

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

### **Decision notice**

**Date:** 7 August 2023

**Public Authority:** Breckland District Council  
**Address:** Elizabeth House  
Walpole Loke  
Dereham  
Norfolk  
NR19 1EE

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

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1. The complainant requested a copy of the register of land and building assets. Breckland District Council (the Council) provided some information but withheld other information under section 21 (information accessible to the applicant by other means) of the FOIA.
2. The Commissioner's decision is that the Council:
  - failed to confirm or deny exactly what information is held relevant to the request,
  - failed to carry out appropriate searches in order to identify all information it holds relevant to the request, and
  - incorrectly applied section 21 to withhold UPRNs (Unique Property Reference Numbers).
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the complainant that considers all of the information falling within the scope of the request and either disclose the information or, in respect of any information it wishes to withhold, issue a refusal notice within the meaning of section 17 of FOIA providing a basis for withholding the information. As the Commissioner has determined that section 21 is not engaged the

Council will be unable to rely on this exemption in relation to UPRNs held relevant to the request.

4. The public authority must take these steps 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**

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5. On 22 October 2022, the complainant wrote to the Council and requested information in the following terms:

"I would like to request a copy of your register of land and building assets, as you are required to publish annually under paragraphs 35-37 of the Local Government Transparency Code 2015 [1].

I would like to request that the information is provided in an open machine-readable format, such as a CSV file or a spreadsheet, preferably aligned with the standard template / schema recommended by the Local Government Association in Annex 1 of their "publishing land and social housing asset and parking information" guidance [2].

I would also like to request the land area / floor area for each entry in the register. (This corresponds to the "Additional recommended information" fields "Size building" and "Size Land" LGA's schema in Annex 1 of [2].)

Furthermore, under the Re-Use of Public Sector Information regulations, I would also like to request permission to re-use the supplied information under the terms of the Open Government Licence v3, for the purposes of (a) improving the mapping data in OpenStreetMap and (b) making the information available to others in a convenient format and under an open license.

I have searched on your website and have found your "Transparency" page [3], from which is linked a document called "Breckland Council Asset Register 2020" [4]. I assume this is your attempt to comply with the relevant provisions of the Local Government Transparency Code. However, as well as being in a non-machine-readable PDF format, I believe that document fails to meet a number of the requirements, viz:

\* You are required to provide UPRNS, which are numbers with up to 12 digits. See e.g. <https://www.geoplace.co.uk/addresses-str...> The "UPRN" column contains reference codes that are not UPRNs. (Presumably they are your own internal reference codes.)

\* The required "map references" (OS grid reference or lat/lon coordinates) are missing.

\* Apart from the final page, the required freehold/leasehold designation of each asset is missing, as are the other details required for each type.

\* The published document [sic] is titled "Breckland Council Asset Register 2020" suggesting it is [sic] more than 18 months out of date. The code requires you to publish updates at least annually. The document may have been updated more recently. If so, you should make sure the date at which it was current is made clear.

\* I am suspicious that the published list may not be complete. I was unable to spot entries for a number of parcels of land that I believe that the Council owns in Thetford, including: The water-meadows adjoining the Abbey Farm estate, the open green space on the Abbey Farm Estate, various pieces of open space on the Cloverfields Estate, Trafalgar Wood and the water-meadows between the Cloverfields Estate and the river, the grass land east of Melford Bridge between the river and the roundabout, land to the north-east of The Link car park, the green space on Glebe Close, the Minstergate Car Park, and the adjacent shops (with the exception of the ex-Somerfield building), and Butten Island".

6. The Council responded on 23 November 2022 and provided some information and stated that it did not hold the UPRNs.
7. On 5 December 2022 the complainant requested an internal review of the Council's handling of the request. They pointed out that the information that the Council disclosed appeared incomplete as it contained significantly less entries than the previous published list. In addition, the complainant stated that the list did not contain other information requested including co-ordinates, area/floor space and freehold/leasehold designation. Finally the complainant disputed the Council's position that it did not hold the UPRNs for each property.
8. The Council provided the outcome of its internal review on 4 January 2023 and disclosed an updated spreadsheet of its property asset list. It explained the difference in the number of assets on the information disclosed compared to the published list. The Council also confirmed that it held the UPRNs but it considered section 21 to apply to the

information as it was reasonably accessible to the applicant online and provided the relevant link.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 24 February 2023 to complain about the way their request for information had been handled.
10. The scope of the Commissioner's investigation into this complaint is to consider whether the Council holds any additional information relevant to the request and to determine whether the Council correctly applied section 21 to the request.

