned here, to a company called [redacted] but are denying this. In addition they wasted £800,000 on a failed planning application for the Lyme Green depot so they will have had meetings etc to discuss strategy for the future use of this site. In addition their development company Cheshire Engine of the North were instructed to asset manage the site (it was on their website) but again they are denying they have any record of this."*

9. The complainant contacted the Commissioner on 7 September 2017 with further information:

*"You should be aware that a client of mine offered the council a total of [redacted] for the Lyme Green Depot...Furthermore, my client owns land adjoining this depot where my client agreed to sell the council a slice of land to improve access to the depot. Therefore I cannot understand in any way the council's statement that no meetings or discussions have taken place regarding the future of the depot."*

10. The Commissioner considers that the scope of the case is to consider whether the Council complied with its obligations under section 1(1) and section 10(1) of the FOIA.

## Reasons for decision

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### Section 1 of the FOIA – Information held / not held

11. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled (a) to be told if the authority holds the information and (b) to have the information communicated to him or her if it is held.
12. The Council's initial response provided a narrative of the status of the depots, rather than confirming to the complainant whether the information was held. The Commissioner appreciates that the Council may consider that the information could be deduced from that narrative

however she finds that the initial response did not comply with section 1(1)(a).

13. The Council subsequently confirmed in its review response that the information was not held.
14. 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.
15. 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 at the time of the request.
16. In applying this test the Commissioner will consider:
  - the scope, quality, thoroughness and results of the searches
  - whether the Council has a business purpose for which the requested information should be held; and
  - other explanations offered as to why the information is not held.

*Scope, quality, thoroughness and results of the searches*

17. The Council explained that the Head of Asset Management and Regeneration, who leads the team that delivers the Council's disposal programme, has confirmed that the depots are not for sale.
18. The Commissioner asked for confirmation that the future of the Lyme Green site has not been discussed at any Council meetings since the planning application for a waste transfer station was submitted by the Council. The Council responded that "*since the discovery of the maladministration in this case and the subsequent investigation, the results of which were reported to the Audit and Governance Committee, officers within the Asset Management and Regeneration Service are not aware of discussions regarding the future use of the site.*"
19. The Commissioner asked for confirmation that the future of the Commercial Road site has not been discussed at any Council meeting in the last three years. The Council responded that "*officers within the Asset Management and Regeneration Service are not aware of any discussions regarding the future use of this site.*"

20. The Commissioner asked the Council on what basis it was certain that it did not hold any of the requested information. The Council confirmed it was certain that no meetings or discussions have taken place in respect of the requested information because *"to dispose of these assets the Council would have to relocate these services and then declare the assets surplus prior to progressing with a sale. Therefore it is very clear that both assets are not for sale at this time."*
21. The Commissioner asked the Council whether any recorded information was ever held relevant to the scope of the complainants request but deleted or destroyed. The Council stated *"Officers within the Asset Management and Regeneration Service are not aware of any historic information on this subject which is no longer held. Informal conversations may have taken place in the past. If they did nothing would appear to be documented about this. Nothing was located at the time of the request."*

*Business purpose for which the requested information should be held*

22. The Council advised that when it decides to cease the use of either of the depots, it will be required to complete an Officer Decision Record ("ODR"), which is a publically available document. There is no corresponding process to monitor the continuation of use of an asset.
23. As the depots remain operational, the Council states that there is no business purpose for any of the requested information such as internal or external reports or recommendations regarding the future use management and asset management of the depots.

*Other explanations offered as to why the information is not held*

24. The Council explained that the depots are occupied and that both are considered *"an important strategic cog"* for the delivery of separate services in the borough. Furthermore there are no suitable alternative sites for these services therefore there are no plans to dispose of either operational asset.
25. The Council stated: *"should the council change the way it delivers its services then this decision would be made publically available through the authorities systems and processes."*
26. The Commissioner asked the Council to respond to the complainant's evidence proposing that other meetings have taken place. The Council confirmed that the complainant already holds all correspondence regarding the offer made by the complainant's client for the Lyme Green depot which was *"unsolicited and rejected"*. The Council confirmed that it had sought to acquire an adjoining piece of land to this depot from the complainant's client, however it stated that this does not strictly relate

to the scope of the request and furthermore the complainant already holds all correspondence on this matter.

27. The Council expressed the view that it is "*not aware who [complainant's name] source is but the authority is of the opinion that [complainant's name] is poorly informed by his source.*"
28. The Commissioner is satisfied that the Asset Management and Regeneration Service would be aware of long term plans for the two depots and therefore she is satisfied that the Council contacted the relevant parties to consider whether or not any information was held in respect of the request.
29. Having considered the Council's submission and the evidence provided to her, on the balance of probabilities the Commissioner is satisfied that the Council did not hold the requested information. Accordingly, she does not consider that there is a breach of section 1 of the FOIA.

### **Section 10 – time for compliance**

30. Section 10(1) says that a public authority must comply with section 1(1) as soon as possible and within 20 working days.
31. Whilst the initial response was given in within the required timescale, the Council provided a narrative on the status of the sites rather than confirming that it does not hold the requested information. This position was rectified in the internal review response.
32. The request was made on 31 January 2017, and the review response was provided on 17 March 2017 which falls outside of the period of 20 working days required by section 10(1) of the FOIA. Therefore the Commissioner has decided that the Council failed to comply with the requirements of section 10(1).

## Right of appeal

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33. 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)

34. 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.
35. 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**