

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice**

Date: 8 February 2023

Public Authority: Royal Borough of Windsor and Maidenhead
Address: Town Hall
St Ives Road
Maidenhead
SL6 1 RF

Decision (including any steps ordered)

1. The complainant has requested information on the number of prosecutions raised against residents.
2. The Commissioner's decision is that, on a balance of probabilities, the Royal Borough of Windsor and Maidenhead ("RBWM") does not hold the requested information.
3. The Commissioner does not require RBWM to take any steps to ensure compliance with the legislation.

Request and response

4. On 5 February 2022, the complainant wrote to RBWM and requested information in the following terms:

"Please provide the number of prosecutions raised against residents without any enforcement action or warning i.e. case reference number, enforcement notice, discontinuance notice, explanation as to why the prosecution was being raised and the opportunity to avoid a court case. No date range is being provided given any cases contravene the Councils Enforcement and Prosecution policy and therefore would be very small."

5. RBWM responded on 22 February 2022. It stated that

“The number of prosecutions made by Environmental Protection without enforcement action and or warning is zero.”
6. Following further contact from the complainant with regards to whether the planning department of RBWM still maintained zero Environment Protection prosecutions and enforcement notices for unauthorised development for advertising, RBWM responded a further two times as follows, on 1 March stating

“We have made further enquiries with Planning Enforcement and they confirmed that no prosecutions against residents without any enforcement action or warning have been raised by the Planning Enforcement Team.”
7. On 7 March 2022, RBWM further responded as follows:

“Few Trading Standards and Licensing enforcement processes involve the use of enforcement notices but there have been no prosecutions that we have taken against any individual without warning.”

There will always be some form of engagement with any alleged offenders. Planning Enforcement has not commenced any prosecutions under the Planning Legislation without first opening an enforcement file, generating a reference, and providing written warning, be it in relation to failure to comply with a statutory notice properly served; or failure to remove an advertisement erected without consent when requested; or carried out works to a listed building without consent; or failure to comply with a planning contravention notice.

All the other departments have confirmed there have been no such prosecutions.”
8. On the 6 April 2022 and 30 April 2022, the complainant wrote to RBWM to dispute the nil response, as they believed there were in fact two cases, that did not appear to have been recorded in 2011. The complainant stated

“In 2011 2 cases of prosecutions not generating a reference, and providing written warning, be it in relation to failure to comply with a statutory notice properly served; or failure to remove an advertisement erected without consent when requested were raised. 2 residents could not avoid court, had no notice upon which to appeal and were in the middle of an investigation by the Local Government Ombudsman concerning the display of advertising

RBWM informally required removed then subsequently admitted did not require removal as legal. These cases do not appear on the RBWM website for planning, enforcement filter as no reference and unrecorded.

I have knowledge that the information provided is not accurate and should be rechecked. This is in the interests of transparency of actions taken by a public body and for the confidence of the community in following RBWM council policies.

The review of my FOI request is simply a review of the public response RBWM provided. Given you have confirmed there was no enforcement then the response to the outstanding FOI reply is 2 so can quickly be added to the public request response."

9. Following an internal review RBWM wrote to the complainant on 9 May 2022. It withheld its original response that it did not hold the information requested, stating

"The service areas have confirmed that the information they have provided is correct. I understand that you have made several complaints regarding the prosecution action taken against you which you have detailed in your emails to the FOI team. However, the freedom of information process is one which allows residents to have access to records that the council holds and is not a complaints process."

Scope of the case

10. The complainant contacted the Commissioner on 16 May 2022 to complain about the way his request for information had been handled. The complainant disputes the accuracy of the internal review statement by RBWM that there have been no prosecutions or enforcement action taken by it and that it does not hold records. The complainant additionally requested that RBWM amend the statistical data, records and website to reflect their view that there are two cases in 2011 that should be published on its website.
11. The Commissioner considers the scope of his investigation to be to determine whether on a balance of probabilities RBWM has met its obligations under section 1 of FOIA.

Reasons for decision

12. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection
 - (a) to be told if the authority holds the information and, under subsection
 - (b), to have the information communicated to them if it is held and is not exempt information.
13. FOIA concerns recorded information only. It does not require a public authority to answer general questions, provide opinions, explanations, generate answers to questions, or create or obtain information it does not hold. The information must already be held at the point a request is made. Nor does the legislation require a public authority to amend or verify the accuracy of the information it holds.
14. The complainant's reasons for believing that RBWM hold further information which has not been disclosed on their website appears to be connected to their own personal experiences and a long standing dispute over enforcement action dating back to 2011.
15. The complainant requested that RBWM review the information held and amend its website accordingly to reflect the discrepancy, however RBWM has maintained that this information is not held and there is no further relevant information that can be disclosed or published.
16. RBWM confirmed that the authority would not have carried out any prosecution action without warning as this would result in them losing the ability for such prosecutions to be avoided, placing unnecessary burdens on their resources.
17. Additionally RBWM confirmed that it does not keep lists of prosecution cases undertaken without any enforcement action or warning, nor has it ever as far as it is aware, taken any such action.
18. Prosecution cases have a legal file set up which is subsequently destroyed in accordance with the Legal Services Document destruction policy. RBWM provided the Commissioner with a copy of its retention schedule and policy stating that any files are closed shortly after the court hearing with hard copy files destroyed three months from file closure and all electronic information destroyed after six years from file closure.
19. The Commissioner is satisfied that RBWM carried out appropriate searches of record systems and consulted with the relevant teams within RBWM to determine whether information within the scope of the request was held. It is not his role to determine whether a public authority has followed the correct internal process.

20. Having considered all the circumstances the Commissioner is satisfied that the information the complainant says RBWM should hold would, if it ever existed, have long since been destroyed and, in any case, would likely have been the complainant's own personal data anyway.
21. Section 1 of FOIA is a matter of fact of whether information is held or not held. It is not an opinion on whether it should have been held or recorded and as such, the Commissioner is satisfied that on the balance of probabilities that the information requested and was not held at the time of the request and that RBWM has complied with section 1(1) of FOIA.
22. Finally, the Commissioner notes that some of the information would, if it were held, be environmental (such as prosecutions relating to planning breaches). For the avoidance of doubt, he does not consider that the Council holds any information (environmental or otherwise) that falls within the scope of the request. Therefore the outcome of the decision would have been the same regardless of the access regime that was used.

Other matters

23. The Commissioner notes that part of the complainant's request is not for disclosure of recorded information but rather a request for RBWM to change details that it has already published on its website. Such matters do not fall under FOIA or the EIR.
24. Additionally, any complaints with regards to enforcement matters and the absence of disputed information on the RBWM website are not within the remit of FOIA.

Right of appeal

25. 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

26. 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.
27. 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

Catherine Fletcher
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Wycliffe House
Water Lane
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SK9 5AF