## **Reasons for decision**

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### **Section 1 – general right of access**

11. Section 1 of 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".

12. In their internal review request and also in their complaint to the Commissioner, the complainant pointed out that the information which the Council had disclosed to date does not include some of the fields which are required, and or recommended to be published in accordance with paragraphs 35-37 of the Local Government Transparency Code 2015<sup>1</sup> (the Transparency Code). The 'missing' information includes whether the property is freehold/leasehold, the co-ordinates of the properties. In addition, the area/floor space has only been included for some entries on the list.
13. In its response to the Commissioner, the Council accepted that its published land and building asset register does not, strictly speaking, contain all the fields required in accordance with the Transparency Code.

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<sup>1</sup> <https://www.gov.uk/government/publications/local-government-transparency-code-2015/local-government-transparency-code-2015>

The Council also confirmed that it was looking to update the register and in doing so it would consider the information contained within it.

14. In terms of searches conducted in relation to the request the Council confirmed that it located the register that was already in existence and then conducted electronic searches to determine whether any additional information was held. The Council confirmed that searches were conducted by the following staff:

- Property & Surveyor
- Property Estates Support Officer
- Land and Development Officer
- Spatial Information Manager
- Statutory Information Officer (now Governance & Information Officer)

Following the initial searches, "more senior staff were made aware" including the Customer Access Manager, the Commercial Property & Estate Manager and the Legal Services Manager.

15. The Council advised the Commissioner that information relevant to the request would be held by its Property Team on a shared drive and also on a system used by its Finance Team, who originally prepared the register which was published on its website. It stated that:

"All members of the Property team have access to the data and can search that system. Whenever the Property team sell or buy land they will deal with the transaction via their own Council email address (networked) and then save pertinent information to their shared drive. Property asset transactions are conducted via the Property team, who keep a record of the transactions conducted during a given year. Searches using particular words/parameters were therefore not necessary at that time".

16. The Commissioner asked the Council to comment specifically on the 'missing fields' as identified by the complainant – ie the freehold/leasehold designation (some entries), area/floor space (some entries and the UPRN/map reference/co-ordinates (all entries).
17. In relation to the freehold/leasehold information for each entry on the register, the Council confirmed that this information has been provided to the complainant. However, the Commissioner notes that the spreadsheet which the Council disclosed contains 383 entries on the "Buildings and Land" worksheet and 47 entries on the "Extras" worksheet. Freehold/leasehold information has only been provided in

relation to the 47 entries on the "Extras" worksheet. To date, the Council has not advised the complainant whether or not it holds information relating to the freehold/leasehold status of the other 383 entries. In addition, the Council has not adequately explained to the Commissioner the reason why this information is only held for certain assets or demonstrated that the searches it has undertaken would have identified all of the information held relevant to this part of the request.

18. In respect of the area/floor space for each entry, the Council failed to provide any specific representations in relation to this information. Again, the Commissioner notes that the Council has disclosed this information for 251 of the 383 entries on the "Buildings and Land" worksheet, but it has not provided any details of the area/floor space for any of the 47 entries on the "Extras" worksheet. To date, the Council has not advised the complainant whether or not it does hold information relating to the area/floor space for all entries on the register. In addition, again the Council has not adequately explained to the Commissioner the reason why this information is only held for certain assets or demonstrated that the searches it has undertaken would have identified all of the information held relevant to this part of the request.
19. In terms of coordinates and UPRN information the Council advised the Commissioner that this information "whilst available for most assets are not available for all because land is not generally allocated a UPRN". The Council also stated that:

"UPRN and associated coordinate [sic] are held in a separate system and not linked to the register of land and building assets. This is held in the Local Land and Property Gazetteer (LLPG). This is only assessable [sic] by the Council as it subject to strict licensing restrictions. This is because it contains all street information and property information relating to every property in the Breckland area and will also include details of whether the property is occupied, and what type of property it is. However part of the information held, namely the UPRN and associated coordinate can now be disclosed under Open Government Licence. This of course has its own restrictions which the requester needs to comply with. This is a fairly recent development and the Council is considering how best to present that information".

