

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 January 2020

Public Authority: Melton Borough Council
Address: Parkside
Station Approach
Burton Street
Melton Mowbray
Leicestershire
LE13 1GH

Decision (including any steps ordered)

1. The complainant has requested information relating to fire safety measures implemented at a named property by the council. The council provided some information however it said that it does not hold any other information. The complainant disputed this.
2. The Commissioner's decision is that, on a balance of probabilities, the council has now disclosed all of the information which it holds falling within the scope of the request. She has however decided that the council did not comply with the requirements of section 10(1) in that it did not disclose the information it holds within 20 working days.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 21 November 2018 the complainant wrote to the council and requested information in the following terms:

Under the Freedom of Information Act 2000, I respectfully request the following documents to be provided to me:

Applicable dates - From January 2006 to date.

1. You are required to provide, both independent and in-house Fire Risk Assessments (FRA's), whether of Type 1, 2, 3 or 4, pertaining to the fire safety conditions and associated strategy, to the common areas, drying rooms, to include the Community Lounge on the ground floor in Mapperley House and also within either each flat or a representative sample of the individual flats, within ALL of the blocks within the complex of flats abovementioned, as is required by 'The Regulatory Reform (Fire Safety) Order 2005'.

Please note that enshrined within 'The Regulatory Reform (Fire Safety) Order 2005' Order proper, is that this information should be properly recorded by the responsible person, in this case MBC, and also be made publicly available.

We would therefore expect MBC to comply with both 'The Regulatory Reform (Fire Safety) Order 2005' and also the Freedom of Information Act 2000, in this respect, and therefore comply with our request in the stipulated time period of 20 working days.

2. You are required to provide, any in-house fire Evacuation Policies pertaining to ALL of the buildings under consideration; to include details of the policies themselves, how the residents of the blocks are informed of such policies, how the Council records that residents have been appraised of such policies including fire notices distributed to tenants, how new tenants are introduced to the policies and what educational procedures and updates are offered to keep tenants safe in the event of a fire.

You are to include specific and accurate details as to exactly WHY the responsible person, in this case MBC, urgently changed the evacuation policy from the previously in force policy of 'Stay Put', to the significantly more onerous policy of 'simultaneous evacuation' to the public Fire Assembly point in the car park.

You are to include details of all fire drill procedures, when they have been carried out and how often and by whom, and all of the documentation which records such data.

3. Details of ANY and ALL remedial works specifically carried out to address non-compliance issues brought to light in ANY of the FRA's mentioned at 1 above and / or elsewhere in this document. This should include drawings and plans, schedules of works or Bills of Quantities, competitive tender offers, receipts and acceptances, along with proposed programs of works and the like.

4. ANY and ALL independent reports created either by or for the Enforcing Authority, which we believe to be the Leicestershire Fire and Rescue Service, AND any other independent specifically ratified bodies, licenced or authorized to carry out fire safety inspections or audits on behalf of MBC.

5. ANY and ALL sign-off documents / certification, which show unequivocally that the Enforcing Body has properly inspected the buildings concerned themselves, as is required by the Act, against the FRA's carried out and more specifically the areas of non-compliance, as identified in any such FRA's and works pertaining to them.

6. A complete list of ALL fire events in St. John's Court AND other purpose built blocks of flats within MBC's housing stock, where the Fire Service has been called to attend any such fire event. You are to include all reports that were created either in-house or by the Fire Services in this regard, which record and create reports of details of such fire events.

7. You are to provide what definitive proof that MBC has, to underpin its press release statement in the Melton Times of 23 May 2018, in which it is stated that:

'Melton Council says it carries out regular fire safety checks on its residential properties and gives clear advice to tenants on how to prevent blazes breaking out'.

8. You are specifically requested to include the FRA Type 3/4 report which details the inspections carried out at St. John's Court on 29 and 30 October 2018, which resulted in the emergency withdrawal / reversal by the responsible person (MBC) of the then current evacuation plan, which was found to be non-compliant.

