

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 November 2018

Public Authority: West Yorkshire Combined Authority

Address: Wellington House
40 – 50 Wellington Street
Leeds
LS1 2DE

Decision (including any steps ordered)

1. The complainant has requested information which concerns the procurement process of contracts between West Yorkshire Combined Authority and Proventure, Xenonex and ICE Creates Ltd for executive coaching. The complainant has also asked to be given details of any payment made to the Authority's former Director of Policy, Strategy and Communications. The Authority has refused to provide the complainant with certain pieces of information which are relevant to the procurement and awarding of its contracts for executive coaching in reliance on section 43 of the FOIA. The Authority has also refused to confirm or deny whether it holds information relating to any payments made to its former Director of Policy, Strategy and Communications in reliance on section 40(5) of the FOIA.
2. The Commissioner's decision is that West Yorkshire Combined Authority has properly applied the exemptions provided by section 43(2) and 40(5) to the information requested by the complainant. The Authority is therefore entitled to withhold information which is commercially sensitive, and to neither confirm nor deny whether its former Director of Policy, Strategy and Communications received any payment.
3. The Commissioner notes the failure of West Yorkshire Combined Authority to disclose three pieces of recorded information to the complainant, which are relevant to his request and which are not subject to the application of the section 43(2) exemption. The Commissioner has decided that this failure constitutes a breach of section 1 of the FOIA and she requires the Authority to take the following action to ensure compliance with the legislation:

4. The Commissioner requires West Yorkshire Combined Authority to disclose to the complainant the following information:
 - the notification the Authority gave to ICE Creates Ltd of its award a contract for executive coaching
 - A copy of the Authority's standard terms and conditions services
 - The request for Tender documents.
5. The public authority must take these steps 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

6. On 5 February 2018, the complainant wrote to the Authority having received its response to questions he had previously asked. The complainant advised the Authority that its responses failed to provide the clarification he had asked for, particularly in respect of his questions 1, 2, 3 and 6 and therefore he submitted the following request for recorded information:

Item 1: "I think this is the issue my questioning was getting at but which it is proving difficult to get a fulsome answer to. In the circumstances, the best way to advance is by providing the information held to support this statement. The best way this could be achieved is by providing the records of the working group that worked on the Skype for Business project last year.

Item 2: Given we seem to be going round a few houses on this one as well, it would be best if WYCA just provides the recorded information held on the procurement and contracts for Proventure, Xenonex and ICE Creates to provide executive coaching which were, as you state, all awarded in March 2017.

Item 3: In terms of question 3, perhaps clarity would be best achieved by clarifying who has held the role of head of HR (including interims) over the last two years. I would therefore be grateful if WYCA would identify who has held that position over that period, for what period of time and what salary/pay each was paid.

Item 6: In terms of question 6, I would simply ask for the details of any payment made to Rob Norreys. If it is a reportable payment, I can't see any reason why WYCA wouldn't simply provide the figure."

7. The Authority responded to the complainant's request on 5 April 2018 by confirming it holds some of the information he had requested. The Council's response was: given under the following headings:

The Skype for Business project:

8. The Authority provided documentation held in relation to the Skype for Business working group. This information had previously been sent to the complainant on 13 March 2018. The Authority redacted the names of junior members of staff and external colleagues in reliance on section 40(2) of the FOIA.

Executive coaching services procured from three companies in March 2017:

9. The Authority provided the complainant with documentation held in relation to the procurement of executive coaching services from the three companies named in his request. The Authority redacted the names and contact details of junior staff and staff from external organisations in reliance on section 40(2) of the FOIA.
10. The Authority withheld the individual bid documentation from all three companies, together with the itemised costing information, the quality scores and comments from the tendering process in reliance on section 43(2) of the FOIA, on the grounds that disclosure of this information would, or would be likely to, prejudice the commercial interests of any entity, including the public authority holding the information.

Who has held the role of head of HR within the organisation over the last two years?

