

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 3 June 2015

**Public Authority:** Wealden District Council  
**Address:** Council Offices  
Pine Grove  
Crowborough  
East Sussex  
TN6 1DH

#### **Decision (including any steps ordered)**

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1. In a 14 part request, the complainant has requested information from Wealden District Council (WDC) about its Housing Revenue Account proposals. WDC said information relating to one part of the request is already published and is therefore exempt from disclosure under section 21 of the FOIA. Regarding the remaining 13 parts, it either provided some information or confirmed that it did not hold the specific information requested. The complainant was initially not satisfied with WDC's response to five parts of his request; this reduced to two parts during the Commissioner's investigation. The complainant considers that WDC has not disclosed all the relevant information that it holds with respect to these two parts.
2. The Commissioner's decision is that Wealden District Council has disclosed to the complainant all the information that it holds within the scope of his request, and has complied with its obligations under section 1 of the FOIA.
3. The Commissioner does not require Wealden District Council to take any further steps.

#### **Request and response**

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4. On 3 December 2014, the complainant submitted a 14 part information request to Wealden District Council. The full request is in an annex at

the end of this notice. The two parts of the request with which the complainant remains dissatisfied are given below:

"4. *Please provide the relevant council decision or documentation that has allowed the service charges for grounds maintenance and contract cleaning to be costed by the Housing Service to the Sheltered Dwellings General cost centre rather than direct to each scheme as per the WDC council decision in 2012.*

5. *As the cost of CPI is set at 2% and management costs being increased at RPI + 0.5% throughout the 30 year business plan period please provide any documentation regarding the rationale to increase management cost by RPI + 0.5% rather than CPI is the most appropriate for residents of Wealden.*

5. WDC responded on 18 December. Drawing on a previously published Housing Revenue Account consultation report, it provided some information within the scope of the request, including part 4, but did not provide a tailored response to his request, citing section 12 (cost exceeds appropriate limit) and section 40 (personal data). With regard to part 5, it cited section 21 (information already publicly available) and provided a link to its general website.
6. Following an internal review, WDC wrote to the complainant on 19 January 2015. Having re-interpreted the request, WDC provided additional information to the complainant or confirmed that it did not hold some of the information the complainant has requested. It maintained its position regarding part 5; it said that this information is already published on WDC's website and is therefore exempt from disclosure under section 21. It provided a new link to a specific area of the website.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 23 January to complain about the way his request for information had been handled. He was not satisfied with WDC's application of section 21 to part 5 of his request. In addition, he considered that the information WDC provided in response to part 4 did not address his specific request; that its response to part 11 was incomplete; that it had not answered part 12 and that its response to part 14 was incorrect.
8. Following initial correspondence with the Commissioner, WDC acknowledged that its response to part 4 of the request could have been clearer and it then provided the complainant with a further response to this part. The complainant remained dissatisfied with WDC's response

and has maintained this position following the Commissioner's further contact with WDC.

9. During the Commissioner's investigation, the complainant agreed that WDC had published some information relating to part 5 of his request. However, he said it did not provide information on the 'rationale' that he has specifically requested and, again, has maintained this position following the Commissioner's further contact with WDC.
10. The Commissioner has told the complainant that he considers that the supplementary questions he asked WDC in relation to its response to parts 11, 12 and 14 are not requests for held, recorded information and are therefore not valid requests under the FOIA. The Commissioner therefore advised the complainant to raise these matters with WDC outside of the FOIA, and as part of WDC's customer service, and the complainant agreed.
11. The Commissioner has therefore focussed his investigation on whether WDC has disclosed all the information that it holds with respect to part 4 and part 5 of the complainant's request.

## Reasons for decision

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12. **Section 1** of the FOIA says that anyone making a request for information to a public authority is entitled be informed whether the public authority holds the information, and if so, to have that information communicated to them.
13. Regarding part 4 of his request, the complainant considered that WDC had not answered the question he had asked. In its submission to the Commissioner, WDC conceded that it could have added some wording that would give more clarity. It provided this wording to the Commissioner, who suggested that WDC provide it to the complainant, which WDC did.
14. However, the complainant does not accept that WDC does not hold any further information relating to a decision he says Council officers made to apportion service charges in a particular way, going against a decision elected members of WDC had made to 'unpool service charges' for 2012/13 onwards.
15. In order to respond to the Commissioner's questioning, WDC sought advice from its Housing Team about how costs are allocated. It then confirmed that costs are allocated to individual schemes and this has been the case for some years. There will be occasions when costs are allocated to a general code, before being apportioned to the appropriate

scheme, but costs relating to just one scheme are allocated to that scheme. WDC went on to confirm to the Commissioner that it does not hold recorded information about any decision Council officers took, and that that this has never existed.

