

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 April 2024

Public Authority: Ealing Council
Address: Perceval House
14/16 Uxbridge Road
Ealing
W5 2HL

Decision (including any steps ordered)

1. The complainant has requested information from Ealing Council (the Council) in relation to a Fire risk assessment and chargeable works on a named property.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further information within scope of the request.
3. The Commissioner does not require the Council to take any steps as a result of this decision.

Request and response

4. On 11 October 2023, the complainant wrote to the Council in the following terms:

"In the latest service charge for 85 Creffield Rd, Ground Floor, London, W3 9PU. There are 2 entries that are not understood. Therefore I would like to raise an FOI request to understand:

Fire risk assessment. Where and how was that carried out? Can someone provide a description of what that entailed? Also what was the outcome of this assessment? Presuming this was communal areas if so what specific areas were assessed seeing as there are no communal areas.

Also can someone articulate why it costs £480 to "setup safe working area". Again can someone provide a report on this work that has been done?"

5. The Council responded on 8 November 2023 and provided some information in scope of the request.

It also included further advice and assistance in order to help clarify the work carried out at the premisses.

6. The complainant requested an internal review on 15 November 2023 setting out their reasons and arguments as they believed the Council had "approved as routine without any meaningful assessment as to relevance or consideration of the property and the task at hand."

7. The Council responded on 12 December 2023 further explaining its role in relation to the complainants' questions and stated that it did not hold a report specifically about the work undertaken and as previously explained: "The survey was not a Fire Risk Assessment. It was an advice note that determined whether a Fire Risk Assessment was required for the external walls; the internal common parts, or both."

Reasons for decision

8. This reasoning covers whether the Council is correct when it says that it does not hold information within the scope of the request.

The complainant's position

9. In their complaint to the Commissioner the complainant said that: "My issue with the Metro inspection is that it does not detail what

information was shared to Metro prior to instructing them to make an inspection. Ealing Council would have been well aware there are no communal areas to the property and therefore I believe there is a high chance this (chargeable) inspection should not have gone ahead. However, they haven't been able to disclose exactly what information they supplied to Metro.

With the second contractor (drain repair). There is no detail on exactly what was formally communicated to Ealing Council to justify another chargeable cost to "setup a safe working area". While Ealing Council have been able to pass on generic information about this. They have not been able to evidence that this inspection was done and they were specifically passed information/recommendations from that inspection by their contractor. However, they have charged for this work."

10. The complainant considers the Council should hold information within the scope of their request.
11. It is not within the Commissioner's remit to determine what information a public authority should hold, but only to determine that it has complied with FOIA with regard to the information it does hold.

The Council's position

12. In its submissions to the Commissioner, the Council maintained its position that it has disclosed all the information it holds in scope of the request, and it does not hold a report as requested. It stated that: "The flats have no internal communal areas, and each flat is classed as a single domestic place of residence. Consequently, a Fire Risk Assessment is not required as the premises do not fall under The Regulatory Reform (Fire Safety) Order 2005 Article 6."
13. The Council also explained that: "Due to the ongoing coronavirus pandemic, the Assessor was unable to access any of the flats to assess the flat entrance door and the provision of automatic fire detection."
14. The Council further explained that the requester was provided with a copy of the report it held and all associated information at the time.
15. With regard to the second contractor, it also reiterated that it had explained the reasons for the engagement of the contractors to the complainant in its response:

"Set up safe working area Many serious accidents have occurred when buried services have been damaged during excavation work.

Every contractor has a duty under Health and Safety to protect both employees and the public when working.

- The contractor as part of the quotation process would need to go out and survey the area, hazards, access arrangement, storage, and parking. Depth of excavation and whether Temporary supports - Before digging any trench pit, tunnel, or other excavations, the contractor must decide what temporary support will be required and plan the precautions to be taken.
- Once the works are agreed and the work order placed, before any works are undertaken; the area would be surveyed for any underground services i.e., gas, water or live electrical cables. This is usually undertaken using a CAT scanner or plans to identify the location of any services in the ground before the earth is cleared.
- Once the area has been surveyed and everything is deemed clear, barriers and signs should be clearly placed to protect the public from any holes excavated or danger.
- If part of the work involves machinery i.e. diggers, skip lorries these should be managed by the contractor and barriers placed and possible a traffic marshal employed when required.

All these actions must be undertaken by groundworks contractors before works are started and would be chargeable to the client, some maybe visible others might not."

The Commissioner's position

16. The Commissioner notes that the complainant considers the Council should hold information within the scope of the request as they believe the information is relevant to the Council's work and functions.
17. However, the Commissioner is satisfied that the Council has provided all the information it held at the time of the request and carried out reasonable enquiries with the relevant departments in order to locate and confirm if any further information was held within the scope of the request.
18. The Commissioner is not required to prove beyond doubt that the Council do or do not hold further information but can only make a decision based on the civil standard of the "balance of probabilities" that information within the scope of the request is more likely than not held.
19. The Commissioner's decision is that on the balance of probabilities, the Council does not hold any further information within the scope of the original request.

Right of appeal

20. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF