

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 May 2021

**Public Authority:** Westminster City Council  
**Address:** City Hall  
64 Victoria Street  
London  
SW1E 6QP

### Decision (including any steps ordered)

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1. The complainant submitted a request to Westminster City Council (the Council) seeking information about the funding arrangements for a building repair project in relation to a number of residential locations. The Council provided the complainant with a response to his request and disclosed further information to him during the course of the Commissioner's investigation. The complainant maintained that the Council had failed to fulfil his requests for information.
2. The Commissioner is satisfied that the Council has provided the complainant with the recorded information it holds falling within the scope of his request and thus has fulfilled its obligations under FOIA. However, the Commissioner has concluded that the Council breached section 10(1) of FOIA by failing to provide the complainant with all of the information falling within the scope of his request within 20 working days.
3. No steps are required.

## Request and response

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4. The complainant submitted the following request to the Council on 17 March 2020:

*'Freedom of Information Act request*

*Under the above Act I respectfully request the following:*

- a) Can Westminster City Council confirm their Council Tenants are contributing towards the £4,116,966 estimated cost of Major Works Project X108. If so what is the total combined contribution.*
  - b) Please confirm the source of any contribution, i.e. as a % of Council Tenant's rent, Housing Revenue Account, or other subsidies.*
  - c) How is the Housing Revenue Account funded?'<sup>1</sup>*
5. The Council responded on 3 April 2020. In response to question a) the Council confirmed that council tenants contribute towards the costs of the works. However, it explained that the total contributions from tenants and leaseholders is fluid depending on a number of factors. The Council noted that the leaseholders pay for their proportion of the works, and the contribution from the Housing Revenue Account (HRA) pays for the tenanted proportion of the works across the whole scheme. In response to question b) the Council explained that the main sources of income are tenants in the form of rents and service charges. In response to question c) the Council explained that the main sources of income of the HRA are from tenants in the form of rents and service charges.
6. The complainant contacted the Council on 6 April 2020 in order to ask for an internal review of this response. He explained why he was dissatisfied with the Council's response to all three parts of his request.
7. The Council informed him of the outcome of the internal review on 22 April 2020. In relation to part a) of the request the internal review noted that the initial response had confirmed that council tenants contributed to the cost of project, but had failed to provide the total combined contribution. The Council explained that the estimated bills for the project were revised to £4,037,864.58 and it billed an estimated total of

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<sup>1</sup> The 'Major Works Project X108' consists of a project involving external and communal area repairs to a number of blocks in the Westbourne Park area.

£1,689,026.07 to leaseholders, and the remaining £2,348,838.51 was contributed from the HRA which pays for the tenanted proportion of the works. The Council noted that the true figure of spend will be known at final account. In relation to question b) the internal review concluded that the initial response had answered the question as it stated that *'The main sources of income are from tenants in the form of rents and service charges'*.

8. The Council explained that it considered the further points the complainant had raised about question b) in his request for an internal review contained new FOI requests; the complainant had asked *'With regard to council tenants, how much is collected from rents? How much is collected from (elsewhere) HRA?'*. In response to these new requests the Council explained that its accounts for last year (ie 2019/20) would be published in May 2020 and therefore it considered such information to be exempt from disclosure on the basis of section 22 of FOIA. However, the Council also referred the complainant to the page 169-173 of the previous year's accounts (ie 2018/19) in reply to these further requests and provided him with link to these accounts. In relation question c) the Council also referred the complainant to its accounts for 2018/19 and the future publication of its accounts for the year 2019/20.

## Scope of the case

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9. The complainant contacted the Commissioner on 7 May 2020 in order to complain about the Council's handling of his request. He argued that the Council had failed to provide him with the information sought by all three parts of his request.
10. The Commissioner contacted the complainant on 29 January 2021 and explained that in her view the Council had provided a response to questions a) and c) of the request. However, she accepted that the Council had failed to provide a clear response to question b) in terms of how the tenants' contribution was met.
11. The Commissioner therefore asked the Council to provide the complainant with a further response to question b) of his request. The Council did so on 25 February 2021. In this response the Council confirmed that the *sole source* of the council tenants' contribution to the cost of the project was the HRA. The Council has also provided the percentage breakdown between the tenants' contribution to the costs of the project and the contribution of the leaseholders.
12. The Commissioner informed the complainant that in light of this further disclosure she was satisfied that the Council had now provided him with the information falling within the scope of his request. The complainant disputed this position. This decision notice therefore focuses on whether

the Council has fulfilled its obligations under FOIA in relation to the information it has provided to the complainant. The notice also considers the Council's delay in providing the complainant with some of the information falling within the scope of his request.

## Reasons for decision

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13. The Commissioner has considered each of three questions contained in the complainant's request in turn. However, as an overarching point, the Commissioner considers it is important to emphasise that the right of access provided by section 1(1) of FOIA is limited to any recorded information held by a public authority. FOIA does not place any obligation on a public authority to create information in response to a request or to provide explanations or opinions in order to answer a request.
14. In considering FOI complaints, the Commissioner therefore focuses simply on establishing whether a public authority holds any recorded information falling within a disputed request, and if so, whether the recorded information should be disclosed or whether it is exempt from disclosure under FOIA.

