

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 24 August 2018

**Public Authority:** Dartford Borough Council  
**Address:** Civic Centre  
Home Gardens  
Dartford  
Kent  
DA1 1DR

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to Dartford Borough Council's Warmer Streets Project. Dartford Borough Council ('the Council') provided some information and stated other information was not held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any additional information relevant to the request.
3. The Commissioner does not require any steps to be taken.

**Request and response**

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4. On 28 September 2017, the complainant wrote to the Council and requested information in the following terms:

*"1. Can Dartford Borough Council confirm how many properties signed up to the Warmer Street Project to have EWI installed?"*

- 2. Can Dartford Borough Council confirm how many properties on the Warmer Streets Project have been completed, and to how many have not been completed?*
  - 3. Can Dartford Borough Council confirm how many properties on the Warmer Streets Project are non-compliant to the specification?*
  - 4. Can Dartford Borough Council confirm how many properties on the Warmer Streets Project have the incorrect fixings installed in the EWI System?*
  - 5. Can Dartford Borough Council confirm how many properties on the Warmer Streets Project have sealing tape installed?*
  - 6. Can Dartford Borough Council confirm how many properties on the Warmer Streets Project had a pre-commencement survey undertaken?*
  - 7. Under the Warmer Streets Project how many Declaration of Conformity Certificated have Lawtech issued to Dartford Borough Council for EWI installations and how many of the Declaration of Conformity Certificated has payment been made against?*
  - 8. How has Dartford Borough Council ensured that non-compliant EWI Installations are not in a dangerous condition and what enforcement action has been taken to rectify the non-compliant EWI installations?*
  - 9. As the installation at 56 Elm Road has not been completed and has Exposed Polystyrene Insulation how can Dartford Borough Council ensure that this installation is not a potential fire risk and how does it meet Building regulations?*
  - 10. As the two installations do not comply with the BBA Agreement certificate 13/5065 and have the incorrect fixing installed, how do these meet Building regulations and how can Dartford Borough Council ensure that occupants and general public are not at risk of the system becoming detached from the properties?"*
5. On 17 October 2017, the Council provided the requested information to the complainant in relation to Q1, Q2, Q3, Q4, Q6 and Q7. The Council asked the complainant to provide an explanation in relation to Q5, whilst it stated that it did not hold information falling within the scope of Q8, Q9 and Q10.
  6. On 24 October 2017, the complainant wrote to the Council, expressing his dissatisfaction with the response and requested an internal review. He also provided explanations in relation to Q5 and asked the Council why his information request had not been published on the freedom of information portal of the Council.

7. The Council responded on 15 November 2017, providing the complainant with the outcome of the internal review. It responded to the complainant's question regarding the publication of his request in the Council's portal, it stated that it did not hold information falling within the scope of Q5 and it decided to uphold the position of the Council reached in responding to his initial request.
8. On 15 December 2017, the complainant wrote to the Council providing further arguments challenging the Council's outcome of the internal review.
9. On 6 February 2018, the Council provided him with the outcome of a second internal review, which also considered the additional arguments that the complainant had put forward on 15 December 2017, which according to the Council, were received on 11 January 2018. The outcome of the second internal review did not change the Council's original position.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 11 January 2018 to complain about the way his request for information had been handled. The complainant believed that there was still information falling within the scope of his requests that remained outstanding. Therefore, he asked the Commissioner to investigate whether the Council held further information falling within the scope of his request.
11. The Commissioner's investigation has focussed on whether the Council complied with section 1(1) of the FOIA, when it stated that, at the time of the request, it did not hold any further information within the scope of the request, more precisely whether the Council held information in relation to Q5, Q8, Q9 and Q10.

### **Reasons for decision**

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12. Section 1(1) of the FOIA states that:

*"Any person making a request for information to a public authority is entitled-*

*(a) To be informed in writing by the public authority whether it holds information of the description specified in the request,*

*and*

*(b) if that is the case, to have that information communicated to him."*

13. In scenarios where there is some dispute between the public authority and a complainant as to whether the information requested is held by the public authority, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of proof, which is the balance of probabilities.
14. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

### ***The complainant's position***

15. The complainant maintains that the Council must be in possession of information beyond what was already provided and states that he is entitled to have access to this information.
16. On many occasions, the complainant expressed his concern about the accuracy and incompleteness of the information that he received. He also expressed his disbelief in the Council's honesty in its response.
17. The complainant believes that the implementation of the project to which the requested information is related, has been followed by a range of faults and incompliances with the relevant building regulations.

### ***The Council's position***

18. The Council maintains that it has provided to the complainant all the information that it held within the scope of the information request.
19. The Commissioner wrote to the Council for explanation of the efforts made by the Council to locate information falling within the scope of the complainant's requests. The Commissioner's questions were focused on the Council's endeavours in providing the requested information to the complainant, its searches conducted in relation to the complainant's request, and whether any of the information falling within the scope of the requests was deleted or destroyed.
20. In relation to Q5, the Council confirmed that the additional searches that were conducted in response to the Commissioner's letter did not bring different results to previous searches. The Council also discussed the requests with the officers that were involved in this project and none of them were aware of any such records.

21. In relation to the rest of the request, the Council explained that it has reviewed all electronic files, reports and minutes in the course of its searches for the remainder of the information requested. However these searches only confirmed that the Council does not hold any further information relating to this subject other than what had already been disclosed to the complainant.
22. The Council stated that its retention period for the documents of this nature is six years. It also confirmed that no records relating to the project had been deleted or destroyed.

***The Commissioner's view***

23. The Commissioner has reviewed the information disclosed by the Council to the complainant, explanations the Council offered and the correspondence between the Council and the complainant.
24. The Council described to the Commissioner the searches for relevant recorded information it undertook. From the copies of correspondence submitted by the complainant, the Commissioner also notes that the Council actively engaged in discussion with the complainant providing responses to other queries raised in the course of their communication.
25. Whilst the Commissioner recognises that the complainant does not consider that the Council has fulfilled the requests, the Council has provided a clear explanation of the searches that underlay its responses. No evidence is available to the Commissioner which would indicate that the Council's searches have been insufficient, or that further recorded information is held falling within the scope of the requests.
26. The Commissioner appreciates the complainant's concerns that he raised in a number of occasions with the Council about the accuracy of the information provided. In response to this, the Commissioner wishes to note that the FOIA provides a right of access to recorded information. It does not, however, require public authorities to guarantee the accuracy and completeness of the information.
27. In light of the above, the Commissioner is, on the balance of probabilities, satisfied that the Council identified all information it holds that falls within the scope of the complainant's requests. The Commissioner's decision is, therefore, that the Council has complied with section 1(1) of the FOIA.

## Right of appeal

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28. 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)

29. 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.
30. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**