

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 April 2022

Public Authority: London Borough of Southwark
Address: 160 Tooley Street
London
SE1 2QH

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Southwark ("the Council"), in relation to copies of court order charge forms and redacted copies of any court orders obtained. The Council relied on section 21 of FOIA to withhold the requested information as it was already reasonably accessible to the requestor.
2. The Commissioner's decision is that the Council is entitled to rely on the exemption at section 21 of FOIA (information accessible by other means) to withhold the information.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 9 March 2021, the complainant wrote to the Council and requested information in the following terms:

"1. Can you please provide me with a copy of the Court order charge forms, that you refer to – this is the Charge form used by Southwark in the Courts if the leaseholder cannot pay or refuses to pay.

2. Please provide redacted copies of any of these court orders obtained at court."

5. The Council responded on 9 April 2021. It provided the complainant with a redacted copy of a Charging Order application, Interim and Final Charge Order. It also provided a spreadsheet confirming the legal charges for 2012 to 2014.
6. Following an internal review the Council wrote to the complainant on 2 June 2021. It explained that it had provided the documents requested, along with the redaction of the dates removed (from the court orders) when the complainant asked for this.
7. Within the internal review, the Council also addressed a few additional points that the complainant had raised within their internal review request, including the formatting of the response, why the forms had been issued at Northampton County Court, a link to obtain further information (at a cost to the complainant) relevant to the request, and applied section 21 of FOIA – information accessible by other means.
8. During the course of the Commissioner's investigation, he asked the Council to determine if there were any other means of the complainant being able to obtain the information, without having to access the link/make payment for the information.
9. The Council advised the Commissioner that whilst determining whether further information could be accessed, it was found that the complainant was entitled to the information under the Civil Procedure Rules (CPR).
10. The Council explained further that it had checked that there should not be any restrictions on the complainant accessing the records via CPR, using the claim reference numbers that they have already been provided with and, as such, section 21 of FOIA is applicable.

Scope of the case

11. The complainant contacted the Commissioner on 17 May 2021, to complain about the way their request for information had been handled.
12. The Commissioner considers the scope of the case is to consider if the Council is entitled to refuse the request on the basis of section 21 of FOIA.

Reasons for decision

Section 21 – Reasonably Accessible to the Requestor

13. Section 21 of FOIA states that:

“(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

14. The Commissioner considers that the purpose of the section 21 exemption is to protect the scarce resources of public authorities by shielding them from replying to requests for information which the requestor could have found elsewhere. It acts as an incentive for public authorities to be proactive in publishing information as part of their publication schemes. Finally, it protects the statutory right of public authorities to charge for certain information which they are bound by law to collect.
15. It is also pertinent to note that section 21(2)(a) of FOIA states that information may be regarded as being reasonably accessible to the applicant “even though it is accessible only on payment”.
16. The Council provided the complainant with the majority of the information that they had requested. It directed the complainant to a website, which provides the same information but not in a redacted format. To obtain the information, a fee is required.
17. The Council explained to the Commissioner that the website is external to the Council and that the information held on there, is the same as the information that the Council has provided to the complainant, although the information is not redacted.
18. The Council explained further that the redacted information is personal data, that if it were to be released under FOIA, would be a breach of the UK General Data Protection Regulation (UK GDPR).
19. The Commissioner considers that the Council has gone above the expectations/requirements of FOIA to assist the complainant with their request when relying on section 21, by providing the information in a redacted format, even when it is available online for a fee.

20. Whilst the Commissioner notes that there is a charge to obtain the information from the website and is sympathetic to the circumstances of the complainant, he refers again to section 21(2)(a) of FOIA which states that information may be regarded as reasonably accessible to the applicant "even though it is accessible only on payment". In addition, the Commissioner's guidance on the application of section 21 states that "In such cases, information is generally reasonably accessible even though the payment may exceed that which would be payable via FOIA".
21. The Commissioner also notes the complainant's concerns regarding providing their personal data to obtain the information. The Council confirmed to the Commissioner that the information available on the website is the same information that has been provided to the complainant in the spreadsheet, other than it includes the personal data of the individuals involved. The Commissioner has explained this to the complainant. As such, the Commissioner is satisfied that the complainant has the requested information, although with the personal data redacted and, unless they require the unredacted version of the information, they would not need to enter their personal data or use the website.
22. During the Commissioner's investigation, the Council informed the complainant that they could obtain the information through the CPR process. In certain circumstances, as is made clear in the Civil Procedure Rules (the CPR), an individual has the right to obtain a copy of a court order or judgment. This means that, where the relevant requirements of the CPR are met, such information must be made available to a member of the public on request and therefore would be reasonably accessible to the applicant under section 21(2)(b).
23. The complainant was not satisfied with this response and asked for the Council to provide them the requested information, along with asking for the names of the members of staff who signed off the court orders.
24. The complainant also explained that they had looked at the link the Council provided for the CPR process and advised that what they wanted is not available; the information they are looking for are application forms for a land charge for service charges to be placed on a Leaseholder's property.
25. The Council explained to the Commissioner that a final charging order is a court order and, as such, is the information the complainant has requested.
26. Additionally, the Council also explained to the Commissioner that its procedure regarding the redaction of names, is that all names below Director level are redacted. It confirmed that, in this instance, any

names redacted were below this level. The Council also clarified that court orders are not signed by members of staff at the Council.

27. Regardless of if the complainant considers that they are entitled to the requested information in an unredacted format, the Council are not required to provide this information, as it is readily available elsewhere, even if this is at a cost.
28. The Commissioner also notes that within the complainant's original request, they asked for "redacted copies of any of these court orders obtained at court". He is therefore satisfied that the complainant is aware that some redactions would be necessary were the information to be released directly under FOIA.
29. As the Council has since provided a further way for the complainant to obtain the information (by applying to the Courts through the CPR process), he is satisfied that the information is reasonably available to the complainant and that the Council has correctly applied section 21 of FOIA.
30. The Commissioner notes that the complainant has further concerns regarding the Council, however, this is outside of his remit and any other concerns need to be addressed with the relevant body.
31. The Commissioner is satisfied that the requested information is reasonably accessible to the complainant, even if a fee is required, and therefore exempt from disclosure under section 21 of FOIA.

Right of appeal

32. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

33. 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.
34. 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

Michael Lea
Team Manager
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