This report should now be available from Messrs FireServe or any other 3rd party and appropriately qualified Fire Technician that may have carried out the survey on either FireServ's or MBC behalf, as some 3 weeks have elapsed since the survey was carried out.

9. You are specifically requested to ensure that details precise to ANY and ALL non-compliance issues raised within the Community Room in

Mapperley House, in either the FRA Type 1 of 8 August or the FRA Type 3/4 of 29 and 30 October 2018, are included.

10. With respect to 9 above, you are specifically requested to provide precise details of ALL and ANY remedial actions or works, which have been carried in order to bring this room into full compliance, both prior to and as at 10.30hrs, 19 November 2018.

This should include any formal sign-off documents which would have been provided by the Enforcing Authority, if compliance had been achieved.

11. You are required to include any draft action plans that may have been prepared as working documents which demonstrate what works have been identified as necessary, to work towards compliance, with appropriate programming information pertaining to timescale in which this work is expected to be carried out.

12. You are to include details of any future plans to develop a working group and it's participants, with specific respect to ensuring that appropriate actions are taken to develop a cohesive and robust strategy, which is both intended to reach compliance in the very near future and maintaining compliance on an ongoing basis.

13. Lastly, you are required to provide a detailed statement of fact, as to why MBC is not compliant with the 'The Regulatory Reform (Fire Safety) Order 2005' and has not been since 2006.

Please note that this statement may be made available to various Enforcement Authorities, including Leicestershire Fire and Rescue Service, The Information Commissioner's Office, The Local Government Association and The Local Authority and Social Care Ombudsman.

5. The council responded on 18 January 2019 with the following:

1. Information not held for types 2 & 4. Information is held for types 1 & 3 however section 36 of FOIA was applied and the information withheld.

2. a. Details of evacuation policies

i. A copy of a letter dated 29th October 2018 is attached and were hand delivered to all eight blocks in St Johns Court.

b. How residents are informed of policies

i. The Council does not hold information

c. How residents are appraised of policies including fire notices distributed to tenants

- i. The Council does not hold information on processes and procedures.*
- ii. A copy of a letter dated 29th October 2018 is attached and were hand delivered to all eight blocks in St Johns Court.*

d. How new tenants are appraised

- i. Relevant section of our current handbook for tenants is attached.*

e. What educational updates are offered to keep tenants safe.

- i. Do not hold information but officers do spot checks in community.*

f. Fire Drill information

- i. Do not hold information*

3. a. Drawings and plans

- i. The Council holds this information but considers it to be exempt under s.36 FOIA.*

b. Schedules of work

- i. List of remedial works undertaken and completed are attached, as an action plan*

c. Bills of Quantities

- i. The Council holds the information but considers it as exempt under s.36 FOI.*

d. Competitive tender

- i. Quotes for works are attached.*

e. Receipts and acceptances

- i. Nothing to provide at this time.*

f. Proposed programme of works

- i. See (b)*

4. It confirmed it holds relevant information but applied section 36 and withheld it.

5. No information held.

6. a. All reports

- i. Two formal event reports from LFRS are attached*
- ii. The Council does not hold any further reports of other incidents*

b. Details of fire events

- i. Copies of the fire event logs from our sheltered scheme and our central record for residential properties is attached.*

ii. The Council does not hold any further details of incidents

7. It said that this was not an FOI request.

8. It referred you to the response to point 1 above

9. It referred you to the response to point 1 above.

10. No information held.

11. It referred you to its response to point 3 above.

12. No information held

13. It said that this falls outside of the FOI Act to respond.

Following your request for review it provided its outcome on 22 March 2019. The review found that:

1. All information was disclosed – It said that the initial application of section 36 was incorrect to this part of the request.

