

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2021

Public Authority: Blackburn with Darwen Borough Council

Address: Town Hall
Blackburn
Lancashire
BB1 7DY

Decision (including any steps ordered)

1. The complainant has requested information regarding a section 114 notice (Local Government Finance Act 1988). Blackburn with Darwen Borough Council denied that the information was held.
2. The Commissioner's decision is that, on the balance of probabilities, Blackburn with Darwen Borough Council does not hold the requested information.
3. The Commissioner does not require any steps.

Background

4. The Commissioner notes that section 114 of the Local Government Finance Act 1988 requires a councils' chief finance officer to issue an s114 notice reporting to all elected members an actual or impending seriously unbalanced budget.

Request and response

5. On 30 July 2020 the complainant wrote to Blackburn with Darwen Borough Council ("the council") and requested information in the following terms:

"I require an appointment to see the complete audit of the filings of the S114 form as of 23rd March 2020.

Please provide a copy of the S114 form which has been filed for Blackburn with Darwen Borough Council."

6. The council responded on 12 August 2020. It refused to provide the requested information. It wasn't clear about the exemption cited however it stated that it was advising, in accordance with section 17(5) of the FOIA, that the request was refused. In terms of the basis for the refusal the council stated:

"A public authority which, in relation to any request for information, is relying on a claim that section 12 (Exemption where cost of compliance exceeds appropriate limit) or Section 14 (Vexatious or repeated requests) applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

7. The complainant requested an internal review on 25 August 2020. The complainant then contacted the Commissioner as they had not received a response.
8. Following correspondence from the ICO, the council advised that it had not received the internal review request. It provided the complainant with the outcome of an internal review on 10 December 2020 in which it confirmed that the request was refused on the basis of section 14 (vexatious requests), stating:

"This is because your requests continue to demonstrate all of the vexatious behaviours that have led to the refusal of previous requests."

9. During the course of the Commissioner's investigation, the council revised its response. On 9 September 2021 the council wrote to the complainant to advise that the requested information was not held. It stated to the complainant:

"The Council have not filed a S114 form, as such there are no records to inspect in relation to this request."

Scope of the case

10. The complainant contacted the Commissioner on the 19 November 2020, initially in regard to the refusal notice of 12 August 2020 and the lack of response to their internal review request. Following the council's revised response of 9 September 2021, the complainant confirmed that they dispute that no information in scope of the request is held.
11. The scope of this case is whether the council is likely, on the balance of probabilities, to hold any information in scope of the request.

Reasons for decision

Section 1 – General right of access to information

12. Section 1(1) of the 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.*

13. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
14. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
15. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

16. The complainant advised the Commissioner that they have evidence that the form does exist because the council had to declare itself bankrupt in order to retrieve Covid-19 grants from the government.
17. The complainant forwarded the purported evidence to the Commissioner. It consists of a letter from the council in response to a separate information request. In that letter the council advises of the funding it received to support the loss of income and additional expenditure requirement due to the impact of the pandemic.

The council's position

18. The council advised the Commissioner that it does not hold any information in scope of the request because a section 114 (S114) notice has never been filed and neither has the council been declared bankrupt.
19. The council advised that it had not given this response initially because it was receiving a high level of requests from the complainant which were disrupting the council's provision of services. It was concerned that any response would spur further enquiries.

The Commissioner's conclusion

20. The Commissioner observes that S114 notices tend to be reported in the press. There is press coverage from June 2020¹ stating that many large councils were concerned that they may meet the criteria to issue such a notice. However, there is nothing reported in this respect that specifically names the council in relation to bankruptcy or an S114 notice.
21. The Commissioner does not consider that the evidence provided by the complainant constitutes evidence that an S114 notice had been filed.
22. The Commissioner has no reason to dispute the council's position that it had not filed an S114 notice and therefore does not hold any information in scope of the request.
23. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.

¹ [Coronavirus: UK councils fear bankruptcy amid Covid-19 costs - BBC News](#)

Right of appeal

24. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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

Janet Wyles
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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