16. The complainant considers that WDC's response to part 4 of his request is disingenuous. In correspondence to the Commissioner dated 29 April, he acknowledges that the detail of WDC's method of allocating service charges is known only to WDC, makes an assumption on how its contracts are negotiated and assumes that officers met, had a discussion and decided to go against the elected members' decision.
17. The Commissioner considers that these arguments involve a degree of speculation – on how WDC allocates service charges to specific schemes; how contracts are negotiated and on officers having formally met, discussed and made a decision.
18. WDC has explained how it allocates service charges namely, that they are usually charged to individual schemes with some costs occasionally being allocated to a general code before being apportioned to the appropriate scheme. It says this has been the situation for some years. This approach also appears to the Commissioner to be broadly in line with the elected members' decision. In the absence of any credible evidence to the contrary, the Commissioner is prepared to accept that WDC does not hold the specific information the complainant has requested at part 4.
19. In response to part 5 of the request, the WDC initially provided the complainant with a link to its general website where it said the information requested in this part is already available. It subsequently provided the complainant with a link to the specific area of its website where it says relevant information is published.
20. The complainant agrees that this link leads to a statement that the management costs are being raised by a Retail Price Index (RPI) percentage point, but it does not show the rationale for doing so, which he has requested.
21. During the investigation, WDC told the Commissioner that the 30 year business plan that the complainant refers to in his request was drawn up two years ago when the inflationary increases were anticipated generally using RPI. Some of its contracts did and do assume the Consumer Price Index (CPI). The reason why WDC used RPI is that this was the index in general use. However, WDC explained that, from this year, rent increases are based on a formula using CPI rather than RPI.

22. The complainant told the Commissioner that the information he is seeking is WDC's rationale and decision making process for adding a levy to its management costs for the first time via its housing revenue account by an increase of RPI + 0.5%, and does not concern contracts.
23. WDC confirmed to the Commissioner that it does not hold the specific information the complainant has requested. It says there is no levy. When its 30 year business plan was drawn up it used RPI (and not RPI + 0.5%) as an inflationary uplift for its management costs. WDC says this is normal practice and that RPI was used because RPI was the index generally used at that time. Its Finance Officer made this decision and would not have had to seek approval from anyone more senior, either an officer or a member, because this would not be required. Similarly, there is no instruction from a senior officer to dispense with CPI because, as discussed above, RPI was the index WDC used. WDC says its business plan is a projection and this is how it should be regarded.
24. The Commissioner has considered part 5 of the complainant's request and WDC's response to the complainant and its submissions to him. He notes that WDC has reviewed both parts of the complainant's request a number of times and has sought advice from its relevant teams. The Commissioner is convinced by WDC's resulting explanations and is prepared to accept that it does not hold the specific information the complainant asked at part 5 of his wider request.
25. Section 1 of the FOIA provides a general right of access to information *held* by public authorities. The FOIA does not place an obligation on public authorities to create new information in order to respond to a request or to give an opinion or judgement that is not already recorded. The Commissioner recognises, however, that WDC has nonetheless provided answers to questions the complainant has asked about the parts of the request covered in this notice, and his wider request, outside of the FOIA and as part of its customer service function.

## **Right of appeal**

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26. 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)

27. 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.
28. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## ANNEX

1. Please provide any documentation held on the Formula Rent and the calculations for the formula rent at my property.
2. Please provide documentation on the Formula Rent and the calculations for the formula rent at one of the bungalows at Hillside Drive for comparison.
3. Please provide documentation showing the relevant property values, local income levels and the property size for all sheltered properties.
4. Please provide the relevant council decision or documentation that has allowed the service charges for grounds maintenance and contract cleaning to be costed by the Housing Service to the Sheltered Dwellings General cost centre rather than direct to each scheme as per the WDC council decision in 2012.
5. As the cost of CPI is set at 2% and management costs being increased at RPI + 0.5% throughout the 30 year business plan period please provide any documentation regarding the rationale to increase management cost by RPI + 0.5% rather than CPI is the most appropriate for residents of Wealden.
6. Please provide estimates of the value of the extra income that has been estimated over the 30 year business plan period by using the RPI + 0.5% figure for management costs.
7. Please provide any documentation that shows what the council intends to use the £2.188 million pounds that will be generated by the HRA income over the 30 year business period.
8. Please provide any documentation from the DWP or the Communities Agency to the WDC that makes it clear that they are aware of the way management costs are costed by WDC and documentation showing their agreement to such costs.
9. Please provide documentation to provide a clear explanation of the item shown at (ix) Purchase of existing properties.
10. Please provide any documentation surrounding the application of any "weighting" of heating, water and sewage applied by the Housing Services at sheltered properties.
11. Please provide the documentation or provide the evidence that has allowed the different rates of heating, water and sewerage to be shown at appendix D for 2015/16 to be budgeted for by Housing Services.

12. Please provide any documentation to support the level of increased service charge costs at properties 1 to 13 inclusive highlighted in RED font on Appendix D.

13. Please provide any documentation to confirm that the void level previously applied has NOT been applied for the service charge year 2015/16 or in the future.

14. Please provide any documentation to support the lack of increase in the costs for the supporting people charge in 2015/16 as it is unclear why the charge has not increased at least in line with pay and pension costs for staff.