11. The Authority informed the complainant that its incumbent head of HR was employed until 31 December 2017 at salary band N and, during the period September to December 2017 an interim head of HR was employed in salary band N as sickness cover. Between January and March 2018 an interim head of HR was employed in salary band O. From 12 March 2018, a permanent head of HR was employed at salary band O.
12. The Authority told the complainant that the changing salary band is one of the outcomes of the review of the Combined Authority's HR function undertaken by Candour Consultancy. As details of the Authority's salary bands is information already in the public domain, the Authority applied section 21 of the FOIA and advised that the information could be accessed at:

<https://www.westyorks-ca.gov.uk/media/2927/staff-pay-and-grading-structure.pdf>

Details of any payments made to the former head of Policy, Strategy and Communication upon their departure from the organisation:

13. The Authority informed the complainant that, in respect of details of any payments made to the former head of Policy, Strategy and Communication, it neither confirms nor denies whether the Authority holds this information. The Authority did not identify an exemption which it is relying on to make this response.
14. On 8 April the complainant wrote to the Authority and asked it to conduct an internal review of its decisions to withhold the information he has asked for. The complainant made the following points about the Council's response:
15. "WYCA previously stated Ice Creates won the tender for executive coaching and had a three year contract worth £36,000 a year. WYCA's tender document confirms the tender was for a three-year contract. The FOI response has not included any information in relation to this. No contract has been provided, no communications with Ice Creates, no information detailing the figures. In addition, limited information has been provided about a commercial relationship with two other providers. This is in the form of two internal communications stating a decision has been made to have a relationship with the two other providers but with no surrounding information as to why or how. Some purchase orders have also been provided but there is no indication of how prices have been arrived at and these don't evidence why the two other providers have been chosen. In short, information appears to be missing from the response."

And:

"In terms of the payment to Rob Norreys; his role is included in the remuneration report in the annual accounts and all public bodies are expected to transparently disclose payments to their most senior staff. The response does not indicate why WYCA seeks to depart from standard practice. Indeed, if WYCA believes there are circumstances in which payments to its directors do not need to be disclosed this raises the question of whether published accounts have not included other previous payments to directors. The reason why public policy moved towards transparency in this area was increasing public disquiet about payments made to very senior staff which were not being disclosed and/or properly accounted for."

16. On 2 May 2018, the Authority wrote to inform the complainant of its internal review decision. The Authority noted that the complainant's request for internal review did not include his questions relating to the Skype for Business project or who had occupied the role of Head of HR in the last two years – items 1 and 3, and therefore the Authority's review was solely focussed on items 2 and 6.
17. In respect of item 2 of the request, the Authority's review provided responses to the points raised the complainant's email of 8 April: It said – "The Authority informed you that Ice Creates was awarded the tender for executive coaching services at a cost of £36,000, following a competitive tendering process. The Authority provided evidence of this by supplying you with a series of purchase orders which confirmed the Authority's spend information published on its website. You were informed that purchase orders are widely used by organisations as a means of contracting and therefore the Authority does not hold a separate contract with Ice Creates for executive coaching services." And; "The Authority referred you to the Local Government Transparency Code guidelines¹ which set out its transparency obligations in relation to spending. The guidelines detail the information that should be made available in respect of tender awards:
18. Regarding who the tender has been awarded to; details of the products or services being procured; details of how the tenderer has met the criteria and has been evaluated against other submissions received, and, how much the tender award is for and the duration, the Authority advised the complainant that it is satisfied all of these obligations have been met through its provision of the documentation provided as part of its original FOI response.
19. The Authority confirmed that it holds details of the individual bid submissions as well as the quality scores and related comments, and restated that this information is exempt from disclosure under section 43(2) of the FOIA.
20. The Authority explained that Ice Creates was appointed solely to provide executive coaching to the Combined Authority's Heads of Service. Its Leadership Team was then asked for its preference for an executive coach. This resulted in Proventure and Xenonex being engaged. The Authority stated that this is a permitted approach within the rules of the tender process. The Authority referred the complainant to the details of

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf

spending with the two companies which was included in the purchase orders already supplied to him.

