

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 November 2013

Public Authority: Blackpool Council

Address: Town Hall
Blackpool
FY1 1AD

Decision (including any steps ordered)

1. The complainant has requested information on the reasons for awarding a concession to operate the Blackpool and Fleetwood Tramway rather than conducting a competitive tendering process, and information on compliance with stated service standards.
2. The Commissioner's decision is that Blackpool Council ('the Council') has complied with the FOIA in that, on the balance of probabilities, no further information is held relevant to the awarding of the concession.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 18 December 2012 the complainant wrote to the Council and requested information in the following terms:

"Please let me know the reasons for the decision to award a 15 year concession to operate the Blackpool and Fleetwood Tramway to Blackpool Transport Services Limited rather than undertaking a competitive tender process.

The 'transparency notice' published on 4 April 2012 states that the concession will include stricter service standards relating to frequency, capacity, comfort and quality. Please let me have details of these standards and arrangements in place to monitor compliance."

5. The Council responded on 6 March 2013. It provided information on the new service standards and some reasoning for awarding the concession to Blackpool Transport Services ('BTS').
6. Following an internal review the Council wrote to the complainant on 31 May 2013. It addressed the three specific concerns highlighted by the complainant. It acknowledged the delay encountered by the complainant in receiving a response to his request, it provided further information on the reasons for not undertaking a competitive tender process and it confirmed that it held no further information on the quality of service monitoring.

Scope of the case

7. The complainant contacted the Commissioner on 10 June 2013 to complain about the way his request for information had been handled. He explained to the Commissioner that his particular focus for complaint was as follows:

"It seems to me that a major decision to award a contract or concession to BTS rather than undertake a competitive tender process must have been discussed by the full Council, by a Committee of the Council or by the Council officers at a senior level, so in my view it is inconceivable that no information about this decision making process exists within Council records."

8. The Commissioner notes that the complainant is satisfied with the Council's explanation provided in respect of the quality of service monitoring. The scope of his investigation therefore focusses on whether the Council has provided the recorded information it holds on the reasons for making its decision to award the concession to BTS.

Reasons for decision

Section 1- Is the information held?

9. 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 so, to have that information communicated to him.
10. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a

complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. The Commissioner must decide whether on the balance of probabilities the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

11. In this case the complainant's view is set out in paragraph 7. The Commissioner understands the complainant's expectations that there would be a competitive tendering process in the determination of which contractor would be awarded the contract to operate the Blackpool and Fleetwood Tramway. Consequently it is to be expected that the Council has reasons for deciding not to undertake a competitive tendering process.
12. In its submissions to the Commissioner the Council explained for background information that it was not obliged to undertake a competitive tender process in this instance, for the following reason:

"Blackpool Transport Services are a 'Teckal' company and not an Arms Length Management Organisation. Teckal is a reference to an EU case brought by a company complaining about the award of work by EU public bodies to a publicly established consortium. The court ruled that EC procurement rules do not need to be complied with where the winning provider is controlled by the awarding authority in a manner similar to that which it exercises over its own departments. As such, Blackpool Council has full financial control of Blackpool Transport Services. In view of this, Blackpool Council is at liberty to determine whether there is a requirement for tendering."
13. The Commissioner notes the fact that the Council is able to award a contract without undertaking a competitive tender and in this case the Council decided to do so. Nevertheless, in order to reach this decision it is reasonable to expect some discussion to have taken place resulting in recorded notes or minutes.
14. The Commissioner enquired as to the scope, quality and thoroughness of the searches carried out by the Council to determine whether any notes or minutes had recorded the reasons for its decision. The Commissioner also asked whether information had ever been held but deleted or destroyed and whether there was any legal requirement or business need for the Council to hold the information.
15. The Council explained that it had carried out a manual search of all the current and archived paper files held within the Chief Executive's office, the Directors' office and the Tramway Consultant's office for any recorded information on the reasons for the decision. The Council also

searched the file store drives for any electronically held information. A search of the online Committee Minutes system for "Tramway" was also undertaken.

16. The Council confirmed that further searches included the laptop used by the Tramway consultant and all relevant staff's email accounts. The Council stated that it does not allow staff to save files or records to their personal computers. Although the Council is unable to use one search 'term' for all electronic searches, staff were instructed to search for any information relating to the decision not to go to tender for the tramway and any related measures or standards.
17. The Council confirmed that no relevant information was found during the searches. In the absence of any recorded information the Council described its reasons in its responses to the complainant which the complainant does not consider to be cogent reasons for such a decision. However, the Commissioner is unable to comment on the validity or otherwise of the reasons given by the Council. The Commissioner must determine whether, on the balance of probabilities, the Council holds further recorded information which it has not provided to the complainant.
18. The Commissioner notes that the Council does not have a formal Records Management Policy in place. It publishes a Retention Schedule and Disposal Policy on its website which specifies the retention periods for various types of contracts, minutes and project documentation. Consequently if minutes from a meeting had been created they should appear in that schedule. No such minutes are present. The Council has acknowledged that, at the time of the decision not to operate a tendering process, the systems that are currently in place with respect to recording and retaining information were not operating effectively.
19. The Council explained that the information it is required to hold for business purposes and statutory requirements concerns the operation and maintenance of the Tramway service not the Council's reasons for awarding the concession to BTS.
20. In considering the Council's submissions the Commissioner notes that the Council placed a Prior Information Notice in the Official Journal of the European Union on 8 April 2010 and a Voluntary Ex-Ante Transparency (VEAT) notice in the EU Journal on 4 April 2012. The VEAT advised of the Council's intention to let the contract without opening it to formal competition and provided an opportunity for a challenge to the decision.
21. In the circumstances of this case, the Commissioner does not consider that there is any evidence that would justify refusing to accept the

Council's position that it does not hold any further information relevant to the request. The Commissioner is therefore satisfied that, on the balance of probabilities, the information is not held by the Council. Accordingly, he does not consider that there is any breach of section 1 of the FOIA.

Other matters

22. The Commissioner notes that the Council does not at present have a formal Records Management Policy in place. The Council is aware that this is not in conformity with the Section 46 Code of Practice and has an Action Plan in place to achieve a formal policy during the first half of 2014.

Right of appeal

23. 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

24. 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.
25. 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

Alexander Ganotis
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