

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 May 2012

**Public Authority:** Sheffield City Council  
**Address:** Town Hall  
Pinstone Street  
Sheffield  
South Yorkshire  
S1 2HH

#### Decision (including any steps ordered)

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1. The complainant requested information from Sheffield City Council ("the council") relating to the services provided by his company. Following a long exchange of correspondence and the provision of some information, the council confirmed that it did not hold any further recorded information. The complainant did not accept this was the case.
2. The Commissioner's decision is that the council did not hold the information required.
3. The Commissioner does not require any steps to be taken.

#### Request and response

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4. On 23 April 2010, solicitors acting on the complainant's behalf requested information from Sheffield City Council ("the council") in the following terms:

*"We act for Public DataWeb Limited of [address] and have been consulted by them in connection with a Service Agreement dated the 1 April 2004 entered into by them and the Council and earlier agreements involving:-*

1. *JC Decaux Limited; and*

2. *CSL Group Limited and Service & Systems Solutions Limited as agents for the Council;*

*following a successful tender by our Client to supply the Council with outdoor touch-screen kiosks giving members of the public access to databases with city information.*

*Pursuant to the Freedom of Information Act 2000 we hereby request you to provide us with minutes of full Council or internal meetings, copies of interdepartmental memoranda, and correspondence between the Council and our Client or any of the parties named above relating to: -*

1. *The tender to supply public access services in 2000/2001;*
  2. *The Approvals given by the Council for the agreements mentioned above;*
  3. *The monitoring of the system; and*
  4. *The agreements and amendments to the contract for street furniture between the council and JC Decaux arising from our Client's involvement".*
5. Following the Commissioner's intervention prompted by an initial complaint by the complainant, the council responded on 29 July 2010 and said that it had not received the original request. The council supplied some information but in the main, its response was that the information requested was not held.
  6. Following a long delay which the Commissioner understands was a result of correspondence sent to the complainant's solicitor not being forwarded on, the complainant contacted the council about the response on 10 May 2011. In this letter, he expressed dissatisfaction with the response provided. In particular, he said that he wanted the contract that the council has with JC Decaux and he also said that amendments had been made under instructions from [names]. He said that the reason for this was to expand the "JCD coverage" so that funds from their revenue could be provided in lieu to Public DataWeb Ltd.
  7. The council responded on 9 June 2011. It said that it had decided to handle the request under the Environmental Information Regulations 2004 ("the EIR") rather than the FOIA. It said that the information may be excepted under regulation 12(5)(b) because it might prejudice an investigation by the Office for Fair Trading. It said that it would contact the OFT. Following consultation, the council wrote to the complainant on 28 June 2011 to supply a copy of the relevant contract.

8. Following a further exchange of correspondence in which the complainant continued to state his dissatisfaction, the Commissioner understands that the council wrote to the complainant on 25 July 2011 and 29 September 2011. It said that no further information was held falling within the scope of the request.

### **Scope of the case**

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9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council held any recorded information that it had not provided.
10. Following a telephone conversation with the Commissioner, the complainant agreed not to pursue the part of his request that asked for correspondence that would already be in the complainant's possession such as correspondence between his company and the council or the service agreement from April 2004. To bring greater focus to the outstanding issues, the complainant also agreed to withdraw part 3 of his request relating to the monitoring of the system.
11. In relation to part 2 of the request, the complainant expressed a particular interest in minutes of council meetings. The council confirmed to the Commissioner that all records of past minutes are already publicly accessible at "Shoreham Street" Libraries and Archives. Details are available on the council's website, for ease of reference, at the following link:

<https://www.sheffield.gov.uk/libraries/archives-and-local-studies/about-us/visiting-us/how-to-find-us.html>

As this information is already publicly available and therefore accessible to the complainant, the Commissioner has scoped this information out of his investigation.

### **Reasons for decision**

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#### **Did the council hold more recorded information?**

12. 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 that is the case, to have that information communicated to him. Information is still held by a public

authority even if it is in the physical possession of a third party. In that scenario, it will be held on behalf of the authority.

13. 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 was not held and he will consider if the authority is able to explain why the information was 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 balance of probabilities".<sup>1</sup>
14. By way of brief background to this case, the Commissioner would like to explain that the complainant is currently in dispute with the council following the termination of services it was providing. Although there is no obligation to explain why information is being sought, the complainant told the Commissioner that he is seeking to establish that the council had a contractual duty and held more information about its relationship with Public DataWeb than it is now willing to acknowledge. The Commissioner asked the complainant to clarify why he was not satisfied with the information provided and why he believed that more was held.
15. Public DataWeb said that no tender documents had been provided (relating to point 1 of the request). It said that this would prove that Public DataWeb won the tender, which was to put in, in conjunction with New World Payphones and later JC Decaux, multiple street internet touch screen systems. The Commissioner queried whether the complainant already had copies of this information and the complainant explained that he had never submitted a tender directly. He explained that on the instructions of the council and because it was only a small company, it had submitted relevant information to one of the council's contractors, which the complainant referred to as "CSL". The complainant understands that CSL then put together a tender on its behalf however Public DataWeb had never actually been sent a copy of this information because it had not considered it necessary at the time.
16. In relation to point 2 of the request, Public DataWeb said that it did not accept that the council had no minutes or any other information showing approvals. It said that the council had meetings to pass the installation and the complainant personally attended and presented

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<sup>1</sup> This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

several demonstrations of the company's systems in council chambers and the town hall to all elected members and service staff.

17. In relation to point 4 of the request, the complainant said that the contract provided was unsatisfactory because it related to an agreement made in the 1990s, long before Public DataWeb was even involved. He said it had also asked for the amendments to the JC Decaux contract. The complainant believes that the contract would have been amended following the involvement of Public DataWeb. In particular, the complainant discussed with the Commissioner the fact that Public DataWeb were not making enough money from the work and following an appeal to the then Chief Executive, plans were put in place to install advertising (large billboards). The complainant alleged that reference was made at the time to "backing" this agreement into the original contract. The complainant said that he believes this information may be held by a third party contractor and the council had not properly considered the possibility that information may be held by a third party on its behalf.
18. In response, the council told the Commissioner that it maintained that no further information was held. The council said that it had conducted very thorough searches of relevant electronic and paper files to check that no further information was held. It had also consulted a variety of staff members who were involved in these particular issues. The council said that it had not consulted third party contractors because it did not consider that there was any reason for it to do that.
19. As regards point 1 of the request relating to tenders, the council told the Commissioner that the council had contracted with a company referred to as CSL however it was that company that chose to sub-contract to Public DataWeb and to New World Payphones. The council said that under the doctrine of privity of contract the council would not expect to hold copies of contractual documentation relating to third parties. The council said that there is no reason why it would hold a copy of Public DataWeb's tender as it had neither generated the information nor had any right to such information. On the subject of whether any relevant information may have been contained in documentation concerning the contract with CSL, the council commented that it considered that Public DataWeb had effectively been "reappointed" in 2004 and this had rendered the earlier documentation no longer relevant to the work. It said any relevant earlier documentation would have been destroyed by the time of the request in line with standard legal practice.
20. On the subject of "approvals" referred to in point 2, with particular references to minutes of meetings, the council said that any information that was recorded is already publicly accessible (see

scoping section of this notice). In relation to any other records of "approval", the council told the Commissioner that its commercial services department would not have retained the information due to its age and any relevant information would have been destroyed before the request was made.

21. In relation to point 4 of the request, the council said that its position was that there had never been any amendment or agreement to the contract. It said that there was no possibility that this information would be held by a third party contractor because this particular contract only concerned JC Decaux and no third parties were involved. The council supplied the Commissioner with copies of information showing that there was a report prepared in 2008 proposing to give JC Decaux an extension to the original term. There was also a letter written by the council to JC Decaux about this matter. The council said that it did not consider that this information fell within the scope of the request because the extension was never authorised. It said that this was the only information relating to a considered amendment to the contact. In view of the wording of the request and the Commissioner's understanding of what information the complainant was seeking, the Commissioner accepts that this information does not fall within the scope of the request.
22. The council also clarified that some variations could have been made that would not have warranted paper work. The council referred to the relevant clauses of the agreement which it said were clause 8 "Supply of Further Equipment or Other Equipment" and Clause 13 "Variations". The council highlighted that neither clause expressly specifies that the agreement under these provisions have to be made in writing or retained.
23. In view of the above, the Commissioner decided to accept that the council did not, on the balance of probabilities, hold the information requested by the complainant by the date of the request. Relevant information is likely to have been held prior to the date of the request however due to the age of the information being requested, the Commissioner accepts that any such information had been destroyed by the date of the request in line with the council's records management procedures at the time. The Commissioner also accepts the explanations provided by the authority on the subject of why it would not be necessary to consult any third parties about this request.

## Right of appeal

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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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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** .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**