21. The Authority explained how it uses its learning and development budget to provide training across the organisation and it informed the complainant that a decision was made in 2017/18 to invest in the development of its senior team in recognition of the scale of change being introduced to the Authority when the former Metro, LEP and Leeds and Partners were brought together. The Authority further explained that the coaching will be reviewed and evaluated at the end of the year when delivery is complete and before a decision is made about any further future phases of the programme.
22. The Authority advised the complainant that it is satisfied it has been transparent about how the executive coaching services have been procured and the amounts spent. It then went on to advise him that there is no further recorded information it can provide in this regard.
23. In respect of the item 6 of the complainant's request, the Authority upheld its decision to neither confirm nor deny whether this information is held. The Authority advised the complainant that it "is not deviating from the practice of including details of remuneration payments, exit packages and payments made to senior staff in its annual statement of accounts".
24. The Authority also informed the complainant that "all such payments made in the 2017/18 financial year will be included in the upcoming annual statement of accounts, due for publication later this year", and it made clear that named individuals would not be identified in line with the obligations under paragraph 48 of the Local Government Transparency Code². The Authority concluded that its response to item 6 of the request remains valid.

Scope of the case

25. The complainant contacted the Commissioner 4 May 2018 to complain about the way his request for information had been handled.
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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf

26. Having examined the documents supplied by the complainant in support of his complaint, the Commissioner determined that her investigation should focus on whether the West Yorkshire Combined Authority has properly applied sections 43 and 40(5) to items 2 and 6 of the complainant's request.

Reasons for decision

Item 2: The procurement and contracts for Proventure, Xenonex and ICE Creates

Section 43 - commercial interests

Section 43(2)

27. Section 43 of the FOIA allows a public authority to refuse to disclose recorded information where the disclosure would, or would likely, prejudice the commercial interests of any person. This includes the commercial interests of the public authority itself.
28. The Authority has provided the Commissioner with copies of the information it is withholding.
29. Some of the withheld information is contained in documents which have been disclosed to the complainant, but which are subject to the redaction of information made in reliance of section 43 of the FOIA. The documents containing withheld information relate to:
 - The Authority's invitation to tender
 - information submitted by the three companies – ICE Creates Ltd, Proventure and Xenonex in respect of their tenders
 - purchase orders for the provision of services
 - evidence of the Authority's approval of ICE Creates Ltd.'s tender
30. The Authority also provided the Commissioner with a copy of a 'Tender evaluation spreadsheet which it has withheld in its entirety in reliance on section 43.
31. The Authority has confirmed to the Commissioner its reliance on section 43(2) of the FOIA to withhold the individual bid documentation from the three companies named in the complainant's request. This information includes itemised costing information, quality scores and comments from the tendering process.

32. The Authority asserts that disclosure of the withheld information would prejudice the commercial interests of the companies concerned and also would be likely to prejudice the commercial interests of the Authority itself.
33. With respect to the companies' commercial interests, the Authority argues that disclosure would give a significant advantage to the information providers' competitors in a very competitive market and would therefore prejudice the companies' commercial interests.
34. To support this view the Authority has provided the Commissioner with representations made by two of the companies concerned – Proventure and ICE Creates Ltd. Both of the companies' letters make reference to the 'commercial environment' they operate in and they assert that disclosure of the requested information would prejudice their commercial interests by making public their costs and prices, proprietary models and methodologies, and their experience. Both companies assert the disclosure of the withheld information would put them at a disadvantage with their competitors in respect of future business tenders.
35. The Authority holds the view that disclosure would prejudice its own commercial interests by diminishing its ability to obtain value for money in future procurement exercises. The Authority argues that disclosing the itemised costing information of successful bidders would reveal to the market what it has previously paid for professional coaching services. It says this is "...likely to result in future prospective providers tailoring their bids..." and would "likely to have the effect of keeping costs artificially high and reducing value for money".
36. The Authority argues that disclosure of the details of wider bid submissions may result in competitors using this information to copy the successful bids of the companies concerned without necessarily being able to provide that level of quality of service – so called 'copycat bidders'. It is the Authority's opinion that this could result in a distortion of what would otherwise be a fair tendering process and might discourage providers from bidding for public sector work in future.
37. The Authority points out that it may require similar procurement exercises in the future and therefore disclosure of the withheld information poses a real likelihood of prejudice to its own commercial interests.
38. On the grounds that the itemised costs contain day rates, the Authority considers disclosure would likely prejudice its future procurement of coaching, training or consultancy services.

39. The Commissioner has examined the information which the Authority has withheld in reliance on section 43(2) of the FOIA. On the grounds that she considers that the essence of commerce is trade or some form of commercial activity such as the sale or purchase of goods or services for profit, the Commissioner accepts that the withheld information engages this exemption.
40. Section 43 is a qualified exemption and consequently the Authority's reliance on section 43 is subject to the Commissioner's consideration of the public interest.

