

Our ref: MH/MH/037211
Your ref:
Date: 17 January, 2020

By email: request-618135-
5d29aef1@whatdotheyknow.com

Dear Mr Lilley,

FOIA INTERNAL REVIEW REF: 1920-573

I write further to your email dated 16 December 2019 in which you requested an internal review. I have been appointed as a senior officer of the Council to conduct the internal review. I confirm that I was not involved in the original FOIA request.

Background

On 7 November 2019, you emailed the Council and requested *"Will you please place in the public domain all written evidence relating to Harrogate Borough Council undertaking all necessary "due diligence" processes and procedures in relation to the offer by Mr Adam Thorpe and/or ATP (Crescent Gardens) Limited to purchase the old Harrogate Council offices at Crescent Gardens, Harrogate?"*

On 5 December 2019, the Council responded stating:

"Dear Mr Lilley,

Thank you for your email received by the Council on 7th November 2019 requesting information under the Freedom of Information Act 2000 ('FOIA') relating to "all written evidence relating to Harrogate Borough Council undertaking all necessary "due diligence" processes and procedures in relation to the offer by Mr Adam Thorpe and/or ATP (Crescent Gardens) Limited to purchase the old Harrogate Council offices at Crescent Gardens, Harrogate".

The Council consider this information to be personal data exempt from disclosure under section 40 of the FOIA. Section 40 of FOIA provides an exemption from the right to information if it is personal data as defined in the Data Protection Act....."

On 6 December 2019, the Council responded further stating:

"....Whilst the information relating to Adam Thorpe is personal data, the Council can confirm that bidding company and experience was reviewed as explained by the following section included in the Cabinet Report

Appendix D –Company and Experience Feedback, Lambert Smith Hampton

Company & Experience Scoring

The following criteria were considered for each of the bidders when reviewing and scoring the bid(s):

- *Dun & Bradstreet Credit Report & Risks Profile*
- *A review of financial accounts and information provided by the bidders*
- *Advice provided by Harrogate Borough Council's finance colleagues*
- *Evidence of proof of funding for the purchase & development*
- *Access to development finance & evidence of support (where provided)*
- *Evidence of a track recorded in developing developments in following areas:*
 - *Schemes in Harrogate*
 - *Regional schemes*
 - *National schemes*
 - *Developments within Town Centre locations*
 - *Within Conversation areas*
 - *Conversions of Historic properties*
 - *The frequency & scale of the developments previously undertaken*
 - *Where schemes of mixed use are being proposed, evidence of having previously undertaken these types of development & their success*
- *Consideration has been given to the freely available supporting information on their website highlighting their previous projects.*
- *Consideration to the proposed professional teams*
- *Consideration to the business viability for mixed use commercial activities, and evidence provided to support the business case”.*

On 16 December 2019, you requested an internal review and more particularly requested that the following issues be considered:

“Dear Harrogate Borough Council

Please pass this on to the person who conducts Freedom of Information reviews.

I'm calling for an internal review into the handling of this FOI request as I have serious concerns about the way it was dealt with.

I would like the senior officer undertaking the review to explain why the legal department sat on my request for 19 working days before responding – only to say that it would not provide the information I sought because it contained personal data and was therefore exempt from disclosure.

However, the following day, and without any explanation at all, the legal department suddenly provided some of the information I had requested.

The senior officer needs to explain what is going on in the legal department and its system of dealing with FOI requests if it delays responses until the penultimate day before the official deadline - but then refuses to provide the information. Only to change its mind the following day, providing some of the information sought - but without explanation as to why it wasn't provided in the first place?

One would have assumed there were very strict rules governing the way FOI requests are dealt with. Can the senior officer explain why this request was dealt with in a manner which I would describe as being both sloppy and unhelpful?”

Review

Before I set out my conclusion on this review, I think it is important to make clear that I shall only review whether the Council has fulfilled its obligations in respect to your request for information and not any wider issues which you raise.

It appears from your request for an internal review that your concerns relate to the way the Council dealt with your request rather than the exemption applied. With regard to the specific issues you have raised my response is as follows:

1. I have reviewed the file and do not accept that the legal department 'sat' on the request for 19 working days. The FOIA Officer commenced the process of dealing with your request on the day after receipt.
2. Having responded to your request, it was also identified that a report had also been taken to Cabinet, in which Appendix D outlined the information which had been reviewed in respect of the bidding companies, and that this would be relevant to your request. This was sent to you as soon as it was identified, being the day after the response to your request for information.
3. I do not consider that the FOIA Officer changed their mind, they did not disclose information which would be exempt personal information, and they subsequently drew your attention to the information which explained the criteria applied to the companies when reviewing and scoring the bid(s) which was not within this exemption.
4. I consider therefore that the Council has complied with the FOIA Act in dealing with its response to your request for information.

If you are not content with the outcome of this review then you have the right to make a complaint to:

The Information Commissioner
Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
Tel: 0303 123 1113
Website: <https://ico.org.uk/>

Yours faithfully

MAIR HILL
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