

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2017

Public Authority: London Borough of Wandsworth Council

Address: Town Hall
Wandsworth High Street
London SW18 2PU

Decision (including any steps ordered)

1. In 13 requests, the complainant has requested information from London Borough of Wandsworth Council ('the Council') about its purchase of particular properties. The Council has released some information and says some of the information is exempt from release under section 21 of the FOIA because it is already reasonably accessible to the complainant. The complainant considers that the Council holds information within the scope of nine of his requests that it has not released.
2. The Commissioner's decision is that, on the balance of probabilities, the Council has released all the information that it holds within the scope of requests 1, 3, 4, 5, 6, 7, 9 and 10 and has complied with its obligations under section 1(1) of the FOIA with regard to these requests.
3. However, the Commissioner finds that the Council holds further information within the scope of request 2 that it has not released and has breached section 1(1)(a) with regards to this information. The Commissioner also finds that the Council has breached section 10(1) (time for compliance) with regard to this information.
4. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:

- Comply with section 1 as appropriate with regards to the information it holds within the scope of request 2.
5. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 9 December 2016, the complainant wrote to the Council and requested information in the following terms:

"You are required to provide:

- 1. The reasons why the information provided by [Named Individual 1] contradicts the information provided by [Named Individual 2]?*
- 2. The full name of the council's "strong" policies on acquiring property (repossessed or any other)?*
- 3. The exact date the "strong" policies on acquiring property (repossessed or any other) have been approved by the committees?*
- 4. The full name of the council's committees including the full names of the chairman's of those committees who approved payments of £350,000 and £640,000 amounts?*
- 5. The exact date the "strong" policies on acquiring property (repossessed or any other) have been authorised by the Executive of the Executive?*
- 6. The exact date the Executive of the Executive has authorised payments of £350,000 and £640,000 amounts?*
- 7. The full name of the conveyancing solicitors who have been instructed by the council's Executive to purchase [Address 1] and [Address 2]?*
- [8a]. The exact date the council's Executive made an offer to purchase [Address 1] and [Address 2]?*
- [8b] The full name of a person or an institution to whom the council's Executive has paid £350,000 and £640,000 amounts?*
- 9. The full name of the council's officer who made payments of £350,000 and £640,000 amounts on behalf of the council's Executive?*
- 10. The full name of the account, its number and sort code that belongs to the council's Executive, that is used to make the payment of £350,000 and £640,000 amounts?*

[No number 11]

12. The full name of the bank the account that belongs to the council's Executive, from which the payment of £350,000 and £640,000 amounts is held with?

13. The reasons why the council's Executive does not have the register of acquired properties (repossessed or any other)?"

7. The Trust responded on 9 February 2017. It provided answers to requests 1 and 3; released information with regard to requests 2, 4, 5, 6, 7, 8a, 9, 10 and 12; withheld the information requested in request 8b under section 21 of the FOIA and confirmed it does not hold the information requested at 13.
8. The Trust provided a review on 3 April 2017. It referred to its response to a previous request the complainant had submitted to it on 7 November 2016 and confirmed that it considered its response of 9 February 2017 satisfied the complainant's requests.
9. Addressing an allegation the complainant had made against it that the Council had not released lawful documents, the Council confirmed that particular information is already reasonably accessible to him on the Land Registry website (and is therefore exempt from release under section 21 of the FOIA).
10. The Council disputed another allegation; that it had not provided the information the complainant had requested. The Council suggested the complainant seek legal advice about his wider concerns.

Scope of the case

11. The complainant contacted the Commissioner on 8 May 2017 to complain about the way his request for information had been handled. In correspondence to the Commissioner dated 14 September 2017, he expressed dissatisfaction with the Council's response to requests 1, 2, 3, 4, 5, 6, 7, 9 and 10 specifically.
12. The Commissioner's investigation has focussed on whether the Council has released to the complainant all the information that it holds within the scope of these requests and has complied with section 1(1) and section 10(1) of the FOIA in respect of these requests.

Reasons for decision

13. In its submission to the Commissioner, the Council has provided a background to the complaint. It says that Address 2 was at one time

owned by Wandsworth Council. The Council sold the property in 1996. The complainant purchased the property from the then owners in May 2000, taking out a mortgage in 2008. A charging order was made in 2014 and a bankruptcy restriction notice made in December 2014.