The public interest

41. The Commissioner will always give significant weight to the public interest where disclosure of information provides accountability and transparency for decisions taken by public authorities and where the decisions concern public expenditure and significant numbers of people.
42. In this case, disclosure of the withheld information would provide transparency in terms of the tenders received and contracts awarded for the executive coaching programmes within the Authority. Disclosure would allow the public to scrutinise the information and satisfy for themselves that public money being spent on these activities appropriately and is achieving value for money. Therefore disclosure is likely to provide a degree of accountability.
43. Weighed against these factors is the strong public interest in maintaining the confidentiality of commercially sensitive information submitted by third parties.
44. In the Commissioner's opinion, disclosing the withheld information would likely, to some extent, discourage service providers from bidding for public sector contracts because of the exposure of their commercially sensitive information. It is not difficult for the Commissioner to envisage companies being reluctant to bid for contracts with local authorities where to do so would place them at a disadvantage to their competitors who are not subject to the same level of disclosure.
45. Reticence to come forward or to tender without necessary candour would likely prejudice the Authority's ability to achieve value for money from service providers. Here, there is a potential risk of receiving future tender information from 'copycat bidders'. Such tenders would not necessarily meet the needs of the Authority and would result in public money being spent on goods and services which are poor and do not meet the needs of the Authority.
46. The Commissioner recognises that the bids of interest to the complainant were only submitted in 2017. As such, the Commissioner

agrees with the Authority's assertion that the information contained within those bids is still relevant to the market.

47. The Commissioner also recognises that whilst transparency in the tender process might promote competition and increase value for money, in this case, the Commissioner considers disclosure would have the opposite effect of distorting competition and reducing value for money.

The Commissioner's decision

48. The Commissioner acknowledges the public interest factors of transparency and accountability. She considers these factors to have been significantly met through the Authority's publication of information in line with the Transparency Code and through its disclosure of information made in response to the complainant's request and the explanations provided in response to the complainant's earlier enquiries.
49. In this case the Commissioner considers that the weight of the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information. The Commissioner considers that disclosing the withheld information would likely diminish the Authority's ability to achieve best value for its future contracts for the provision of services and it is the Commissioner's view that this would not be in the best interests of the Authority's council tax payers.
50. The Commissioner's decision is that the Authority has correctly applied the exemption provided by section 43(2) to the information it has withheld from the complainant in response to item 2 of his request.
51. In addition to providing the Commissioner with copies of the information it is withholding, the Authority has also provided her with copies of information, relevant to the complainant's request, which it has not previously disclosed to him. This information is comprised of the following:
- The notification given to ICE Creates Ltd of the Authority's decision to award a contract for executive coaching
 - A copy of the Authority's standard terms and conditions services
 - The request for tender documents.
52. The Authority acknowledges that the section 43 exemption does not apply to the information listed above and likewise it accepts that the information should have been disclosed to the complainant.

Item 6: Payments made to the Authority's former Director of Policy, Strategy and Communications

Section 40 – Personal information

53. The council has relied on section 40(5) of the FOIA to neither confirm nor deny whether it holds the information which the complainant seeks. Section 40(5) states:

“The duty to confirm or deny —

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either—
 - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject’s right to be informed whether personal data being processed).”

54. In order to rely on the exemption provided by section 40, the information being sought must constitute personal data as defined by the Data Protection Act 1998 (“the DPA”). The DPA defines personal data as:

‘...data which relate to a living individual who can be identified

a) From those data, or

b) From those data and other information which is in the possession or, or is, likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect to the individual.’

55. The Commissioner has considered the nature of the information which the complainant seeks, namely, “the details of any payment made to [the Authority’s former Director of Policy, Strategy and Communications]”.

