

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 September 2021

**Public Authority:** Tandridge District Council  
**Address:** The Council Offices  
8 Station Road East  
Oxtet, Surrey  
RH8 0BT

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to planning permission granted by Tandridge District Council (the Council).
2. The Council ultimately provided the complainant with information within the scope of the request.
3. The Commissioner's decision is that, in failing to communicate that information within the statutory time for compliance the Council breached section 10(1) (time for compliance) of the FOIA.
4. The Commissioner is satisfied that the Council holds no further information relating to this request and therefore requires no steps to be taken as a result of this decision.

#### Request and response

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5. On 20 October 2020, the complainant wrote to the Council and requested information in the following terms:

*"All written electronic or paper, video, audio recorded information relating in any way to the planning permission that has now been granted at [address redacted] and the owners of that property. This is to include any dates of meetings that have taken place and notes recorded. In particular all correspondence and meetings that [name*

*redacted] your planning officer has had with regard to the planning application at [address redacted]. Also any records relating to the planning decision making process for the planning application to this property."*

6. The Council responded on 30 October 2020 providing information. The complainant stated to the Commissioner that when he received the initial response it became clear that not all the information been provided. The complainant therefore contacted the Council to explain what information he believed to remain outstanding.
7. On 4 November the Council responded stating that all documents were provided in the initial response. It explained that at the time the planning application was being reviewed the planning officer used a computer programme to calculate a 45 degree angle but a screenshot was not saved at the time. The Council explained that the officer repeated the exercise and provided a copy of the screenshot to the complainant.
8. In its response to the complainant on 4 November 2020 the Council stated the following:

*"It is also important to highlight that our officers have good knowledge of the District and its character and also access to other sources of information such as previous applications (some containing past photographs of sites) and other aerial images available on the internet."*

The complainant responded to the Council's email of 4 November stating the following:

*"Clearly other documents have been used in assessing this planning application. My FOI request has asked for copies of everything used in deciding this planning application including any previous applications that may have been referred to.*

*In [name redacted] email response to me she states:*

*"Given the fact that the window in question would not serve a room considered to be habitable, along with other primary windows which would not be impacted as a result then a site visit was not necessary to establish this harm."*

*Please supply the evidence that [name redacted] has used to make this decision. She has stated that she did not visit the site or come into our house so she must have used other evidence. This forms part of what I have requested in my FOI request.*

*At the present time I do not consider my FOI request to be fully complied with and I look forward to receiving all the further documents that has been used in deciding this planning application."*

9. On the 26 November 2020 the Council provided an internal review explaining that the Planning Officer had provided all information on the file relating to the planning application. It explained that what the Council was referring to in its correspondence of 4 November 2020 was a previous record of the complainant's property which the Planning Officer used to identify the rooms. The Council stated in its correspondence that it provided the complainant with a copy of the plans, however it appears the complainant did not receive a copy of this information.

## **Background**

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10. The complainant contacted the Commissioner on 3 December 2020 explaining that further information was being withheld from the Council and stated the following:

*"I have since had a further email that has identified yet more information that they have failed to provide as part of my FOI request. This email in response to a Stage 2 complaint has identified that the planning officer used 'extract of the drawings taken from the application at your property in 2003 for the single storey rear extension under [application reference redacted]'. This information that was clearly used as part of the planning process formed part of my FOI request and has not been provided as part of that request. I am now asking the ICO to investigate why it has taken me so much work to get to the truth and for me to have to be the detective to get them to comply. I am also wanting them to fully comply with my FOI request as clearly they have at least one further item they should have provided me."*

11. The Commissioner contacted the Council on the 23 April 2021 explaining that the complainant had expressed concerns that the Council had not provided all of the information within the scope of his request, specifically an extract of a drawing taken from the planning application of his property in 2003 and that this information was used as part of the planning process and formed part of his request for information.
12. The Council eventually provided the drawing of the complainant's property in 2003 on 13 July 2021. Evidence of this was sent to the Commissioner and the complainant also confirmed he received the outstanding information.

## **Scope of the case**

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13. The complainant requested a decision notice from the Commissioner to consider whether the Council has provided all the information within the scope of the request and if it breached section 10 of the FOIA, time for compliance.
14. The scope of this notice and the following analysis will therefore consider whether the Council has complied with section 1 and section 10 of the FOIA.

