

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 January 2013

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

#### Decision (including any steps ordered)

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1. The complainant requested information from Liverpool City Council (the council) about the third party clients of Liverpool Direct Limited (LDL). The council said that it did not hold the requested information but this statement was not accepted by the complainant.
2. The Commissioner's decision is that, on the balance of probabilities, the requested information is not held and therefore the council responded appropriately to this request.
3. The Commissioner requires no further action to be taken.

#### Request and response

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4. On 21 November 2011, the complainant wrote to the council and requested information in the following terms:

*"Please provide a list of all third party clients of LDL. You will hold the information since all such agreements have to be approved by LCC.*

*I would expect the list to include details of the "four other councils, two central government departments, over 10 third sector bodies and quasi non-governmental organisations, a police service and 300 schools" that the CEO of LDL told the Guardian about, in an article published in 2009 (<http://www.guardian.co.uk/government-com...>).*

*To avoid unnecessary prevarication and delay, I would point out that while the details of the agreements may well be confidential, their*

*existence, and the names of clients, are not. Indeed LDL itself boasts about a number of these clients in its Annual Reports. I would also point out that it does not matter whether or not you "own" this information - since you hold it, you are required to disclose it."*

5. The request was acknowledged by the council on the same day. On 20 December 2011, a response was provided in which the council stated that it held some but not all of the requested information. The information it held was provided in the form of a list.
6. On 22 December 2011, the complainant asked for a review on the basis that she didn't accept that the list the council had provided was complete. This request for a review also included a request for the clarification of certain points.
7. On the same day the council responded that it could not conduct a review as both clarification and further questions had been included in the review request. It was agreed that the further questions would be logged as a new request.
8. On 22 March 2011, the council confirmed that it held information relevant to the request and responded by providing that information. The complainant said that the response did not address the issues she had sought clarification on. She also pointed out that no internal review had been carried out regarding the council's response to the 21 November 2011 request.
9. After further correspondence, an internal review was provided on 30 May 2012. Firstly, the review considered the council's response on 22 March 2012 to the complainant's additional questions and clarification of her original request. Some further information regarding the value of third party income was provided.
10. In addressing the complainant's comments about the brevity of the list provided in response to the 21 November 2011 request, the council pointed out that some information might be held by LDL but that the council had provided all the information it held. The council explained that the assertion made on 28 May 2011 in a series of questions that information had been held might have been the case three years previously but that this was no longer the case.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 28 March 2012 to complain about the way her request for information had been handled.

12. The Commissioner considers the scope of this case to be whether there is any remaining information relating to the request that was held by the council at the time the request was made that has not been provided to the complainant.

## **Reasons for decision**

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### **Section 1(1)**

13. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
14. On 9 August 2012, the Commissioner asked the council for details of the searches it had carried out in order to reach a determination concerning whether any further requested information was held.
15. The council answered the Commissioner's questions as follows:
  - The council does not hold any further requested information.
  - The requested information would have been sent by email only.
  - LDL provides a list of third party work bids.
  - The council had already identified the criteria that LDL is instructed to measure when considering third party work in response to a related request made by the complainant.
  - Information regarding third party work is sent to a designated member of staff.
  - The designated member of staff had undertaken a search of their mailbox to establish if any information was held regarding third party bids. All relevant drives were searched using the following search terms - "LDL 3RD party work", LDL 3rd Party Bids and "LDL Bid Work".
  - The search elicited no information. The designated officer stated that, if no queries arose from the bid list, the email/s is/are then deleted as there is no business need to keep the information. It was stated that there has been no business need for the bid list to be passed to any other officer in the council.
  - The council does not accept the complainant's view that it was not complying with the provisions set out in clauses 12, 16 and Schedule 4

of the Joint Venture Agreement (the JVA) that had established LDL. The clauses appear to contain the provision that LDL has to notify the council of any bids for third party work and the council can accept or reject these bids. The council stated that there is no requirement within those clauses that stipulate that the council has to keep a defined list of all the third party work undertaken by LDL. The council has no business or statutory need to keep the requested information. The council had explained with regard to another of the complainant's requests that any information regarding third party work would be held by LDL.