56. The Commissioner agrees with the Authority that the requested information, if it is held, would relate to a living person, regardless of whether it is in that person's personal or business capacity, on the grounds that it would satisfy the definition of personal data provided by section 1 of the Data Protection Act 1998.
57. In order to refuse to confirm or deny whether it holds the requested information, the Commissioner must conclude that to do so would breach one of the data protection principles. To assist the Commissioner in her consideration of its application of section 40(5) the Authority argues that to confirm or deny whether the information is held would breach the first data principle.
58. The Authority considers that to confirm or deny whether the requested information is held would be unfair and unlawful, and would fail to meet one of the conditions for processing personal data contained in Schedule 2 of the Data Protection Act.
59. The Authority acknowledges that the requested information, if it is held, would relate to its former Director of Policy, Strategy and Communications' public life. It accepts that the senior position held by its former Director would lead to him having a greater expectation that information relating to his public role would be subject to a higher level of scrutiny.
60. The Authority also acknowledges that its former Director would have a reasonable expectation that information with regards to any exit payment he may have received would go beyond that required by Account and Audit Regulations 2015.
61. In the Authority's opinion, the former Director's expectations have been increased in this case following the nature of media reporting³ of his absence from the Authority due to ill health. The Authority understands from communicating with its former Director that the media reporting caused distress to him and his family and has resulted in a negative effect on his health.
62. The Authority considers that either confirming or denying whether it holds the information would be unfair because of the possible consequences on its former Director. The Authority says, the history to

³ <https://www.yorkshirepost.co.uk/news/cash-strapped-west-yorkshire-combined-authority-faces-inquiry-into-lavish-spending-1-8913671>

this request suggests that the requester's interest in the former Director's departure appears to be fuelled by speculative gossip of a highly personal nature unconnected to the performance of his public duties. In the opinion of the Authority, the motivation for the complainant's request is relevant to the consideration of possible consequences for its former Director.

63. The Authority recognises the public's legitimate interest in openness and transparency concerning the expenditure of public funds, including payments and salaries to its senior officers. The Authority points out that it is required to disclose relevant information in its annual accounts which are independently audited and approved, together with the information it makes available under the Transparency Code. The Authority asserts that the information it is required to publish satisfies the legitimate interests of the public and it considers that to confirm or deny holding the information which the complainant seeks does not outweigh the reasonable expectations of its former Director when measured against the consequences of that disclosure.

The Commissioner's considerations and decision

64. The Commissioner has referred to her guidance on requests for personal data about public sector employees.⁴ That guidance states that such requests relate to issues such as severance payments, compromise agreements and circumstances in which an employee left the authority. As with other requests for employee information, a public authority must first consider whether disclosure would be fair.
65. The guidance notes that the expectations of employees as to what information will be released will have to take account any statutory or other requirements to publish information and it gives the Accounts and Audit (Amendment no 2) (England) Regulations 2009 as an example.
66. The Accounts and Audit Regulations require local authorities in England to publish in their annual accounts the amounts paid to employees in connection with the termination of their employment, if their total remuneration is over £50,000. These amounts are published by job title if the total remuneration is between £50,000 and £150,000 and by name if it is over £150,000.

⁴ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

67. The Regulations only affect a person's reasonable expectations regarding the actual amounts of money paid out and their reasonable expectations in other contexts may differ.
68. In the case, the Authority has also referred the Commissioner to the requirements of the Accounts and Audit Regulations and to the requirement that it accounts for payments made to leavers by way of redundancy payments or exit packages.
69. The Commissioner notes the contents of the Authority's Audited Statement of Accounts for 2017-18⁵ which was published on 31 July 2018. On page 47 of those accounts, the remuneration table records the Authority's former Director of Policy, Strategy and Communications' salary, fees and allowances. It also notes that he left the Authority's employment in December 2017.
70. Page 48 of the same accounts provides a table which records the payments made in respect of redundancy and exit packages. The table provides figures in 5 cost bands for increments of £20,000, up to £100,000. It is not possible to adduce the identity of an individual from the figures shown in the table nor is it possible to say with any certainty what amount was paid to 9 of the ten individuals recorded for 2017/18.
71. The Commissioner accepts that the information published by the Authority satisfies the requirements of the Accounts and Audit Regulations. She also acknowledges that information requested by the complainant, if it is held, is not required to be disclosed by statute.
72. Having considered the Authority's representations, the Commissioner is minded to agree with the Authority's position in this matter.
73. The Commissioner has concluded that to confirm or deny whether the Authority holds the requested information would be unfair to its former Director.
74. This conclusion is made in consideration of the reasonable expectations of the former Director and of the impact on him which would flow from making that confirmation or denial.
75. The Commissioner considers that the information which the Authority has published in its audited accounts in respect of exit payments made

⁵ https://www.westyorks-ca.gov.uk/media/3441/statement-of-accounts-2017-18-audited_31jul2018.pdf

to former staff members fully satisfies the legitimate interests of the public.