2. a) information provided

b) Not an FOI request

c) Not an FOI request

d) Information disclosed

e) Information not held

f) Information not held

3. a) section 36 of the Act applied

b) Information disclosed

c) Information disclosed

d) Information disclosed

e) Information disclosed

f) Information disclosed

4. *Further information was disclosed for 2 of the reports, but it maintained the application of section 36 for the notice in relation to St John's Court.*
 5. *No information held.*
 6. *Further information was provided but it confirmed that following this disclosure, no further information is held.*
 7. *It argues that this is not an FOI request*
 8. *Information provided*
 9. *Information provided*
 10. *Information not held*
 11. *As per question 3 above – section 36 maintained for part of the request.*
 12. *Information provided*
 13. *It argues that this is not an FOI request*
6. Following an internal review the council wrote to the complainant on 22 March 2019. It provided further information in relation to some parts of his request:

"Question One

The letter incorrectly identified that an exemption was applied to Type One and Three FRA's. In reality the following information was released and is provided again for your convenience;

We sent Type One FRAs for 2008, 2014, 2016, 2017 and 2018 relating to all of the blocks in St Johns Court.

Type Three FRA October 2018 was released for all blocks in St John's Court in the correspondence sent.

Question 2(a)

A copy of a letter dated 29th October 2018 was not attached, please accept my apologies and find it attached. We do not hold any in house evacuation policies because each block has localised advice to residents by way of letters and notices. Also attached is a "Fire – Make Your Home Safe" information leaflet provided to all new tenants. The Council did not hold recorded protocols about how it identifies vulnerable tenants for evacuation purposes, but upon conducting my review I have identified we do now hold information in relation to identifying vulnerability through the Tenancy Sign Up Flow chart which is provided

as attached. Information about vulnerable tenants is shared with the Fire Service in case of emergency. In relation to your request for a Fire Drill Policy I can confirm that the Council does not hold this information at this time. The LFRS were commenting on a draft policy from 2012, this is attached. The new Fire Safety Policy was considered by Corporate Committee on 30th January 2019 and approved by the Leader of the Council on the 27th February 2019 and is attached.

Question 2(b)

You have requested explanations which do not fall within the scope of the FOIA

Question 2(c)

You have requested explanations which do not fall within the scope of the FOIA

The letter is attached. A number of actions are underway to improve communication with tenants following the adoption of the new Fire Safety Policy in February 2019.

Question 2(d)

The handbook was attached but is attached again for your convenience.

Question 2(e)

Same as original answer. A number of actions are underway to improve communication with tenants following the adoption of the new Fire Safety Policy in February 2019.

Question 2(f)

Same as original answer. A number of actions are underway to improve communication with tenants following the adoption of the new Fire Safety Policy in February 2019.

Question 3(a)

Same as original answer. I uphold the exemption applied.

Question 3(b)

This section was not specifically referenced in your review but I can confirm that an updated schedule of works completed and programme of works has been attached for your convenience.

Question 3(c)

The bill of quantities is included in the schedule of works and quotes that have been provided to you. My assessment is that there is nothing further held that would require any exemption to be applied.

Question 3(d)

Quotes were attached but are sent again for your convenience.

Question 3(e)

There were none at the time however receipts since the date of the response are now attached.

Question 3(f)

Same as original answer. This was part of the schedule of works which has been provided to you.

Question 4

The Council applied an exemption to the Independent Report (Fire Safety Notices) given they were live at the time and therefore there was a likelihood releasing them would prejudice the effective conduct of public affairs and maintaining the exemption outweighed the public interest in disclosing the information. Given the remediation work has now been concluded in two out of the three notices the exemption should no longer apply to those notices and therefore they are provided as requested. The exemption is upheld for the notice in relation to St John's Court.

Question 5

The Council does not hold this information. LFRS do not audit the Council's works and provide sign off. They do carry out spot check and make sure compliance with the Action Plan but they do not certify it.

Question 6

Same as original answer. The documents were attached but are sent again for your convenience.

Question 7

Same as original answer.

Question 8

The letter incorrectly identified that an exemption was applied to Type One FRA's. In reality the requested information was released and is provided again for your convenience.