16. On 5 November 2012, the complainant wrote to the Commissioner expressing her disagreement with the council's arguments and explaining why she believed them to be inaccurate.
17. The Commissioner wrote back to the council on 13 November 2012 outlining the concerns that the complainant still held. He stated that, whilst it is not his role to question the council's contractual arrangements, those arrangements seemingly necessitated the holding of certain information. The Commissioner highlighted some of the contractual clauses provided by the complainant and asked further questions.
18. On 27 November 2012, the council responded again to the Commissioner's questions in the following terms:
  - The council described its email deletion process from inbox to final irretrievable deletion.
  - It explained that, although the complainant held an opinion about how the JVA should be managed, the council is under no obligation to agree with that opinion. It also stressed that it had no need to consider any information it did not hold for the purposes of the FOIA.
  - It described the chain of responsibility as regards the management of the JVA. There is a lead client officer who has overall responsibility and client officers responsible for the management of specific strands within the JVA – revenues, benefits, human resources and payroll, ITS, customer access, careline (children's and adult services).
  - The council stated that it had identified in its response of 22 October 2012 that the list is provided by LDL for bids for third party work and that the lead client officer has no requirement to retain this information as it is held centrally by LDL. It maintained that it had no need to duplicate this information.
  - The Mayor of Liverpool and Chief Executive of the council sit directly on the Board of LDL.

- Third party work is not solely dependent on a list supplied by LDL. Further discussions and meetings will be held by the Mayor and Chief Executive, these can be discussed either at the LDL Board meeting or the quarterly performance review meetings. However, no separate list is held by the Mayor or the Chief Executive.
  - The council's final accounts are audited by the District Auditor. There is no separate audit for the JVA. LDL has its own auditors and these have to be approved by the Board. Some of the information might "*interface*" with the council's final accounts. The council is clear that no issues have been raised by the District Auditor or LDL's auditors relating to third party work in itself.
  - The council stressed that all the information it holds in relation to third party work has been provided to the complainant. It has explained why it holds nothing further and it does not consider the retention of a list of third party work as essential because it is retained by LDL.
19. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "*on the balance of probabilities*"<sup>1</sup>.
20. In deciding where the balance lies, the Commissioner considers the scope, quality and thoroughness of searches conducted by the public authority together with any reasons offered by the public authority or the complainant as to why the information is not held or should be held, where appropriate.
21. The Commissioner's approach is supported by the Information Tribunal in the hearing of Thompson and Dyke v Information Commissioner EA/2011/0164 and 0165. The Tribunal stated that the Commissioner is:

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<sup>1</sup> This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

*"...entitled to accept the public authority's word and not to investigate further in circumstances where there is no evidence as to an inadequate search, any reluctance to carry out a proper search and any grounds for believing there is a motive to withhold information actually in its possession."*

The Tribunal referred to the Commissioner's national remit and limited resources and that to act otherwise might require a full scale investigation to be carried out in every case where a public authority is *"...simply not believed."*

22. The Commissioner is satisfied that there is no evidence of an inadequate search by the council. The council has explained where the information would be held if it existed and it has checked these files thoroughly.
23. The complainant does not accept that the council does not hold this information as she believes that the council is obliged to do so. The Commissioner did not consider that there was sufficient evidence to support this allegation. Although the council may have held the requested information at some point in time, there is no evidence to support the view that it was held at the time of the request.
24. For the above reasons, the Commissioner has concluded in this case that, on the balance of probabilities, the requested information is not held.

## **Other matters**

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25. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that, in this case, the internal review took considerably longer than his recommended timescale, despite the publication of his guidance on the matter.

## Right of appeal

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26. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

27. 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.
28. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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