76. The Commissioner's decision is that West Yorkshire Combined Authority is entitled to rely on section 40(5) of the FOIA in respect of the information requested by the complainant at part 6 of his request.

Section 1 - right to access information held by public authorities

The tendering process and the information held by the Authority

77. On 20 August 2018, and following a telephone conversation with the Commissioner's representative, the complainant sent the Commissioner an email containing a number of points about the information which the Authority had disclosed and the extent of the information which he considers should be available to the public.
78. With the complainant's permission, the Commissioner sent his email to the Authority and asked for its position in respect of the points made.
79. The complainant's email advised the Commissioner of his belief that a lot of information anyone would reasonably expect to be held has not been disclosed. The Authority has explained to the Commissioner why its disclosures have not met the complainant's expectations. It says:
80. "Following the procurement exercise, the contract with Ice Creates was entered into under a number of purchase orders that reference the Combined Authority's standard terms and conditions. Regardless of what the requester believes this contract should look like the reality is that a bespoke contract simply was never entered into and does not exist. Under our contract standing orders that were in place at the time of the procurement exercise, the use of purchase orders was a standard method of contracting for the Combined Authority for orders of this value."
81. The Authority provided the Commissioner with a copy of its own tender request form and the notification made to ICE Creates concerning the award of the contract. This information was given to ICE Creates Ltd via the Authority's procurement portal. The Authority also provided the Commissioner with a copy of its standard terms and conditions of contract.
82. The Authority advised the Commissioner that the tender request form and standard terms and conditions were not disclosed to the complainant at the time of the request. The Authority now accepts that this information might have assisted the complainant in understanding its contracting arrangements with Ice Creates.

83. Notwithstanding the above, the Authority's position is that the contract with ICE Creates (i.e. the purchase orders referencing the Combined Authority's standard terms and conditions) have been disclosed and no further information is held.
84. During the course of his correspondence with the Authority, the complainant noted that the Authority had informed him that the contract was for £36,000 a year. The complainant advised the Commissioner that he did not know where this figure came from as the Authority never provided any information to support that figure.
85. Having examined the Authority's website, the complainant noted there is a three-year contract with ICE Creates with a value of £144,000 and not one for £36,000.
86. The Authority has explained this by advising the Commissioner that it tendered for a 3 year contract with a value of £36,000 per year and it provided the Commissioner with copies of the tender request form and tender documentation. The Authority advised the Commissioner that, following evaluation and the selection of the winning provider, a full 3 year contract was not entered into.
87. Rather than entering into a 3 year contract, individual orders for coaching services were placed with ICE Creates using purchase orders and therefore the total spend on the contract, at the date of the request, was £36,000. The Authority points out that this can be ascertained by adding up the total value of the purchase orders raised.
88. The Commissioner understands that the documentation concerning the Authority's contracting arrangements with ICE Creates has been provided to the complainant subject to the redaction of exempt information, which is comprised of the individual bid documentation from all three companies, the itemised costing information, the quality scores and comments from the tendering process which are considered above from paragraph 26.
89. The complainant directed the Commissioner's attention to a reference to a review date in September 2019, and he pointed out that this is not at the end of the year which the Authority had previously informed him. The Commissioner put this to the Authority and she was given the following explanation:
90. "Our usual practice would be to undertake regular reviews of any arrangements irrespective of any formal contract."
91. The complainant asserted that the information which the Authority has so far disclosed to him does not transparently show how this, the ICE Creates Ltd, contract was arrived at or what its actual value is. He

advised the Commissioner that no correspondence between the Authority and ICE Creates has been provided to support the contract at all, merely background information on a tender process and some purchase orders underpinning actual expenditure.

