

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 18 January 2010

Public Authority: Liverpool City Council
Address: Municipal Buildings
Dale Street
Liverpool
L2 2DH

Summary

The complainant requested information from Liverpool City Council (the Council) as to whether it had contracts with Northgate Information Solutions Plc. During the Council's correspondence with the complainant and the Commissioner it altered its position on this a number of times before clarifying the involvement of a partner company in the arrangements. However it ultimately confirmed its initial response that it did not hold the requested information. The Commissioner has concluded that the request only covered information about contracts between Liverpool City Council and Northgate Information Solutions Plc and that on the balance of probabilities the information requested was not held by the Council and therefore it complied with section 1(1)(a) in denying that it held any information.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 27 July 2009 the complainant requested the following information:

"I would like to know if Liverpool City Council have any contracts with Northgate Information Solutions Plc (or NorthgateArinso) and

if so, the nature of any such contracts, the value of any such contracts and the date upon which any such contracts were signed.”

3. On 28 July 2009 the Council informed the complainant that it had no contracts with Northgate Information Solutions Plc or NorthgateArinso.
4. On 28 July 2009 the complainant asked for an internal review by the Council.
5. On 4 August 2009 the Council informed the complainant that it did have contracts with Northgate Information Solutions but that it would require a specific area of business to be highlighted by the complainant before it would investigate further.
6. On 12 August 2009 the Council wrote further to the complainant, stating that after further consideration it did not hold contracts with Northgate. However it explained that the Council did have contracts with its partner Liverpool Direct Limited (LDL), who in turn had contracts with Northgate Information Solutions.
7. For the purposes of this Decision Notice, Northgate Information Solutions PLC and NorthgateArinso will simply be referred to as Northgate.

The Investigation

Scope of the case

8. On 4 August 2009 the complainant contacted the Commissioner to complain about the Council's failure to carry out an internal review to his original request of 27 July 2009. However, as set out above the outcome of the internal review was communicated to the complainant on 12 August 2009. The complainant then contacted the Commissioner to make the complaint that is the subject of this notice. He asserted that the Council had incorrectly denied holding information within the scope of the request. In particular he argued that Liverpool City Council and Liverpool Direct were one and the same organisation and therefore an irrelevant distinction had been drawn between the two. The Commissioner has considered these points below.

Background

9. There are a number of companies involved in this case. LDL is a public/private partnership between British Telecom and the Council and is owned in the ratio of 80.1 per cent by the former and 19.9 per cent by the latter. It performs various functions for the Council, assisting it in providing services such as its benefits service, points of contact in one stop shops, staff training, information technology

and the collection of revenues. The LDL website refers to the fact that LDL receives software supplies from Northgate.

10. Northgate Information Solutions is a company supplying information technology to the public sector. NorthgateArinso provides human resources facilities to its customers. Together they provide services to 95 per cent of local authorities in the UK.

Chronology

11. The Information Commissioner's Office initially wrote to the Council on 20 August 2009 regarding the complaint seeking further information about its position regarding the required information.
12. On 7 September 2009 the Council wrote to the Commissioner and provided further information regarding the responses it had provided to the complainant in relation to his request. It acknowledges that these had been confusing and asked the Commissioner to apologise to the complainant on its behalf in this regard.
13. On 10 October 2009 the Commissioner wrote to the Council asking it to elucidate on its explanations regarding its handling of the complainant's request. The Council responded on 4 November 2009 and provided the Commissioner with further information.

Analysis

Section 1 – Right of access to information

14. In this case it is necessary to first consider the scope of the request in order to determine whether the Council has complied with the Act. In particular the Commissioner must consider whether the request, when read objectively, only covers information about contracts between the Council and Northgate or if it sufficiently broad as to capture details of contracts between LDL and Northgate as the complainant has suggested.
15. During the course of the Commissioner's investigation the Council acknowledged that it had provided the complainant with apparently contradictory responses about whether or not it held information within the scope of the request. Initially it interpreted the request as only covering information about any contract between the Council and Northgate. However a different member of staff subsequently considered the request and interpreted it to include details of contracts between its partner, LDL and Northgate. The Commissioner has made further comments in the Other Matters section below about the different responses provided by the Council.
16. The Commissioner has carefully considered the wording of the complainant's request and notes that it specifically refers only to

'Liverpool City Council'. It does not mention LDL by name or make any reference to services supplied to the Council via contracts with third parties.

17. Given that LDL carries out a number of the Council's key services the Commissioner understands why the complainant may not have recognised that the two organisations are distinct legal entities. Further he recognises that the complainant apparently intended to access material irrespective of whether the particular party to the contract or contracts was the Council or LDL. However, the fact remains that the request only refers to the Council and in the Commissioner's view the objective reading of it is the one originally adopted by the Council.
18. The Commissioner notes that the Council is a public authority by virtue of section 7(a) of Schedule 1 of the Act whereas LDL is not a public authority. It is not listed in Schedule 1, nor is it a publicly owned company as defined in section 6 of the Act. LDL has not been designated as a public authority by way of an order under section 5. However this does not mean that all information regarding LDL is necessarily outside the scope of the Act. If a differently worded request were submitted to the Council which covered details of LDL contracts then it would be necessary to consider whether relevant material was held by the Council or by others on its behalf.
19. In view of the Commissioner's conclusion above regarding the objective interpretation of the request, it is only necessary for him to reach a decision about whether the Council appropriately denied holding information within its scope.
20. The Commissioner was guided in this matter by the approach adopted by the Information Tribunal in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency* (EA/2006/0072). In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities.
21. Therefore he has considered whether, on a balance of probabilities, it was correct to deny holding information about contracts between it and Northgate.
22. During the course of the investigation the Commissioner requested details about the way that the Council had interpreted and processed the request. The responses provided brought to light the fact that the request had been interpreted differently by several members of staff and that this had led to the apparently contradictory responses. Bearing in mind his findings about the scope of the request above, the Commissioner is satisfied with the explanation provided by the Council to support its initial response that no information of relevance was held. He has not been supplied with any evidence which suggests that in fact

contracts do exist between the Council and Northgate and that therefore relevant material is held. Furthermore the explanation from the Council regarding the contractual relationships between LDL and Northgate he is persuaded that on a balance of probabilities no information of relevance to the request submitted by the complainant is held. Therefore the initial response to the complainant denying that information was held complied with section 1(1)(a) of the Act.

The Decision

23. The Commissioner's decision is that on the balance of probabilities the information requested was not held by Liverpool City Council and therefore it complied with section 1(1)(a) in this case.

Steps Required

24. The Commissioner requires no steps to be taken.

Other matters

25. The following comment does not impact on the outcome of this case, given the Commissioner's conclusion above about the objective interpretation of the complainant's request. However he does wish to point out that, as a matter of good practice, it would have been helpful if the Council had explained to the complainant how it had interpreted his request both initially when it responded on 28 July 2009 and when its interpretation changed in light of the complainant's request for an internal review and prior to the response dated 4 August 2009. It would be helpful if the Council considered providing such confirmation in its responses to future requests.
26. The Commissioner does however also wish to note that the Council has acknowledged the unfortunate confusion in this regard and asked the Commissioner to pass on its apologies to the complainant.

Right of Appeal

27. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 18th day of January 2010

Signed

**Jo Pedder
Senior FOI Policy Manager**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**