

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 21 November 2013

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

Decision (including any steps ordered)

1. The complainant has requested a copy of the Liverpool Direct Limited ('LDL') procurement catalogue for goods and services purchased by Liverpool City Council ('the council') and the service contracts under taken by LDL for such goods and services. The council initially applied the exemptions at section 41 and 43 of the FOIA to the procurement catalogue and stated that it does not hold copies of the service contracts. During the Commissioner's investigation, the council provided a copy of the procurement catalogue but maintained it did not hold the service contracts. The complainant was not satisfied that the council had provided all information held within the scope of the request. The council have not responded appropriately to the Commissioner's enquiries and therefore is not in a position to draw a conclusion in this case.
2. The Commissioner requires the council to take the following step to ensure compliance with the legislation.
 - Issue a fresh response to the complainant in respect of both the procurement catalogue and the service contracts between LDL and the council specifically in relation to the information the council holds rather than the information LDL holds.
3. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 23 April 2013, the complainant wrote to the council and requested information in the following terms:

“I request a full copy, in electronic form, of the Liverpool Direct Limited procurement catalogue for which Liverpool City Council is contracted to purchase goods and services from and through Liverpool Direct Limited. I request this, together with service contracts under taken by LDL for said goods or services, in the hope that there will be no attempt to shroud this information behind the veil of 'commercial confidentiality', which should not apply to the use of funds from the public purse.”
5. The council responded on 20 May 2013 and refused to provide the procurement catalogue citing the exemption for information provided in confidence at section 41 and also stated that the information is a trade secret and as such is exempt under the exemption for commercial interests at section 43(2). In relation to the service contracts, it stated that the council did not hold the information as the goods and services would have been procured by LDL and it is their information.
6. The complainant requested an internal review on 20 May 2013. The council provided its response on 21 May 2013 in which it maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 21 May 2013 to complain about the way his request for information had been handled.
8. During the Commissioner's investigation, the council revisited the request and felt that there was sufficient public interest in both the items in the procurement catalogue and the associated prices for full disclosure to be appropriate. It provided the complainant with an excel spread sheet detailing 18 items and their prices. Therefore, the Commissioner has not considered the application of section 41 or section 43 to the procurement catalogue.
9. However, the complainant was not satisfied that the disclosed spread sheet was all the information held by the council as he believed it should contain approximately 17000 items. He also believed that the requested service contracts must be held by the council.

10. The Commissioner has therefore considered whether the council holds any further information within the scope of the request.

Reasons for decision

11. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
12. 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 is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is 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 civil standard of the balance of probabilities.
13. The complainant has said that he has been informed by a council employee that the procurement catalogue has approximately 17000 items on it. He said that the 18 items disclosed during the course of this investigation are only those which were provided to the Daily Echo in order for it to write an article on 24 October 2013 entitled 'Minister slams LDL deal 'value for money' claim'¹.
14. With regards to the service contracts, the complainant has said that a council employee has told him that service contracts exist between LDL and the council for all electronic items and other items which need to be serviced. He therefore believes that this information must be held by the council rather than just by LDL.
15. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether further information had ever been held but deleted and whether copies of information may have been

¹ <http://www.liverpooldailynews.co.uk/news/liverpool-news/minister-slams-liverpool-direct-ltd-6232636>

made and held in other locations. He also enquired as to what the council's record management policy says about records of this type and whether there was any legal requirement or business need for the council to hold the information.

16. The council did not respond to the Commissioner's specific enquiries despite being requested to do so on three occasions and sending three separate responses. Instead, its responses focused on the information LDL holds rather than the information the council holds. It also appears to have misinterpreted the request for service contracts between LDL and the council as a request for service contracts between LDL and third parties. For completeness, details of the council's response are contained in paragraphs 18 and 19 below.
17. The council would not be expected to provide information held by LDL in response to a request made to it. The Commissioner is sceptical that no further information is held in relation to such a major contractor and is sympathetic to the requester's persistence in seeking to understand more about the situation between the council and LDL. However, he is not in a position to draw a conclusion in this case and requires that the council revisit the request from scratch in relation to the information that it holds.
18. In relation to the procurement catalogue, the council said that it has never had 17000 items and that relevant officers from LDL confirmed that the catalogue has only ever had in the region of 200 items on it. It explained that it had met with officers of LDL and asked them to explain the process of how the catalogue is maintained and the process of how their officers amend pricing information. It said that as a result of that meeting it could confirm that LDL does not retain previous copies of the procurement catalogue as there is no hard copy in existence, the catalogue is an electronic item which is maintained by staff on an as and when basis and amendments are made by a team of staff who are instructed to make changes by their superiors. It said that the version of the catalogue provided to the complainant is the most up to date and the only version of the catalogue in existence. The council did not address the Commissioner's enquiries regarding searches carried out for the procurement catalogue, its relevant record management policy and any legal or business need to hold the information.
19. In relation to the service contracts, the council said that again, after liaising with the relevant officers in LDL, it can confirm that the council does not currently, and has never previously, held copies of LDL's service contracts. It said that the contracts are the property of LDL and remain so. It confirmed that no electronic or hard copy searches were carried out and that it is unaware of any copies of service contracts being destroyed or deleted as it does not hold copies of them. It said

that LDL is also not required to inform the council if they delete copies of service contracts and there is no reference to service contracts held by LDL on behalf of the council in its retention policy. It confirmed that there is no business or statutory requirement for the council to hold copies of service contracts negotiated by third parties in order that the third party can supply the council with goods and services. It said that while there is an obvious business purpose for the service contracts to be held, this business purpose is on behalf of Liverpool Direct Limited and, accordingly, not upon the council.

20. As can be seen (and referenced in paragraph 16), the council have failed to address the question of what it holds as the public authority. If the extension of the argument is that it does not hold any service contracts, or further copies of the procurement catalogue, with such a major supplier, of which it is a part owner, then that should be stated explicitly. Where annual expenditure of tens of millions of pounds is under scrutiny with what LDL's own website² describe as the "largest public/private partnership of its kind in the UK" then the council should expect to have to deal with requests about what it holds.

² <http://www.liverpooldirectlimited.co.uk/>

Right of appeal

21. 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

22. 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.
23. 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
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Wycliffe House
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