

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 April 2014

Public Authority: London Borough of Southwark
Address: PO BOX 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant submitted three requests to the London Borough of Southwark (the Council) for information regarding the damage caused by a fire at a residential block of flats and the costs associated with the necessary repairs. The Council provided the complainant with the information sought by requests 1 and 2 but withheld the information sought by request 3 on the basis of section 43(2) of FOIA, the commercial interests exemption. During the course of the Commissioner's investigation the Council provided the complainant with the withheld information on the basis that it was no longer considered to be commercially sensitive.
2. The Commissioner has concluded that the Council breached section 10(1) of FOIA by not providing the information sought by request 3 within 20 working days of the complainant's request.

Request and response

3. The complainant submitted the following requests to the Council on 2 September 2013:

'I was referred to the situation at Carrisbrooke Gardens by your colleague [name redacted] in Home Ownership Services. I understand from him that a substantial block of flats was severely damaged by fire in the borough several years ago; that the flats here were occupied roughly 50% Leaseholder and 50% Council; that the Council insures its Leaseholder stock, but does not insure its Council stock. Therefore half

of this block will have been insured and the rest not insured. Given that I am told all flats are insured for £350,000 each it will be simple matter to work out the total sum paid out by the insurer.

I need to know at the date of the fire:

1 The exact total numbers (but not their exact addresses) of flats which were Leaseholder and which were Council in this damaged block in Carrisbrooke Gardens.

2 The exact numbers (but not their exact addresses) of flats which were affected by the fire and the numbers of these which were Council and Leaseholder.

3 The total final, or failing that, the total estimated cost of reinstatement of this block of flats.

If this information is blocked from publication then I will have to conclude that the Council is using its leaseholders to pay inflated insurance premiums for over-insurance of the leasehold parts of its housing stock so as to help protect the Council from its own losses.'

4. The Council responded on 12 September 2013 and provided the information sought by requests 1 and 2. However, it explained that the information sought by request 3 was exempt from disclosure by virtue of section 43(2) of the FOIA because its disclosure would prejudice the Council's commercial interests.
5. The complainant contacted the Council on the same day in order to ask for an internal review of the decision to cite section 43(2).
6. The Council informed him of the outcome review on 9 October 2013; the review upheld the application of section 43(2).
7. The complainant was subsequently provided with the information falling within the scope of request 3 by the Council on 3 March 2014 on the basis that it no longer considered it to be commercially sensitive.

Scope of the case

8. The complainant originally contacted the Commissioner on 22 November 2013 to complain about the Council's decision to withhold the information sought by request 3.
9. Following the Council's provision of this information the Commissioner explained to the complainant that his approach in situations such as this where the disputed information is disclosed during the course of his investigation is to invite the complainant in question to withdraw their complaint. If they refused to do so, the Commissioner would simply issue a decision notice which found that the public authority in question had breached section 10(1) of FOIA by failing to provide the requested information within 20 working days.
10. The complainant informed the Commissioner that he did not wish to withdraw his complaint.

Reasons for decision

11. Section 10(1) of FOIA requires public authorities to disclose information promptly and in any event within 20 working days following the date of the request.
12. In this case the complainant submitted his request on 2 September 2013 and the Council did not provide him with the remaining information he requested until 3 March 2014.
17. The Commissioner has therefore concluded that the Council breached section 10(1) of FOIA.

Right of appeal

13. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

14. 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.
15. 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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF