

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 January 2013

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

#### Decision (including any steps ordered)

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1. The complainant requested information concerning prices, income, costs, expenses, etc. that Liverpool City Council (the council) received from) Liverpool Direct Ltd (LDL) and related information.
2. The Commissioner's decision is that there is no further information held by the council that has not been supplied to the complainant.
3. The Commissioner requires no steps to be taken.

#### Request and response

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4. On 23 October 2011, the complainant wrote to the council and requested information in the following terms:

*"Previous responses to FOI requests have made it clear that LDL does not provide the quarterly monitoring reports it is required to under the terms of the contract*

*(<http://www.whatdotheyknow.com/request/co...>).*

*Since LCC is both a client and a shareholder of LDL, and given the clear commitment to open book accounting by both parties, could you please let me know the level of detail on the prices, income, costs, expenses, etc. of the company that LCC receives from LDL, how frequently it receives such information, the positions/job titles of the people to whom it is distributed, and the reasons they receive it. I would expect the response to include any council*

*committees such as Scrutiny Panels, Select Committees, etc. with which the information is shared.*

*I would also expect the response to include all reports on third party work which LDL undertakes or proposes to undertake, since much of the work involved is performed by LCC-seconded staff, and such contracts have to be specifically approved by the LCC director(s) of LDL, under the terms of the JVA.*

*I appreciate that the information itself may well be confidential, but its existence, distribution and use are not. A list of reports, together with a brief summary of the kind of information each contains, will suffice."*

5. The council responded on 1 December 2011. The response was as follows:

*"1. There is a core contract or investment that is agreed rolling forward on an annual basis*

*2. As and when required*

*3. This will depend on the client.*

*4. LCC receives a sum of money in respect of all third party work. The vast majority is carried out by non-seconded (e.g. BT - LGS staff employed by BT/LDL."*

6. On the same day the complainant requested an internal review as she stated that the information provided was not what she had requested:

*"I asked for an indication of the level of detail on the prices, income, costs, expenses, etc. of LDL that LCC receives, and specified that a list of reports, together with a brief summary of the kind of information each contains would suffice.*

*It would appear from your response that you think I am referring only to the work done for third party clients. This is not the case. I am asking about the management account-type information that LDL is required to provide to LCC in its capacity as a shareholder of the company. So this refers to the overall operations of LDL, not the third party work only.*

*I mentioned the third party work merely to point out that I would expect this to be included in reports of the type required under the JVA [Joint Venture Agreement]. However, since you specifically state that most of the third party work is done by BT- seconded staff, I would ask that you include information to substantiate this assertion - including information on how LDL quantifies and reports to LCC the*

*work done by LCC staff on third party contracts and on the method used to quantify this use of resources (hours worked, employee numbers in WTE etc.). To avoid further confusion, may I again make clear that I am not asking for the information itself (which I appreciate may well be confidential) - but for a summary or list of the kind of information that is received, pursuant to the JVA."*

7. The council provided its internal review response on 25 January 2012 which stated that it had failed to provide the information the complainant had requested due to a misunderstanding of what had been requested and a failure to broaden the search within the council for the correct information. More information was provided as a result of the review.
8. However, the complainant again stated that this information was not what she had requested and clarified further:

*"This is all about invoices, i.e., it is information the council receives as a customer of LDL, it contains no mention of any of the information the council will receive as a partner in the joint venture in order to discharge its responsibilities as a shareholder with at least two directors on the board of the company. I specifically requested a list of the kind of information received, as I entirely understand that much of the information itself may be confidential ..."*

## **Scope of the case**

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9. The complainant contacted the Commissioner on 28 March 2012 to complain about the way her request for information had been handled.
10. The Commissioner considers the scope of this case to be whether there is any remaining information relating to the request that was held by the council at the time of the request that has not been provided to the complainant.

## **Reasons for decision**

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### **Section 1**

11. 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.

