

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 April 2024

Public Authority: Walsall Council
Address: The Civic Centre
Walsall
WS1 1TP

Decision (including any steps ordered)

1. The complainant has requested information relating to the land at Oakwood Close, Walsall Wood. Walsall Council's ("the council") position is that it has provided all the information that is available.
2. The Commissioner's decision is that the council failed to comply with section 1(1) of FOIA due to it not conducting proper searches for information falling within the scope of the request.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
 - If it hasn't already done so, the council must disclose to the complainant the 2003 public inquiry inspector's report and the Aldridge / Brownhills Local Plan.
4. The council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 8 August 2022, the complainant made the following request for information to the council:

"I would also request that all documentation held by the Council in relation to the Land is released to me within the next 12 weeks in accordance with the Freedom of Information Act."

6. On 15 November 2022, the council acknowledged the complainant's request and provided some information relating to the land.
7. The complainant acknowledged receipt of the council's letter on 15 December 2022 but stated that its response did not comply with their FOIA request.
8. On 1 March 2023, the council wrote to the complainant, upholding their complaint that their FOIA request had not been responded to. It confirmed to the complainant that the request had now been sent to its Assurance/Information Rights Service so that it could be processed correctly, and that it would disclose any available information as a matter of priority.
9. The council responded on 17 July 2023. It provided the complainant with links to where some of the information in relation to the land could be found, and therefore applied section 21 to refuse to provide this information under FOIA. The council also explained that there were two further documents relevant to the complainant's request, but these documents are not held by the council.
10. The complainant responded to the council on 23 July 2023, raising concerns about information they believed was missing from its response to the request.
11. The council wrote to the complainant on 16 August 2023, confirming that it had provided all the information that was available.

Scope of the case

12. The complainant contacted the Commissioner on 2 October 2023 to complain about the way their request for information had been handled. In particular, the complainant believes the council holds more information than it has sent and is of the view that the council should hold information about the land in question going back 30 years.
13. The Commissioner considers that the scope of his investigation in this case is to consider whether the council holds any further information falling within the scope of the request that has not already been disclosed.

14. The Commissioner has previously issued a decision notice¹ in relation to this request as a result of the council's failure to comply with section 10 (time for compliance) of FOIA. This aspect is therefore not considered in this decision notice.

Reasons for decision

Section 1 – Information not held

15. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled to:
- a) to be told if the authority holds the information and,
 - b) to have the information communicated to them if it is held and is not exempt information.
16. Where there is some dispute between the amount of information located 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 (Information Rights) decisions, applies the civil standard of "the balance of probabilities".
17. In other words, in order to determine such complaints, the Commissioner must decide whether it is more likely than not that the public authority holds any information which falls within the scope of the request (or held it at the time of the request).
18. In this case, the request relates to all documents relating to the land at Oakwood Close, Walsall Wood.

The council's position

19. In its submission to the Commissioner, the council provided some background information in relation to the request. It explained that the land that is the subject of the request has been the subject of a longstanding and complex series of complaints from the complainant, that it has been responding to.
20. The council stated that to consider and respond to these various complaints, it has been necessary, over a number of years, for it to be

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4025323/ic-232369-h1p8.pdf>

able to refer to all relevant information it holds in relation to the land in question.

21. It confirmed that this required relevant officers to search for, locate, and obtain all information that the council holds in relation to the land in question.
22. The council explained that this required officers in its Planning Service to carry out multiple detailed searches of their records to identify any information relating to the land and the issue of the complaint.
23. The council confirmed that any information held by it, that would fall within the scope of the request, had been searched for and located by its Planning Service as part of the ongoing issue.
24. The council's Planning Service had therefore already completed relevant searches, identified, and obtained all information relating to the land in question at the time of receiving this request for information.
25. The council confirmed that it is not the owners of the land in question, and therefore the information it would hold would be limited to just the information relating to any works (or proposed works) carried out by the owners, such as planning applications, large scale plans that would impact on the land and proposal maps. The council confirmed that this information has already been provided to the complainant.
26. The council stated that the information it held relating to the land in question would date from the period of around 2005 and earlier. It explained that information from this period would have been primarily held in paper format.
27. The council reiterated that, at the time it received this request, the information relating to the land in question had already been searched for and compiled by its Planning Service.
28. However, the council clarified that the searches carried out by the Planning Service only included searches of records held locally.
29. Whilst the council believes that adequate searches had been carried out, additional searches have been carried out to identify any further information which included searches of electronic data and hard copy information held both locally and in satellite storage areas.
30. As a result of the additional searches, the council confirmed that it had identified some additional information. It stated that in its initial response to the complainant's request dated 17 July 2023, it had explained that following its searches it had been unable to locate, the following documents:

