

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 15 July 2015

**Public Authority:** Hertfordshire County Council

**Address:** County Hall  
Hertford  
Hertfordshire  
SG13 8DE

### Decision (including any steps ordered)

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1. The complainant has made a request to Hertfordshire County Council ("the council") for information relating to monies received as part of Section 106 agreements with developers in a specific area. The council subsequently provided held information. The complainant disputed whether all relevant information had been retrieved, and whether the council's response had abided by the requirements of section 10 and section 16.
2. The Commissioner's decision is that no further information is held, but that the council breached section 10(1) in failing to disclose all relevant held information within the time for compliance. No breach of section 16 has been identified.
3. The Commissioner does not require any steps to be taken.

### Request and response

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4. On 10 January 2014 the complainant wrote to the council and requested the following:
  - 1) *The amount of Section 106 money obtained from the property developers of housing sites located close to this school, since 1980 – including those at the top of Benslow Lane and Wedgewood Road and Talisman Street.*

*2) Exact details of where that money was spent or confirmation it is still held.*

5. The council responded on 24 January 2014, and disclosed held information.
6. The complainant requested an internal review on 11 June 2014.
7. Following an internal review, the council responded on 4 July 2014. It disclosed further held information that had been identified, and gave advice and assistance to provide context for the disclosed information.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 9 September 2014 to contest the council's response. Specifically, he disputed the completeness of the council's response, and whether it had responded within the time for compliance. He also wished the Commissioner to consider whether a breach of section 16 should be recorded.
9. The Commissioner therefore considers the scope of this case is the determination of whether the council is likely to hold further relevant information, whether it had responded within the time for compliance, and whether a breach of section 16 had occurred.

### **Reasons for decision**

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#### **Section 1(1) – Duty to make information available upon request**

10. Section 1(1) of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.

#### *Background*

11. The complainant's request seeks information about monies that the council has received as part of agreements made under Section 106 of the Town and Country Planning Act 1990. Agreements under Section 106 are typically entered by the landowner and relevant council, and impose stipulations on a planning decision. Such a stipulation can involve the developer paying a contribution to the relevant council to offset any negative impact (e.g. the loss of green space).

*The complainant's position*

12. The complainant has explained that he is concerned that initial searches for held information were either not thorough, or that information about received monies is not held at a level of detail that allows its origin to be identified; which the complainant believes is detrimental to the purpose that the monies were received for. The complainant also disputes the council's explanation that there may be Section 106 agreements to which the council was not an involved party.

*The council's position*

13. The council has explained that its original searches for information were undertaken by the Estate and Asset Management Team, which is based within the council's Development Services, and holds the responsibility to record and monitor monies obtained by the council in relation to Section 106 legal agreements or deeds. These searches spanned hardcopy and electronic records. The hardcopy records searched comprise the Property Section 106 Registers and original deeds held by the council's Registry Office. The electronic records comprise of digital copies of the registers and deeds, and are held on the shared drive used by Development Services, and further recorded on an internal database named 'PROMS'.
14. Further searches have been undertaken in response to the Commissioner's investigation. These have included a further search of hardcopy and electronic information held by the Estate and Asset Management Team, and a new search by the School Planning Team (in order to ensure that no extraneous information is held by that team).
15. The council has elaborated that it will only have received monies from a developer for situations where the council has been a party to a Section 106 agreement, due to the development impacting upon any function that the council is responsible for (e.g. education). To illustrate this, the council has made enquiries with North Hertfordshire District Council in respect of the '*extension of Benslow Lane*' (which the complainant specifies as part of his request), and that council has since confirmed that it holds an agreement between itself and the developer for that specific development.

*The Commissioner's conclusion*

16. In the circumstances of this complaint, the Commissioner must decide on the balance of probabilities whether further information about Section 106 monies is likely to be held by the council.
17. In reaching a decision, the Commissioner has considered the apparent extent of the council's searches for information across both the hardcopy

and electronic resources that are maintained by the appropriate council team, and the limit to the council's jurisdiction, which the council has illustrated through its own enquiries with a neighbouring public authority. Whilst the Commissioner has considered the complainant's own submissions, there is no clear evidence within these to suggest that further information is likely to be held. Additionally, the complainant's concern that information held by the council is not recorded at a sufficient level of detail, falls outside the jurisdiction of the Commissioner. Having therefore considered the above factors, the Commissioner has come to the conclusion, based on the balance of probabilities, that it is unlikely the council holds further information relevant to the complainant's request.

### **Section 16 – advice and assistance**

18. Section 16(1) of the FOIA imposes an obligation on a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice ("the Code of Practice") in relation to the provision of advice and assistance.
19. In the circumstances of this case, the Commissioner has identified that advice and assistance was provided at internal stage in order to assist the complainant in understanding the held information that was disclosed to them. As such, advice and assistance was provided, and the Commissioner has therefore not found a breach of section 16.

### **Section 10(1) – time for compliance**

20. Section 10(1) requires that where a public authority has a duty under section 1(1), it must comply with that duty within twenty working days following receipt of the request.
21. The Commissioner has identified that the council provided relevant held information outside of 20 working days, and as such breached the requirement of section 10(1).

## Right of appeal

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22. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

23. 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.
24. 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**