20. The Council advised that UPRNS are allocated by both Ordnance Survey and local authorities using a range provided by Geoplace. It explained that local authorities have "statutory permission to name and number every street and property in Great Britain and allocated UPRNs". The Council confirmed that it has a UPRN for every property in its boundary, however, UPRNS "are not held generally for pieces of land and land connected to a property". The Council added that its position has been

to only allocate a UPRN to identify a property for emergency services and where it has a business interest in the property. The Council also stated that co-ordinates/UPRNs have not been included in the register historically as full property locations have been included.

21. From the responses provided by the Council, the Commissioner has been unable to determine whether the Council holds UPRNs and/or map coordinates for all entries on the register or only for some of the entries, and if so, which entries it is held for. The Council has also not confirmed to the complainant whether it holds UPRNs and coordinates for all entries or only some of the entries. The Commissioner notes that the Council has applied section 21 to information constituting UPRNs, which the Commissioner has considered later in this notice.
22. In summary, in its responses to the complainant, the Council has not formally confirmed or denied whether it holds the information which the complainant has requested and is missing from the spreadsheets that it has disclosed to date.
23. In failing to confirm or deny whether the Council holds the information requested the Commissioner finds that the Council has breached section 1(1)(a) of the FOIA.
24. In addition, based on the Council's representations, on the balance of probabilities the Commissioner is unable to determine whether or not the Council holds any additional information relevant to the request other than that which it has disclosed to date as he has not been provided with sufficient evidence that the Council has carried out adequate searches to determine that the requested information is held or not.
25. The Commissioner requires the Council to conduct more adequate searches to identify the information held falling within the scope of the request. The Council will then need to issue a fresh response to the request which confirms or denies whether information is held in relation to each item referred to in the request. If the information is held, the Council will need to either disclose the information or issue a valid refusal notice specifying which exemption(s) it considers applicable.

## **Section 21**

26. Section 21 of the FOIA provides that information which is reasonably accessible to the applicant is exempt information.
27. Section 21 is an absolute exemption which means there is no requirement to carry out a public interest test, if the requested information is exempt.

28. In its initial response to the request the Council stated that “we do not hold the requested UPRNs” and advised the complainant that they could obtain UPRN information at <https://www.findmyaddress.co.uk/search>. In its internal review the Council amended its position and stated that its “webmaps systems contains UPRNs – as used by geoplace”. However, the Council advised that it was unable to run a report to extract the information “without having to go through each address individually”. The Council also stated that, as UPRNs were available from the website provided, it considered section 21 to apply to the information.
29. In their internal review request the complainant explained that they were unable to agree to the terms and conditions associated with the website provided. In their complaint to the Commissioner the complainant expanded on this point and stated that they were unable to agree to the terms associated with the website because of their other work commitments. The complainant also pointed out that the terms and conditions for the website in question impose restrictions on the ongoing use of the information. Finally, the complainant stated that, even if they were able to agree to the terms of the site and it did not limit ongoing use of the information, they would be unable to access the UPRN for each entry on the register as some entries on the register contained very limited address information.
30. The Commissioner put the above points to the Council. In terms of the complainant’s assertion that they would be unable to access UPRNs because of the limited address information contained on the register in respect of some entries, the Council stated that it had conducted random checks on a number of entries and “where allocated, the relevant UPRN numbers are listed”. It also confirmed that if the postcode or address was inputted into the website the UPRN is provided. Searches were also able to be conducted against an organisation name to reveal the UPRN.
31. The Commissioner has undertaken some random checks using the website in question and the information contained on the register that the Council has disclosed. The Commissioner found that he was unable to locate a UPRN for a significant number of assets, particularly in cases where there is limited information on the register about the location of the property/land for example, he was unable to find a UPRN for the following entries:

