

**Service Area: Strategic Business**  
**Name of service head: Sheila West**

My Ref: CRM:0041519

Enquiries to: Phillip Furby

15<sup>th</sup> June 2016

REQUEST-318771-D82A812B@WHATDOTHEYKNOW.COM



☎ : 020 8547 5190

Website: [www.kingston.gov.uk](http://www.kingston.gov.uk)

Dear Mr Moss,

**Re: Freedom of Information Request (FOI) - Internal Review decision**

You requested that RBK carried out an Internal Review of its decision of 8th April 2016 not to disclose, at this stage, draft copies of the Council's Decant Policies which it intends to publish and will be discussed at the Council's Housing Sub-Committee in September.

**Your FOI Request**

On 26th February 2016 you made the following FOI request:

*I am writing to make a Freedom of Information request for the following information.*

*Any information held, including e-mails and other electronic records, printed or handwritten notes, relating to the Decant Policy (including the drafting of said policy) for the council's regeneration programme.*

On 10th March 2016 the Council responded seeking further clarification and inviting you to resubmit your request.

*Your request for information in respect of Kingston Council's Decant policy has been sent to me for a response.*

*Having read your request, I am unclear about what you would like to know specifically.*

*I am concerned that in seeking to meet the specific wording of your request there is a real chance that we inadvertently breach Section 12 of the Freedom of Information Act.*

*I wonder if you would kindly resubmit your request stating specifically what you would like to know.*

*You should also be advised that Kingston Council intends to publish the Decant Policy (Tenants and Leaseholders/Freeholders) in the immediate future.*

You replied on the same day as follows:

*The information I am seeking is that showing why and when the decision was made to produce/draft a Decant Policy and who made, or was involved in, that decision; any*

*records pertaining to discussions or decisions about the content of said Policy; any records showing what plans have been made to further discuss, modify, or ratify, internally or with input from residents or other persons, said Policy.*

*It was my understanding that a decision was made recently to postpone the publication of the draft Decant Policy until June. If this is incorrect, please advise when it is due to be published. Just to be clear, this doesn't affect my request for the information specified above.*

*I look forward to hearing from you.*

## **The Council's decision**

The Council responded on 8th April 2016 as follows:

*I can confirm that we do hold some of the information that you have requested. The document requested is currently being drafted, and will not become policy until approved by the Housing sub-committee, at which point the Council intends to publish a Decant Policy for tenants and a separate Decant Policy for freeholders and leaseholders – taking account of the different tenure needs.*

*As part of our governance process we will be consulting with stakeholders via recognised consultation forums. We anticipate the document being discussed at the September, Housing sub-committee. Therefore please accept this as a Refusal Notice under section 22 of the Freedom of Information Act....*

*Furthermore, I am unable to provide you with notes, any information held, emails and other electronic records, including printed or handwritten notes relating to the Decant Policy, as these do not exist independent of the documents currently being drafted. The only notes pertaining to this document are written in to the draft document itself.*

## **Request for Review**

On 27th April 2016 you wrote:

*I do not accept that your refusal to release the draft decant policy is justified on the grounds that it is due for future publication in September. I understand that this draft policy was available some time ago but was then withdrawn and it's release was then pushed back from March to June and now to September. Accordingly I believe the draft already exists and there is no justification for withholding it until September. As a draft it is understood that it may change before being finalised and agreed by the Housing sub-committee in September and you claim you will be discussing it with "stakeholders" before September, which can only happen if you have a draft to discuss and it is in the public interest that residents are able to view, discuss and comment on the proposed policy long before it goes before the sub-committee and is approved as official policy.*

*I also do not accept that there are no notes, e-mails or other information held relating to the draft decant policy, other than what is written into the draft document. Work would not have started on drafting such a policy without this first being discussed and there must be records pertaining to or following from this discussion, including records of the instructions given to those tasked with drafting said policy confirming the purpose of doing so, how they should go about it, what form it should take, what materials they should reference, etc. There must also be records relating to the decision to release the draft policy and then withdraw it and postpone its release from March to June and then September and records regarding any further work that is to be done on the document before September, as well*

*as the plans to discuss it with "stakeholders" before it is ratified in September. None of these records would be written into the draft policy.*

## **Review**

The Council has reviewed its decision and considered the ICO guidance on the use of the information intended for future publication exemption available under s22 of the Freedom of Information Act 2000 (FOIA). It has decided to uphold its decision to withhold the information requested. It has concluded that section 22 FOIA is engaged and exempts this information from disclosure and, having considered the public interest, our decision is to withhold the information.

## **Section 22 of the Freedom of Information Act says as follows:.**

### **Section 22**

#### **(1) Information is exempt information if—**

**(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),**

**(b) the information was already held with a view to such publication at the time when the request for information was made, and**

**(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).**

**(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1).**

Although the public authority must hold the information at the time of the request with a view to its publication, the exemption does not require a set publication date to be in place. At the date of the request and the review the Council held the Draft Policy and anticipated that it would be published in advance of a Housing sub-committee in September 2016 and the documents put before the sub-committee including the Draft Policy will be available on the Council's website. The ICO guidance was considered, which advises that a public authority may still be able to apply section 22 if there is a publication deadline, but publication could be at any date before then and that the exemption does not require a fixed publication date.