Question 9

The letter incorrectly identified that an exemption was applied to Type One and Three FRA's. In reality the requested information was released and is provided again for your convenience. For clarity, the Type 3 FRA for the community room was undertaken in December 2018, not October 2018 as referenced in your letter. This document has already been provided and is provided again for your convenience.

Question 10

The Council does not hold the records requested in relation to works carried out. The subsequent FRA's superseded requirements contained within the FRA of November 2014 and the LFRS Audit.

Question 11

We do hold the information you requested for St John's Court. You have been provided with the action plan from 2014 which is again provided for your convenience. Given the Fire Safety Notice and 2018 action plan are still current on St John's Court the exemption has been correctly applied for these documents given there is a likelihood that releasing them would prejudice the effective conduct of public affairs and maintaining the exemption outweighs the public interest in disclosing them.

Question 12

The Fire Safety Management Working Group has been set up. The report considered at the Corporate Committee meeting on 30th January approved the formation of this group. The report is attached for your reference.

Question 13

Same as original answer."

Scope of the case

7. The complainant contacted the Commissioner 23 April 2019 to complain about the way his request for information had been handled. He considered that the council was not correct to apply section 36 to withhold the information, and he considered that further information must be held by the council or else it was not complying with its statutory legal requirements as regards fire safety.
8. During the Commissioner's investigations, in November 2019, the council reconsidered its position and disclosed the information it holds to the complainant which it had initially withheld under section 36. It did not therefore continue to rely upon section 36 to withhold any information.
9. The Commissioner therefore asked the complainant whether he was now satisfied with the council's response. He was not, as he considered that further information must be held by the council falling within the scope of his request for information.
10. The Commissioner therefore considers that the complaint is whether further information is held by the council. She will also consider whether the council's disclosure of the requested information met with the requirements of section 10(1) of the Act as regards the timing of the disclosure.

Reasons for decision

Section 1 - information not held

11. Section 1 of FOIA provides that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

12. The council argues that it does not hold any further information falling within the scope of the request for information.
13. In cases where there is some dispute between the public authority and a complainant as to whether the information requested was held by the public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check that the information was not held and any other reasons offered by it to explain why it was not held.
14. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
15. The Commissioner asked the council a series of questions to determine whether any recorded information was held. This included questions about the searches the council had conducted to locate the requested information. She also asked for details about the possible deletion/destruction which might be relevant to the complainant's request. The Commissioner also asked the council to provide any general explanations or arguments as to why it should not be expected to hold information relating to the request.
16. The council said that it does not hold information in respect of the following areas:
 - a) What educational updates are offered to keep tenants safe
 - b) Fire drill information
 - c) Sign-off documents/ certification, which unequivocally show that the enforcing body has properly inspected the buildings concerned themselves

a) Educational supplements
17. The council said that it is not the council's policy to issue educational updates. Nevertheless, it carried out searches to determine whether information might be held which it had not initially located.

18. It said that relevant information, if held, would be held in both manual and in an electronic format. It confirmed that it had carried out searches of its systems using the following key terms:

- Policy of educational updates provided to tenants
- Engagement protocol
- Training for tenants
- Letters to tenants
- Information for sign boards in communal areas
- Educational tools and updates for tenants
- Information dissemination to tenants
- Consultation with tenants
- Engagement with tenants

19. It said that information on the process for managing the tenancy of an individual tenant would be retained for at least 12 years after the termination of the tenancy.

20. It said that it has no business purpose why this information would be held and confirmed that there is no statutory requirement for it to hold this sort of information.

21. Having carried out the above searches, and bearing in mind its policy is not to issue educational supplements, it confirmed that its view is that no further information is held.

b) Fire drill information

22. It said that due to the Council adopting a 'stay put and stay safe' policy, there was no need for carrying out fire drills in council owned housing. Therefore, the Council does not hold this information. However, for completeness it carried out searches of electronic files for:

- Fire drill - Evacuation protocol
- Fire drill procedure for housing
- Signage for fire drill
- Information to tenants for fire drill
- Fire drill letters to tenants
- Fire drill instructions

23. It said that no information was located.

24. It said that its records management policy states that information on the process of managing local authority welfare housing estates, should be destroyed 4 years after last action.

