

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 6 March 2023

**Public Authority:** Cheshire East Council  
**Address:** C/O Municipal Buildings  
Earle Street  
Crewe  
CW1 2BJ

#### **Decision (including any steps ordered)**

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1. The complainant has requested certain information held about land sold by Cheshire East Council (the council).
2. The council provided some information to the complainant with its initial response to the request and then, during the Commissioner's investigation, it identified and released some additional information. The council has refused part of the request, citing regulation 6(1)(b) of the EIR (The Environmental Regulations 2004); it states that the relevant information is publicly available from HM Land Registry.
3. Whilst the Commissioner has decided that the request should have been considered under FOIA, rather than the EIR, he is satisfied that the council is entitled to rely on section 21 – information reasonably accessible to the requester, of FOIA, as its basis for refusing part of the complainant's request.
4. The Commissioner is satisfied that, on the balance of probabilities, the council has now released all of the relevant information held that is not exempt under section 21 of FOIA; however, as some of this information was provided to the complainant outside the statutory 20 working days, the Commissioner has found a breach of section 10(1) of FOIA.
5. The Commissioner does not require the council to take any steps.

## Request and response

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6. The complainant originally submitted a request to the council for information held relating to any land which it had sold for £50 or less in the last two years. The council provided the complainant with a copy of an excel spreadsheet which it stated contained the requested information.
7. On 13 July 2022, the complainant then made a further request for information. It is the council's handling of this request that is being considered within this decision notice:

"Could you please confirm the following:

  - How many pieces of land has been sold by the council for £5 or less since Cheshire East was formed?
  - Could you please confirm the size and address of the land, who it was sold to and for how much."
8. The council responded by providing a copy of the same information that it had released in response to the complainant's first request. The council also advised that as details of who purchased the land was available from HM Land Registry, it was refusing this part of the request under regulation 6(1)(b) of the EIR.
9. The complainant requested an internal review. They queried how the same information could have been provided in response to both of their requests when they were for different sets of data, over different time periods. They also queried why some of the data fields relating to price and area of land were recorded as "0" on the excel spreadsheet.
10. In the council's internal review response, it confirmed that it believed that the information it had released was correct, and it also maintained its position that the details of the purchaser of the land was publicly accessible information; the council went on to provide a website link to "HM Land Registry".
11. With regard to the "0" figure used in some data fields on the excel spreadsheet, the council referred to one example provided by the complainant and stated that the figure "nil" was used because the exact area of land was not known.
12. During the Commissioner's investigation, the council reviewed its handling of both of the complainant's requests. It accepted that it was not correct to have provided the same information in response to the two requests, and issued a revised response to the complainant.

13. The council provided the complainant with a copy of the information which it believed correctly answered both requests, and also confirmed that it had found that some of the information previously released was not relevant to the requests.
14. The council explained to the complainant that where information was not held about price or area of land, a "0" figure was input as the data management system required such fields to be completed.
15. The council also confirmed that, with regard to that part of the complainant's request of 13 July 2022, which asked for details of the purchaser of the land, it maintained its previous position that this part of the request should be refused, as the information is easily accessible and publicly available; the council provided the complainant with a link to the HM Land Registry website.
16. The council went on to advise the complainant that some additional data had been included within the spreadsheet to assist them when locating purchaser information held by HM Land Registry. The council also said to the complainant that they would be able to find the sale price information in the same way as the purchaser details on the HM Land Registry website.

### **Scope of the case**

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17. The complainant has raised concerns about the way in which the council has handled their request. They also do not accept that details of the purchaser of land is reasonably accessible via HM Land Registry, as claimed by the council, as they would incur significant costs to obtain the information via this route.
18. From the information available, the Commissioner considers that the requested information is not a factor affecting, or likely to affect, the state of elements of the environment. It is only about the cost and ownership of land. As far as he is aware, this information does not directly affect the state of any land to which it relates. He therefore considers that the council should, in this particular instance, have considered the request under FOIA.
19. However, the Commissioner regards the council's arguments in support of the application of regulation 6(1)(b) of the EIR to be relevant, and transferable, to section 21 of FOIA.
20. The Commissioner will therefore decide whether the council is entitled to rely on section 21 of FOIA when refusing part of the complainant's

request. He will also consider the complainant's concerns about the general handling of the request.

## **Reasons for decision**

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### **Section 21 of FOIA – Information reasonably accessible to the applicant by other means**

21. Section 21(1) provides that information is exempt from disclosure under FOIA if the information is already reasonably accessible to the requester.
22. Section 21(2)(a) provides that information may be regarded as reasonably accessible to the requester "even though it is accessible only on payment".
23. Section 21 is an absolute exemption which means that there is no requirement to carry out a public interest test, if the requested information is exempt.
24. The council has said to the complainant that it believes that the information requested about the purchaser of land is reasonably accessible via the HM Land Registry website.
25. Upon accessing the [main page](#) of Land Registry (using the link recently provided to the complainant by the council), a list of main options are provided, the first being "Search Property ownership information". Clicking this link begins a process where an individual can submit an application to obtain property ownership information by ordering a "Title Register" of a property; this requires payment of a fee of £3 for each "Title Register" ordered.
26. The Commissioner is satisfied that the council has now provided the complainant with sufficient information to allow them to access the relevant information via HM Land Registry (he has made additional comment about the link provided by the council at the internal review stage in the "Other Matters" section of this decision notice).
27. The Commissioner has taken into account the complainant's concerns that they would incur some significant costs in order to obtain only the ownership details of each set of land listed within the spreadsheet provided by the council.
28. The Commissioner's [guidance on section 21](#) sets out scenarios where costs are incurred in order to access information. It states that "information is generally reasonably accessible even though the payment may exceed that which would be payable via FOIA."

29. The Commissioner accepts that there are circumstances where it may be found to be unreasonable to require an applicant to purchase a copy of an entire document when they only require minimal information.
30. However, having considered the request, and the information that is made available to the public by HM Land Registry upon a fee, the Commissioner is satisfied that the information required by the applicant is reasonably accessible, despite the fee that would be required in order to obtain that information.
31. Therefore, it is the Commissioner's decision that the withheld information is reasonably accessible to the complainant by other means, and that section 21 of FOIA is engaged.

### **Procedural matters**

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32. The Commissioner has found a breach of section 10(1) of FOIA as the council failed to provide the complainant with all of the information relevant to their request of 13 July 2022, within the required 20 working days.

### **Other matters**

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33. The Commissioner regards it to be necessary to record certain points about the council's general handling of this request.
34. The Commissioner is satisfied that the complainant was very clear about what information they required in their second request, and why it differed to the first request that they had made. Further clarification was provided at the internal review stage, and in additional correspondence which the complainant sent to the council.
35. Furthermore, in the council's original response it failed to provide a link to where the complainant could find the information about land ownership. Whilst the council did then provide a link in its internal review response, this was not to the official HM Land Registry website, but was instead to a private company that offers services and information about land registration and similar, upon payment of a fee (which appears to be higher than that charged by HM Land Registry).
36. Whilst the council has recently corrected the errors that it made in its initial handling of the request, it is the Commissioner's view that this case indicates broader issues with regards to the council's information rights practices.

37. As a result, the council should conduct a review of how it currently handles the information requests that it receives. The Commissioner may revisit this matter, should he receive other complaints about the council that highlight further poor information rights practices.

## Right of appeal

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38. 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](mailto:grc@justice.gov.uk)

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

39. 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.
40. 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 .....**

**Suzanne McKay**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**