<b>Property Name</b>	<b>Property Address</b>	<b>Property City</b>	<b>Property Postcode</b>
Ben Culey Drive	Thetford	Thetford	IP24 1QL
Grenville Way	Thetford	Thetford	IP24 2JH
Quebecfields	Dereham	Dereham	NR19 2QY



St Martins Way	Thetford	Thetford	IP24 3QD
Kimms Belt	Thetford	Thetford	IP24 3JG
Quebecfields	Dereham	Dereham	NR19 2QY
Threxton Road	Watton	Watton	IP25 6NG
St Withburga Lane	Dereham	Dereham	NR19 1ED
Bridge Street (butten island)	Thetford	Thetford	IP24 3AF
Brandon Road	Thetford	Thetford	IP24 3ND
Middlemarch Road	Dereham	Dereham	NR19 1EQ
Sandy Lane	Dereham	Dereham	NR19 2EE

32. In relation to the above entries, searches on the website brought up numerous properties and as the register does not contain any additional address information, it is impossible to tell which property/UPRN the entry relates to. In addition, in respect of one entry which the Commissioner checked, the postcode on the register disclosed (IP24 6TX) did not bring up any results at all. The Commissioner is unaware of the reason for this, for example, whether it is a typing error.
33. As stated earlier in this notice, the Council advised the Commissioner that UPRNs are not available for all entries on the register because land is not generally allocated a UPRN. In light of this, and in the absence of any further address or detail relating to some entries on the register, the Commissioner is unable to determine whether a UPRN actually simply does not exist for some entries because it relates to land which has not been registered with a UPRN, or whether a UPRN does exist and it is just a case that the Council has not provided more specific information to identify the asset in question. For example, in respect of the third entry on the table above (postcode NR19 2QY), as well as house numbers 1-44 Quebec Hall Bungalows, the search results included the following:
- Post Box, 75m from 44 Quebec Hall Bungalows
  - Shelter 68m from 44 Quebec Hall Bungalows
  - Quebec Hall, Quebec Hall Limited
  - Centre of Pond, 75m from 26 Quebec Hall Bungalows
34. The Commissioner notes that the website referred to by the Council only allows a user to conduct up to 30 searches a day. As such, even if it was possible to identify a UPRN for each property on the register which the Council has disclosed, as there are 430 entries on the register it would take the complainant 15 days in order to access them all. As the Council has not confirmed which entries have a UPRN and which haven't, even if this 30 searches a day limit was not in place, it would be impossible for

the complainant to know if they had obtained all the UPRNs that the Council holds for the reasons set out in the above paragraph in respect of identifying entries on the register because of the limited address details provided.

35. The Commissioner's guidance on this exemption states that it is not sufficient for a public authority to merely assert that information is already in the public domain. It must either know that the requester has already found the information or must be able to provide precise directions to where the information can be found.
36. Based on the circumstances of this case, the Commissioner is not satisfied that all of the information held by the Council in respect of UPRNs for entries on the register is reasonably accessible to the applicant by other means. In reaching this view the Commissioner has taken into account the fact that the Council has not identified which entries on the register actually have a UPRN attached to them and the limited address details on the register in relation to some entries which makes searches difficult and in some cases impossible. In addition the Commissioner has also had regard to the fact that searches on the public website the Council has referred to are limited to 30 per day, which could potentially mean that it would take 15 days for the complainant to access the information in question.
37. In light of the above the Commissioner's decision is that the Council has incorrectly applied section 21 of the FOIA to this part of the request.
38. The Commissioner requires the Council to provide the complainant with a fresh response to this part of the request that does not rely on section 21. The fresh response must confirm or deny whether the requested information is held. If the requested information is held, that information should either be disclosed to the complainant or an adequate refusal notice should be provided.

## Right of appeal

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

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

40. 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.
41. 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 .....**

**Joanne Edwards**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**