25. It confirmed that there is no business purpose for holding the information, and there is no statutory requirement upon it to do so.

c) Sign-off documents/ certification, which unequivocally show that the enforcing body has properly inspected the buildings concerned themselves

26. It said that the enforcing body has not issued any sign off documentation and as a result it does not hold this information. Again however it carried out searches in order to ensure that that was the case.
27. It confirmed that, if held, information would be held in both manual and electronic form.
28. It said that it had carried out searches of its electronic system using the following key terms:
 - Sign-off documents
 - LFRS documents
 - Sign off certificates
 - LFRS certificates
 - Notice sign off
 - Completion certificates
29. It confirmed that its records management policy states that information on the process of managing local authority welfare housing estates, should be destroyed 4 years after last action.
30. Again, it confirmed that it has no business purpose for holding this sort information and that there is no statutory requirement for it to hold this.

The complainant's position

31. The Commissioner asked the complainant to consider the information which had been disclosed and to identify whether there was any evidence of, or any area of information, that he considered that further information may be held. However, he wrote back asking the Commissioner to carry out this analysis.
32. Whilst the Commissioner does carry out such an analysis insofar as she is able to, there are many areas where a degree of expertise in the subject to hand or the issues in question would invariably provide an insight into where further information may lie which is concerning to a complainant. The complainant in this case does have a degree of expertise in such matters. He also has a much greater knowledge of the issues in the property in question which led to him making his request for information.

The Commissioner's conclusions

33. The Commissioner has carefully reviewed the submissions of both parties and the arguments put forward.
34. In the absence of any evidence or suggested areas to the contrary being submitted by the complainant, and having not noted any issues with the council's responses in this case, she must consider whether the descriptions and explanations provided by the council lead to a conclusion that its searches were adequate and appropriate. If she decides that the searches were adequate and appropriate, her conclusion will be that, on a balance of probabilities, no further information is held by the council.
35. The Commissioner notes the complainant's argument that if the council does not hold some information it will be in breach of fire safety requirements. The Commissioner does not know whether this is a correct assumption by the complainant. In any event, the question for the Commissioner to consider is not whether information 'should' be held, but whether relevant information 'is' held.
36. In the absence of evidence to the contrary and given the substantive searches described by the council as having been carried out, as well as the volume of information which has now been disclosed, the Commissioner considers that there is no evidence demonstrating that further information is held falling within the scope of the complainant's request for information.
37. This being the case, the Commissioner's decision is that, on a balance of probabilities, no further information is held by the council falling within the scope of the request for information.

Section 10(1)

38. Section 10(1) of the Act states that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

39. The request for information was received on 21 November 2018. The council disclosed the remaining requested information in or around 1 November 2019.
40. This falls outside of the 20 working days required by section 10(1). Therefore, the Commissioner's decision is that the Council has not complied with the requirements of section 10(1) of the Act.

Other matters

41. The complainant also raised other issues, and provided evidence relating to the council's timeliness as regards previous requests for information which he had made to the council.
42. Although the council initially sought to rely upon section 36 of the FOI Act to withhold the information in this case, it subsequently disclosed the information it held in November 2019 stating that over the time which had passed since the request, circumstances had changed which now allowed it to disclose the information. In such circumstances the Commissioner's policy is to record a finding of a response failing to comply with the requirements of Regulation 5(2) of the EIR or section 10(1) of FOIA rather than to investigate further the initial application of the exception/exemption.
43. For the absence of doubt however, the Commissioner does monitor complaints which are received, and details of delayed responses can be used in evidence should the Commissioner decide that formal action is merited in any particular case.

Right of appeal

44. 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@justice.gov.uk

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

45. 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.
46. 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