14. The bank from whom the complainant took out a mortgage became mortgagees in possession and the property went to auction on 15 December 2015. It did not sell. The Council was informed of this and was advised that if it was interested in purchase it had to act quickly as there were three other interested purchasers. Exchange took place on 6 January 2016 and a pre-exchange HM Land Registry search took place on that date. Completion was intended to be in February 2016, however this was delayed when the complainant went back into the property and so vacant possession could not be given. The Council has said that completion took place in May 2015 – the Commissioner understands the Council to have meant that completion took place in May 2016.
15. Regarding Address 1, this was another repossession by the same bank as above. It did not go to auction but was sold by private treaty. The Council was the freehold owner and it purchased the property from the bank under a 125 year lease. It was purchased as part of an Alton Area regeneration scheme. Exchange took place on 26 July 2016 and completion on 27 July 2017 (the Commissioner assumes the Council means 27 July 2016 here). The complainant was not the lessee and the Council does not know if the complainant has any connection with this property.

Section 1 – general right of access to information / Section 10 – time for compliance

16. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled (a) to be told if the authority holds the information and (b) to have the information communicated to him or her if it is held.
17. Section 10(1) says that an authority must comply with section 1(1) as soon as possible or within 20 working days following the date of receipt of a request.
18. In its submission, the Council has addressed its response to each of the complainant's requests and the complainant's concerns with those responses, which he raised with the Commissioner.
19. Arguably, request 1 is not a request for recorded information and the Council had answered this question in its response to the complainant. The Council has confirmed to the Commissioner that, as above, Address 2, was originally put up for sale, failed to sell and consequently the

Council was able to purchase the property by private treaty. Any apparent contradiction between what officers at the Council had told the complainant was the result of an error and not an act of dishonesty or a concealing of the facts, as the complainant alleges.

20. If request 1 was to be considered as a request for recorded information under the FOIA, the Commissioner notes that the Council has not explicitly confirmed to the Commissioner that it does not hold information falling within the scope of such a request. In the circumstances however, the Commissioner is prepared to accept that it does not.
21. In its response to request 2, the Council had provided the complainant with a particular report: a Housing and Regeneration Overview and Scrutiny Committee report dated 06.07. 2016. In his submission to the Commissioner, the complainant appears to erroneously refer to the date as 06.07.2017. In his submission, the complainant has said that this report does not address this request as it does not refer to a policy of acquiring re-possessed properties. The Council has directed the Commissioner to paragraph 42 of the report which says that "*In Paper No 14-413, the purchase of properties on the open market, using HRA capital funding, for use as temporary accommodation was approved, as part of the response to the significant increase in large family homelessness in recent years.*"
22. The Council considers that the earlier report – that is, Paper 14-413 – is likely to be where the reference to a policy on acquiring properties to house the homeless came from, and the 2016 report was merely referring to that policy.
23. As a result of the Commissioner's investigation, the Council says it has investigated this further. It has identified that the incorrect paper was referenced in the Housing and Regeneration Overview and Scrutiny Committee report. It should have referenced Paper 14-317 and not Paper 14-413. Paper 14-317 (a copy of which the Council has provided to the Commissioner) is a report to the Committee of 2 July 2014. Recommendation (k) in the Paper sought approval for the purchase of accommodation for housing the homeless. Paragraphs 96 to 124 set out the detail.
24. The Council has told the Commissioner that it is unclear whether the complainant has requested a specific policy regarding repossessed properties. If so, it has been unable to find one. However the Council says that there does not need to be one. The authorisation to officers (paragraphs 122 and 123 of the 2014 report authorises the Council's Valuer and the Director in consultation) is simply to acquire units of accommodation around various locations (to avoid clustering). It makes

no difference whether a property becomes available through repossession or voluntary sale, provided it is suitable and provides value for money to the local taxpayer.

25. On the basis of the Council's submission, the Commissioner is prepared to accept that, with regard to request 2, the Council does not hold information regarding repossessed properties. This is because, as above, the Council has told her that it makes no difference to it whether a property becomes available through repossession or voluntary sale. It seems unlikely therefore that the Council would have a policy on acquiring repossessed properties specifically.
26. However, it seems that the 2016 Committee report to which the Council had directed the complainant referred to the wrong 2014 paper when the report referred to Paper 14-413. (The Council considered this 2014 paper to be a policy on acquiring property more generally). The correct paper was Paper 14-317 and the Council provided this paper to the Commissioner. It appears to the Commissioner that Paper 14-317 therefore addresses part of request 2; namely a policy on acquiring properties more generally. The Council holds this information and it should therefore comply with its obligations under section 1 of the FOIA with regard to this information.
27. In its response to request 3, the Council had directed the complainant to the 2016 Committee report and explained that approval is delegated to officers by virtue of that report. The complainant's arguments on this point in his submission to the Commissioner are not clear. He seems to consider that no monies were exchanged with regard to Address 2 and has referred the Commissioner to a particular TR2 form (*Registered title(s) under power of sale: whole transfer*) relating to Address 2 and a particular email to the complainant from an officer at the Council.
28. The Council has told the Commissioner that its officers had authority to make acquisitions at the time of the property search on Address 2 on 6 January 2016, the date of exchange. The Council has noted that the TR2 form states the purchase price was £640,000 and that the complainant says that money did not change hands because the form says "*Transfer is not for money or any monetary value*". The Council argues that the complainant seems not to have appreciated that the TR2 form has boxes that need to be marked with an 'X' according to which situation applies. The first situation on the form is "*The Transferor has received from the transferee for the property the following sum (in words and figures)*" In the TR2 form that the complainant has provided, this box has been marked with an 'X' and the words: "*640,000.000 SIX HUNDRED AND FORTY THOUSAND POUNDS*" have been typed.