92. The complainant strongly asserts that, if no written contract exists – which he says, “would seem very unusual for a contract with a value of £144,000” - there must surely at least be internal and external correspondence with the company, detailing what is going to be provided, to who and to what value.
93. These points were put to the Authority and the following explanation was given: “The written contract is the Combined Authority’s standards terms and conditions as referenced on the purchase orders.”
94. In addition to the foregoing points, the complainant asserts that the information provided about the other two executive coaching companies is even more threadbare. He says it is, “just a very short email exchange from unidentified people which suggested the leadership team will be consulted and that's it”. The complainant says that he has been given no evidence of the consultation which took place and no correspondence either internally or externally with the companies involved to show what the arrangement or contract was going to be.
95. The complainant added, “The only information provided is some purchasing orders with no other context as to how this spending came about at all. It's not even clear how the companies concerned would know they were being considered for work or how they knew they had obtained work.
96. Again, the Commissioner put the complainant’s assertions to the Authority and she was given the following assurance:
97. “The information held by the Combined Authority has been disclosed to the Commissioner and was either disclosed to the requester or withheld under section 43(2). The names of junior members of staff have been redacted pursuant to section 40(2) of the FOIA. The identity of the approving officer has been disclosed as part of the internal review as this was mistakenly redacted in response to the initial request.”
98. The Council’s assurance indicates the complainant’s imperfect understanding of the extent to which the Council holds information relevant to his request: Regardless of what recorded information the complainant believes the Council should hold to ensure accountability, the Council’s position is clear – the Council has considered all of the recorded information it holds relevant to the request and has withheld only those pieces of information which are exempt. There is no provision

in the FOIA for a public authority to create recorded information in order to respond to a request nor does the Act require a public authority to explain its actions or provide a commentary.

99. On 31 October 2018, the complainant wrote to the Commissioner and provided her with links to the Authority's current Standing Orders⁶ and those in place when the executive coaching was delivered⁷. The complainant stated his belief that, "It would appear this contract is classed as Category D", and he added, "I can't see any reference to standard terms and conditions and contracting via 'purchase order' as WYCA seem to have suggested is the case.
100. The Commissioner has examined both sets of Standing Orders. The Commissioner notes that item 'k' in the definitions section of the 2014 Standing Orders relates to Purchase Orders as does paragraph 8.1.
101. The complainant also drew the Commissioner's attention to paragraph 2.7. of the Authority's current Standing Orders. This states –
- "It shall be a guiding principle, when any employee is making a determination under this part of Standing Orders, that in making such determination they have regard to the need to demonstrate that the Combined Authority will obtain value for money and that reasonable steps are taken to ensure that no supplier or potential supplier is treated unfairly in the selection process and that a written record of each determination and the reasons for making it is kept on a file maintained by an officer for that purpose or on Proactis."
102. Whilst it is not the Commissioner's role to determine whether the Authority has complied with its own Standing Orders, the Commissioner is content that the tender evaluation spreadsheet contains information which is likely to satisfy the requirements of paragraph 2.7.
103. The Commissioner notes that the Tender Evaluation spreadsheet contains details of all those companies which submitted tenders, an evaluation of their prices, quality scores and comments and a summary.

⁶<https://westyorkshire.moderngov.co.uk/documents/s8160/Contracts%20Standing%20Orders.pdf>

⁷[https://westyorkshire.moderngov.co.uk/Data/West%20Yorkshire%20Combined%20Authority/20140401/Agenda/140401%20-%20WYCA%20\(1%20April%202014\).pdf](https://westyorkshire.moderngov.co.uk/Data/West%20Yorkshire%20Combined%20Authority/20140401/Agenda/140401%20-%20WYCA%20(1%20April%202014).pdf)

104. In view of the Authority's explanations of the points raised by the complainant, the Commissioner is content that she has considered all of the recorded information held by the Authority which falls within the scope of the complainant's request. The Commissioner is satisfied that, on the balance of probabilities, the Authority holds no further information.
105. At paragraph 52 above, the Commissioner noted the Authority's acknowledgement that the section 43 exemption does not apply to three pieces of recorded information which it has not disclosed to the complainant in response to his request and which should have been.
106. The Commissioner considers that the Authority has contravened the requirement of section 1 of the FOIA by failing to disclose to the complainant all of the information which falls within the scope of his request, which is not exempt under any of the exemptions in Part II of the FOIA.

Right of appeal

107. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

108. 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.

109. 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
Wilmslow
Cheshire
SK9 5AF