12. The Commissioner wrote to the council on 9 August 2012 to ask for its arguments relating to whether it had provided the complainant with the information it held at the time of the request.
13. On 29 October 2012, the council provided another review of the request. It acknowledged that the initial response had not provided a proper response to the request. The subsequent review by the council on 25 January 2012 had been based on an apparent misunderstanding. After further clarification, the council confirmed that it did hold the information that related to that clarification and this was now provided to the complainant.
14. However, the complainant remained dissatisfied. She pointed out that the council had acknowledged that its initial response failed to address any of the information she had requested. She stated that its second response failed to address it again. The complainant did not accept that the further review had provided her with the information she had requested and outlined her reasons as follows:
  - Although she had not wanted to know the actual financial information provided to the council by LDL because she knew it would be refused as confidential, she had wanted to know what kinds of financial information had been provided to the council by LDL and who it was distributed to "*pursuant to the JVA*".
  - The complainant maintains that LDL needs to provide this kind of financial detail to the council as a requirement in its capacity as a shareholder of the company. The complainant believes that the council has a statutory duty to obtain value for money and that the provision of financial information is a legal requirement and not merely her opinion.
  - She had been endeavouring to find out what governance information the council actually gets and who it goes to, and that the request was not intended to elicit performance information.
  - The complainant underlined the fact that she had requested who received the information from LDL. The complainant states that the Mayor of Liverpool and the Chief Executive of the council are both directors of LDL and that they have statutory obligations to the company. The complainant pointed out that the council had actually stated in a response to a previous request that these directors shred all their board papers after every meeting so there is no record kept. The complainant argues that it is in the public interest to ascertain

that there are robust measures in place at the council to ensure that the people actually making decisions about the value of the investment and the value of the services obtained from it, do not have conflicts of interest.

15. 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>.
16. In deciding where the balance lies, the Commissioner considers the scope, quality and thoroughness of searches conducted by the public authority together with any reasons offered by the public authority or the complainant as to why the information is not held or should be held, where appropriate.
17. The Commissioner's approach was supported by the Information Tribunal in the hearing of Thompson and Dyke v Information Commissioner EA/2011/0164 and 0165. The Tribunal stated that the Commissioner is:  
  
*"...entitled to accept the public authority's word and not to investigate further in circumstances where there is no evidence as to an inadequate search, any reluctance to carry out a proper search and any grounds for believing there is a motive to withhold information actually in its possession."*
18. The Tribunal referred to the Commissioner's national remit and limited resources and that to act otherwise might require a full scale investigation to be carried out in every case where a public authority is "...simply not believed."

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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

19. The Commissioner generally expects a public authority to answer certain detailed questions regarding what searches it has made to establish whether it held or did not hold requested information at the time a request was made. Although the council has not addressed itself to these questions specifically, it recognised the inadequacy of its first response and the internal review that followed and undertook to look again into what was held in relation to the request. Therefore he is satisfied, in this case, that the council has carefully reviewed what information it holds in relation to this request and considers that it has now provided everything it holds. Although the council has altered the way it handles requests as a result of this complaint because it recognised the misunderstandings that had taken place, it maintained that it was only obliged to consider what was held at the time of the request and not opinion about what should have been held.
20. The Commissioner notes that the complainant is suspicious about the responses provided by the council because she believes that the council is obliged to hold other information in relation to this request both as a contractual requirement and to satisfy public accountability when large sums of public money are being expended. It is beyond the Commissioner's remit to consider whether a contract or public accountability necessitates the holding of certain information. The FOIA does not require that information be held or generated. However, the Commissioner is satisfied that the council, after the initial failures to respond correctly, has looked again into this request thoroughly and that there is insufficient evidence to suggest that the council holds anything further than it has provided to the complainant, despite the complainant's firm belief that the council is obliged to do so.
21. For the above reasons, the Commissioner has concluded in this case that, on the balance of probabilities, no further requested information is held.

## **Section 10**

22. Section 1(1) of FOIA requires a public authority in receipt of a request for information to confirm whether it holds the requested information, and, if so, disclose it to the applicant. Section 10(1) of FOIA provides that this must be done within 20 working days of receiving a request. In this instance the council failed to respond within the statutory timeframe.

## Right of appeal

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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](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)

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 .....**

**Andrew White**  
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**Information Commissioner's Office**  
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