- 2003 public inquiry inspector's report.
 - Aldridge / Brownhills Local Plan.
31. However, the council has confirmed that as a result of the additional searches, physical copies of these documents have now been located.
 32. The council stated that, as part of the additional searches, it's Central Records Service (who hold various records on behalf of the wider council, including those relating to land ownership, conveyancing and planning), had carried out a review of the electronic index and identified a single document that unfortunately is no longer held by the council.
 33. The council explained that this document relates to "The Development of Oakwood Close Off Green Lane" and was previously held in the council's Central Records Service but was lost in a flood that the council suffered in 2007. The council confirmed that this document was related to the development dated 1974, so would potentially predate and be out of scope of this request.
 34. The council explained that in 2005, the Unitary Development Plan was adopted which meant that only formal documents relating to this matter, such as adopted plan and drafts, the inspector's report and any representations received from third parties, would have been retained. It stated that any other documents would have been destroyed.
 35. The council confirmed that under the regulations in force at the time there was no requirement to inform individual landowners of any resultant changes, so it would not hold any correspondence with them.
 36. The council stated that because the information requested is for any information about the land it is difficult to comment on the business purpose that the information should be held as it would vary from record type to record type.
 37. However, the council stated that "in regards to local plans, these are a valuable historic record of how development proposals for the area have been shaped. The plans themselves and the documents that were used in their preparation show how decisions were taken about the use and development of sites. Information about the reasons for including or excluding sites can often still be relevant to present day decisions. These can include for example information about site constraints such as ground conditions, and past decisions on individual planning applications. In this case, there a suggestion that the planning permission from 1970 may still be valid."

38. The council confirmed that it is required to permanently retain a register of all planning applications under Regulation 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.
39. It stated that it was not aware of a similar explicit requirement in respect of old local plans that have been superseded by subsequent documents, however they form a key part of decisions on planning applications. The council confirmed that their adoption would also have been key decisions made by the local authority so their retention would be covered by general legislation relating to keeping a record of decisions made by the authority.

The Commissioner's decision

40. The Commissioner notes that, at the time of the request, the council had been in correspondence with the complainant regarding the land that is the subject of the request and therefore had already done a number of searches and provided the complainant with information on the subject matter.
41. However, having reviewed the council's submission, the Commissioner is concerned that the council failed to conduct proper searches.
42. The council stated in its initial response to the complainant dated 17 July 2023 that it was unable to locate two documents. However, during the course of the Commissioner's investigation the council carried out additional searches and located these two documents.
43. The Commissioner emphasises that section 1 of FOIA requires the council to conduct thorough searches for information which falls within the parameters of the request.
44. In such a scenario, the Commissioner cannot reasonably conclude that the council had conducted proper searches when it originally dealt with the request. The Commissioner's conclusion is, therefore, that the council failed to comply with section 1 of FOIA.
45. The Commissioner notes that the council has now conducted proper searches and is satisfied that, other than the two documents located in the additional searches, there is no further information within the scope of the request held by the council.
46. The Commissioner requires the council, if it hasn't already done so, to disclose these two documents to the complainant.

Other matters

47. The Commissioner has concerns about the way in which the council responded to his enquiries and, in particular, that the council failed to respond to the Commissioner's enquiries within any of the deadlines set by him.
48. The Commissioner therefore recommends that the council review its handling of this request and complaint to ensure lessons are learned and improvements made.

Right of appeal

49. 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

50. 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.
51. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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