## **Reasons for decision**

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### **Section 1 – right of access to information held by public authorities**

15. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to them if it is held and is not exempt information.
16. In cases where a dispute arises over the recorded information held by a public authority at the time of a request, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This means that the Commissioner will determine whether it is likely, or unlikely, that the public authority held information relevant to the complainant's request.
17. In order to reach her determination, the Commissioner asked the Council to provide detailed explanations as to why the requested information was not held. She also asked the Council to explain the searches it had undertaken to locate any information that would fall within the scope of this request and to explain why these searches would have been likely to locate all of the information in scope.
18. In its submission to the Commissioner the Council explained that when the request was submitted to the council it was logged in the usual way by the FOI/SAR team and a search request was sent internally, attaching the request and requesting that data falling within the scope of the search be supplied to that team.
19. The Council explained that as the request was limited to planning about the requestor's neighbouring property, the FOI team sent this request to

Officers in the planning department only to respond to. It explained that other departments would be unlikely to have any information within the scope of this request. The Planning Officers carry out searches of their mailboxes using the search tool, and using key terms such as the name of the property, and the planning reference to bring up all the information that meets the scope of the request.

20. The Council explained that officers searched their hard drives to obtain any documents that might have been created in relation to the matter within the scope of the request, and any other software or hardware applications that are likely to contain information on the matter.
21. The Council explained to the Commissioner that since working from home, most departments are paperless, and any notes are placed in shredding bins. However, Officers are fully aware that requests cover data in any form and if they hold any paper documents these must be disclosed.
22. The Council confirmed to the Commissioner that searches were performed in the usual way and the response was supplied to the requester. The Council explained that after the response was sent to the complainant it appeared it was, in the opinion of the requestor, deficient for two reasons. The first being that it failed to disclose a document relating to his own property and not the property which was the subject of the request. The Council explained that Officers did not think to search against the requestor's property as it was not the subject matter of the request, however it stated that it conceded that if information relating to the requestor's own property fed into the planning assessment of the property then it should have been disclosed.
23. The Council explained to the Commissioner that it was aware the complainant also considered the response to be deficient as there was no disclosure of documents relating to the calculation of the 45 degree angle when considering planning permission. The Council explained that it had provided an explanation to the requestor stating that there were no documents to supply in this regard as the planning officer used a software programme to calculate the angle and did not save a screenshot.
24. The Commissioner is satisfied with the Council's explanation that the correct department to conduct a search for anything relating to the request would be Officers within the planning department. This is because the request was specifically about planning application of a specific property.

25. The Commissioner however wrote to the Council and explained that the Commissioner would interpret the request as a request for all information relating to the planning permission and not only information that would return a search on the name of the property as this may not provide all the information within the scope of the request. The Commissioner asked the Council to confirm what additional searches it carried out. She also asked the Council to confirm whether the Planning Officer who made the decision regarding the planning application had been contacted to confirm all information relating to the outcome of the planning decision has been provided.
26. The Council responded to the Commissioner stating that it had contacted the Planning Officer concerned and she confirmed that everything was provided in relation to the site, including emails between the Officer and application/agent. The Planning Officer explained that Officers don't usually take formal notes in relation to the assessment as this is all included and justified within the officers report. The Council explained that the Planning Officer had provided links to policies that are publicly available that would have fed into the decision that she reached and asked if this should be provided to the complainant. The Commissioner wrote to the Council asking it to provide the policies to the complainant. The Council later confirmed that this information had already been provided to the complainant and provided evidence of this.
27. Based on the information provided to the Commissioner, she is satisfied that no further information is held within the scope of the complainant's request.

### **Section 10 – time for compliance**

28. Under section 10(1) of the FOIA a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
29. The complainant submitted his request to the Council on 20 October 2020 and although a response was provided on the 30 October 2020 a full disclosure of all the information within the scope of the request was not provided until 13 July 2021, significantly outside the 20 working day requirement. The Commissioner therefore finds that the Council has breached section 10(1) of the FOIA.

## Right of appeal

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30. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

31. 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.
32. 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 .....**

**Gerrard Tracey**  
**Principal Advisor**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**