If the Draft Policy is approved by the Housing sub-committee and becomes Council Policy it will also be published and available on the Council's website.

I am mindful that the ICO guidance advises that the information that the public authority intends to be published must be the specific information the applicant has requested. It advises that if, in the course of preparing information for publication, some information is discarded or rejected, the exemption under section 22 will not cover that rejected material. Clearly, at the time the decision is made to discard that material, the public authority no longer holds the information with a view to its publication. I understand that the draft policy is currently still a work in progress but that any amendments to the policy and comments or suggestions for improvement will be incorporated in to the draft policy document itself.

The Council has an established governance procedure and practice in place in respect of the publication of a policy. Before becoming a policy the draft policy is written at a service level and shared with that department's management team. Any comments or suggestions for improvement are taken into account and the draft policy moves into another phase of consultation - i.e. stakeholders.

Stakeholders in respect of this draft policy include

- a) other council departments
- b) recognised tenants and leaseholder forums
- c) the Lead Councillor responsible for the Housing portfolio.

The draft is either shared with or presented to those fora, who are invited to comment. Any ensuing comments are fed back to the service area for consideration and inclusion in the draft policy. A final draft is then prepared and Finance asked to consider any financial implications and Legal Services, asked to review and comment on compliance with various relevant legislation or statutory guidance. Once both have approved a final draft is submitted to Housing Managers, for 'final' approval to send the policy to the Housing Sub-Committee.

It is only after the draft policy has been discussed and approved by the Housing Sub-Committee that the draft policy becomes policy. The committee will also determine the date at which the policy comes into effect. Committee decisions are all published and publicly available on-line.

The Council has considered whether it is reasonable, in all the circumstances, to withhold information until the date of publication.

The Council has concluded that it is

- sensible;
- in line with accepted practices; and
- fair to all concerned.

The Council does not consider that it is sensible to share with the requestor a document that is still in the process of being drafted, has yet to be commented upon by stakeholders, and in essence is a 'work in progress'. It is the Council's view that to share this would be both misleading and may cause you to act upon inaccurate information. It is likely that the document will change as it progresses through the consultation process.

Early disclosure in advance of publication would not be fair to all concerned. Premature disclosure to a third party non-stakeholder could potentially be damaging to the working relationship of the Council's Housing Department and stakeholder partners, in that it would undermine the agreed working principles. It could also damage the reputation of the council and its councillors who have agreed to work to the principle currently in place.

Given the proximity of the date for publication it is considered reasonable in the circumstances to withhold the information until publication.

In your request for a review you made representations that you *"do not accept that there are no notes, e-mails or other information held relating to the draft decent policy, other than what is written into the draft document."* I have investigated these comments and understand that the document has been shared electronically and any suggestions or comments made within the substantive content of the document, by way of a 'suggestion' or 'comment'.

I have also been informed that there was no written request between officers to prepare a Decent Policy.

## **The public interest test**

I am mindful that section 22 is a qualified exemption and that the Council is required to consider whether the public interest in maintaining the exemption is greater than the public interest in disclosing the information and that where the public interest is equally balanced, the authority must disclose the requested information.

The Council has applied the public interest test and has considered the following factors in favour of disclosure:

- Disclosure of the requested information would be consistent with RBK's commitment to the principles of transparency and accountability.
- The disclosure of information helps further the public scrutiny of the activities and management of the Council.

However, the Council already had a timetable for disclosure in place at the time of the request.

The Council has applied the public interest test and has considered the following factors in favour of non-disclosure

- It is not in the public interest to limit the Council's ability to adhere to its own governance procedure. The Council considers that the public interest in permitting it to publish information in a manner and at a time of its own choosing is important. It is part of the effective conduct of public affairs that the general publication of information is a conveniently planned and managed activity within the reasonable control of the public authority.
- Premature disclosure of the information might result in inaccurate, unchecked information being disclosed prematurely, misleading the public.
- Premature disclosure to third party non-stakeholders would potentially be detrimental to its working relationship with its stakeholder partners which would not be in the public interest.

Taking these factors into consideration, the Council has decided that in this instance the balance of public interest falls in favour of non-disclosure at this time. However, the concept of public interest is ever changing and the arguments may change over time.

If you are dissatisfied with my decision then you may take the matter to the Information Commissioner's Office at:

Information Commissioner's Office  
Wycliffe House  
Water Lane, Wilmslow  
Cheshire, SK9 5AF  
Telephone: 01625 545 700  
Website: <http://www.ico.org.uk/>

Yours sincerely,

Phillip Furby,

Team Leader, Risk & Assurance,

Royal Borough of Kingston Upon Thames,  
Guildhall, High Street, Kingston upon Thames, KT1 1EU



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If this letter is not clear, please post it to: FREEPOST RBK BETTER LETTERS or ring 020 8547 5000.