### Question a)

15. Question a), sought confirmation as to whether council tenants are contributing to the project, and if so, what the tenants' total contribution was. The Council's initial response to the request confirmed that the tenants were contributing to the cost and the internal review explained that £2,348,838.51 of the costs fell to be covered by tenants. Furthermore, the Council's further response sent to the complainant on 25 February 2021, albeit in response to question b), explained that the sole source of the tenants' contribution came from the HRA.
16. Following this further response, in submissions to the Commissioner, the complainant questioned whether the figure of £2,348,838.51 is paid for in part by the tenants and in part by the HRA, and if so, how this figure is split between the two. He also noted that during the course of his correspondence with the Council on his request he had clarified that what he was seeking to understand was *'how much (money) are Council Tenants paying towards the costs?'*
17. Despite the complainant's continuing concern that the Council has not answered question a), in the Commissioner's view it has fulfilled its FOIA obligations in relation to this question. This is because it has i) confirmed that tenants contributed to the cost of the project, and further explained that the tenants' contribution was met from the HRA, and ii) disclosed what the amount of the tenants' contribution, via the HRA,

was. In relation to this conclusion the Commissioner would emphasise that the HRA and tenants' contributions are not separate sources of funding in relation to this work. Rather, as the Council has explained, the tenants' contribution is taken directly (and solely) from the HRA.<sup>2</sup>

Question b)

18. As noted above, the Commissioner accepts that the Council's initial response and its internal review did not provide a clear answer to question b) as to the source of its tenants' contribution to the cost of the project.
19. However, as also explained above, on 25 February 2021 the Council confirmed that the sole source of the council tenants' contribution to the cost of the project was from the HRA. Therefore, the Commissioner is satisfied that the Council has, albeit belatedly, provided the complainant with the information sought by question b) of his request.
20. In his submissions to the Commissioner the complainant noted that leaseholders pay 41.83% of the contribution of the costs and the HRA pays 58.17% of the costs and he raised concerns about the Council's methodology of splitting the cost of the project to arrive at these figures. However, it is beyond the role of the Commissioner to comment on how the Council has decided what proportion of the costs falls to leaseholders and what proportion falls to tenants.

Question c)

21. Question c) sought details about how the HRA was funded. The Council's initial response provided some details of sources of income for the HRA. The internal review response directed the complainant to the Council's accounts for the year 2018/19<sup>3</sup> and noted that the accounts for the year 2019/20 would be published in May 2020 (and thus were exempt from disclosure on the basis of section 22 of FOIA).
22. The accounts for the year 2018/19 available at the link provided by the Council to the complainant clearly contain a breakdown of the income for the HRA account. The sources of income being listed as 'Dwellings Rents', 'Non-dwellings Rents', 'Charges for Services and Facilities' and 'Contributions towards Expenditure'. (The accounts for the period

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<sup>2</sup> Further information about how a local authority's HRA works is available here <https://www.gov.uk/guidance/housing-revenue-account>

<sup>3</sup> It provided him with a link to the following website: <https://www.westminster.gov.uk/annual-accounts/2018-2019-annual-accounts>

2019/2020 which are now available also confirm the same sources of income for the HRA<sup>4</sup>.) Technically, if a public authority directs a requester to a particular website in order to find the information they have requested, then it should explain that this information is exempt from disclosure on the basis of section 21 (information reasonably accessible to the requester) and issue a refusal notice. Whilst the Council did not issue such a refusal notice in response to this request, it is clear to the Commissioner that that the information contained in the 2018/19 accounts to which the complainant was directed clearly fulfils question c) of his request.

23. In his submissions to the Commissioner the complainant noted that the Council's response of 25 February 2021 had stated that *'The leaseholders don't subsidise tenants or vice versa, as each pays the relevant share'* of the costs of the project. However, the complainant noted that in an internal review response in relation to a subsequent request which he had submitted, the Council had informed him that leaseholders pay into the HRA. The relevant section of that internal review reads:

*'As leaseholders are technically tenants of the Council, the leaseholder service charge contributions are included within the HRA, alongside the service charge contributions of the rented tenants, and their rental payments. Both the tenants and the leaseholders pay their proportionate share of the service charge costs.'*

24. The complainant argued that as the HRA pays the tenants' contribution to the cost of the project, with money partially provided by leaseholders, this contradicted the Council's response of 25 February 2021 that *'The leaseholders don't subsidise tenants or vice versa, as each pays the relevant share'*. Rather, the complainant argued that the leaseholders were subsidising the tenants' contributions through the HRA.
25. The Commissioner can understand the complainant's line of argument. With the benefit of hindsight perhaps the Council's response of 25 February 2021 could, whilst explaining that tenants (via the HRA) and leaseholders are directly responsible for the respective sums set out above in relation to the project, have clarified that the leaseholders' services charges are paid into the HRA.
26. Nevertheless, as set out above, the Commissioner's role is limited to determining whether a public authority has provided a requester with the recorded information which it holds falling within the scope of a

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<sup>4</sup> <https://www.westminster.gov.uk/annual-accounts/2019-2020-annual-accounts>

request. For the reasons set out above the Commissioner is satisfied that the information sought by question c), ie details of how the HRA is funded, was available to the complainant via the published accounts at the link provided by the Council in the internal review response.

Procedural issues

27. Section 10(1) of FOIA requires a public authority to provide a requester with a response to their request within 20 working days. Whilst the Council did reply to this request within that time period, it only provided the information sought by part b) of the request during the course of the Commissioner's investigation, ie its communication of 25 February 2021.
28. This represents a breach of section 10(1) of FOIA.

## Right of appeal

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

30. 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.
31. 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 .....**

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