

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 February 2013

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

Decision (including any steps ordered)

1. The complainant requested the total amount, exclusive of VAT, paid by Liverpool City Council (the 'Council') in relation to certain aspects of the 2011 Fringe Festival. Although the Council initially confirmed it had not incurred any costs, the Information Commissioner (the 'Commissioner') discovered during his investigation that it had paid a £2000 fee for an independent co-ordinator for the Festival, which included marketing of the Festival.
2. The Commissioner has decided that, on the balance of probabilities, the Council has now provided all the information it holds in relation to the request. He does not require the Council to take any steps.

Request and response

3. On 22 August 2012 the complainant wrote to the Council and requested information in the following terms:

"In regard to the 2011 Fringe Festival, per se, can you obtain for me, as per my original request (FOI 204939), the total amount paid by the Council, exclusive of VAT, relating to each of the following:

1. *The Bands appearing on the various stages.*
2. *The administration costs of booking the Bands and the making of payments thereto.*

3. *The cost of obtaining licences/permissions for any Intellectual Property Rights, Trade Marks and the like.*
4. *Any other costs related to the above."*
4. The Council responded on 10 September 2012. It stated that it held information relevant to the request and confirmed it had not incurred any costs as a result of the 2011 Fringe Festival stating, *"Any costs accumulated through hiring bands, administration costs or obtaining the appropriate licenses are all met by the relevant venue."*
5. Following an internal review the Council wrote to the complainant on 12 September 2012. It said that it was unable to provide any further information than it had already given under FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 14 September 2012 to complain about the way his request for information had been handled.
7. The Commissioner has investigated, whether, on the balance of probabilities, the Council holds any further information relevant to the request than has already been disclosed.

Reasons for decision

8. 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."
9. The task for the Commissioner here is to determine whether, on the balance of probabilities, the Council holds any further information relevant to the request which it had not disclosed to the complainant. Applying the civil test of the balance of probabilities is in line with the approach taken by the Tribunal when it has considered the issue of whether information is held in past cases.

10. The Commissioner asked the Council about the searches it had carried out for information falling within the scope of the requests and why these searches would have been likely to retrieve all relevant information. The Council did not respond to this part of the investigation until later.
11. The Council provided some background confirming that events of this nature are co-ordinated by its Culture Team. Within this team is an Events Team and the Council consulted its two relevant officers in responding to the Commissioner's Investigation, namely its Divisional Manager of Events and Cultural Infrastructure and its Events Manager.
12. It explained that since 1993 the Mathew Street Music Festival had been held annually. This festival was founded by an independent company which comprised four directors. In the year 2000 the Directors of Mathew Street Festival Limited approached the Council for further assistance and support as the festival had grown in popularity year on year..
13. The Council said that in 2008 local businesses approached it as they believed the Mathew Street Music Festival was not inclusive because it tended to focus on tribute bands, whereas Liverpool has a more diverse mix of musical tastes and talents. Consequently the Mathew Street Fringe Festival was launched in 2008.
14. The Council stated that as the inspiration for the Fringe Festival came from local businesses within the area, it was willing to provide a co-ordinator to work with venues in the city. The venues themselves organise and book bands to meet the needs of the local businesses. The Council confirmed that the only cost it had incurred in relation to the 2011 Fringe Festival was a fee of £2,000 for the independent co-ordinator which included the marketing of the Fringe Festival through publicity flyers and CDs.
15. The Commissioner considers that the £2,000 fee would be caught by part 4 of the request - "*any other costs related to the above*" - and he advised the Council and complainant accordingly. It transpired that the Council had sent the complainant a copy of its response to the Commissioner's investigation.
16. There followed a telephone call with the complainant and an exchange of written correspondence in which the complainant expressed dissatisfaction with the Council's response. His view was that "*the fact that an item of expenditure is reimbursed/recovered in full does not alter the fact that a cost has been incurred by virtue of the fact that an amount has been **paid**. That was the purpose of my request.*"

17. The Commissioner contacted the Council to clarify whether it had paid out any monies in relation to the Fringe Festival, irrespective of whether some or this entire amount had been recouped. In reply, the Council reiterated that its role in the 2011 Fringe Festival was to appoint and pay for an independent co-ordinator to work with the various venues to ensure bookings were made in line with the requirements of the various businesses across the city. It confirmed that it had no further financial involvement in the festival and had paid a £2,000 fee for the co-ordinator inclusive of marketing of the Festival.
18. The Commissioner reminded the Council of the need for it to respond to the search-related questions. The Council explained that as only two officers are responsible from its perspective for the Fringe Festival, it only needed to consult with these two individuals in order to respond to the request. It said that the two officers had confirmed that the only financial contribution made by the Council in 2011 was £2,000, explaining that its role in the festival was minimal. For this reason, the officers concerned were familiar with the matter and knew exactly what contribution had been made, such that there was no need to conduct extensive searches or make checks with any other departments or individuals.
19. Having made further enquiries the Commissioner updated the complainant and asked him to either provide further evidence in support of his view that the Council had paid more than £2,000 for the 2011 Fringe Festival, or to consider withdrawing his complaint.
20. The complainant replied and said that the Council had not responded properly to his request as it had responded with "costs" as opposed to the total amounts "paid", thus *"deliberately excluding a situation where monies had been paid by the Council but subsequently recovered from other parties."*
21. He also commented that its response did not exclude, per se, the possibility that the Council had received monies in relation to licensing costs. Any information relating to funds *received* by the Council would not, however, be within the scope of the request, which was for information relating to funds paid out by the Council.
22. The Commissioner contacted the Council again and it confirmed it had not incurred any costs or paid any monies out other than the £2,000 co-ordinator's and marketing fee. The Commissioner relayed this information to the complainant and asked him again to consider withdrawing his complaint. The complainant declined and requested a decision notice.

23. In coming to a conclusion upon this case the Commissioner has taken into account the explanations provided by the Council, the complainant's view, although unsupported by any tangible evidence, that any further monies were paid out by the Council beyond £2,000, as well as being guided by the Tribunal decision which determined the approach to be taken in this type of case.
24. The Commissioner accepts that the Council's initial response and internal review result were misleading in that the Council failed to identify the fee of £2,000 it had paid to the Fringe Festival co-ordinator, including marketing of the Festival. He considers, however, that on the balance of probabilities any further requested information relevant to the request (than has already been provided) is not held by the Council.

Right of appeal

25. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

26. 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.
27. 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

Jon Manners
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