29. The complainant's submission on request 3 seems to concern broader matters than the Council's response to this specific request. The Commissioner considers that, when the Council answered the complainant's question, it provided a satisfactory answer to the request and that, on the balance of probabilities it does not hold recorded information that falls within its scope.
30. The complainant has told the Commissioner that, with regard to requests 4 and 5, the Council has not released the information he requested – that is the names of the Council committees that approved particular payments, including the names of those committees' chairmen. He again makes reference to two dates: 06.07.2017 and 13.05.2017. If the Commissioner understands correctly, the complainant appears to consider that the first date contradicts the fact that the purchase of his property was completed on the second date. The Council and the Commissioner understand the complainant to mean 06.07.2016 and 13.05.2016. The complainant appears to consider that 06.07.2016 is the date on which his property was purchased; however it is in fact the date of the Housing and Regeneration Overview and Scrutiny Committee report. At this Committee meeting reference had been made to the Council's more general authorisation to acquire properties.
31. In its original responses to the complainant, the Council had provided the name of its Head of Valuation and Asset Management Services and explained that this individual acted in line with appropriate authorities/delegations. It had also referred to the Housing and Regeneration Overview and Scrutiny Committee report dated 06.07.2016 that it had released. The Council explained that approval of the payments in question were not decided by committee Chairmen or the Executive. The Council has confirmed to the Commissioner that the relevant officers had delegated authority and that no Committee was required to approve the purchase and payments.
32. The Commissioner considers that the Council has released to the complainant information that satisfies his request – the name of a particular individual and the Committee report - and, in the circumstances described by the Council, it does not hold any further information within the scope of these requests.
33. In its response to request 6, the Council had provided the dates on which sale of the two properties concerned was completed and confirmed that approval of the two payments of £350,000 and £640,000 had not been decided by the Chairman or Executive. In his submission to the Commissioner, the complainant says that the Council has not provided factual evidence of the date, and proof that the payments were actually made and referred again to the TR2 form and the text "*Transfer*

is not for money or any monetary value". The Council says it has dealt with this matter, which is discussed at paragraph 28. The Commissioner is satisfied that the Council's response to request 6 satisfactorily addresses the complainant's request; and on the basis of its submission to her, she is prepared to accept that it does not hold further information within the scope of this request.

34. In its response to request 7, the Council had explained that the conveyancing for the two properties was handled by its in-house legal team. The complainant is not satisfied that he was not provided with the name of a name of a conveyancing solicitor or the company name. The Council has confirmed that the no external solicitors were instructed to deal with the conveyancing and that it was handled by the Council's Legal Services team. The Commissioner finds that, in the circumstances, the Council addressed the complainant's request satisfactorily and does not hold the information he appears to be seeking.
35. With regard to request 9, the complainant is not satisfied as he has not been provided with the name of a council officer who made the payments and disputes that money ever changed hands, referring again to the text in the TR2 form. As it had told the complainant in its response, the Council had confirmed to the Commissioner that its in-house legal team had made the two payments and, by inference, it therefore does not hold the specific information requested. The Commissioner accepts this and finds that the Council does not hold the requested information.
36. Finally, with regard to request 10, the complainant once again disputes that monies for at least one of the properties in question exchanged hands, referring again to the wording on the TR2 form. As the Council has explained to the Commissioner and, as discussed at paragraph 28, it appears that the complainant is mistaken in his belief that the TR2 form is evidence that no money was exchanged for this property. The Council has noted that, at section 9 of the form, the box on the TR2 for the statement '*The Transferor has received from the transferee for the property the following sum (in words and figures)*' is ticked and the sum of £640,000 given in words and figures. This is evidence that, in fact, money *did* change hands.
37. The complainant's concern regarding request 10, expressed in his submission to the Commissioner, appears to be wider than whether or not the Council holds the information he requested. In its original response to request 10, the Council had confirmed there is no bank account for the Council's Executive and directed the complainant to where relevant bank details are published. This would appear to have satisfactorily addressed the complainant's request and the

Commissioner is satisfied that the Council does not hold the specific information requested at request 10.

Right of appeal

38. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. 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.
40. 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

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