

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 01 August 2013

**Public Authority:** City of York Council  
**Address:** West Offices  
Station Rise  
York  
YO1 6GA

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to "All York" bus tickets. City of York Council (the "council") provided some of the requested information but withheld information regarding the total number of tickets sold, citing the exemption for information provided in confidence (section 41(1) of the FOIA).
2. The Commissioner's decision is that City of York Council has failed to demonstrate that section 41(1) of the FOIA is engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the information to the complainant.
4. 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

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5. On 16 August 2012, the complainant wrote to the council and requested information in the following terms:

*"1. How many "All York" bus tickets have been sold since its launch in July?"*

2. *What this equates to as a percentage of total bus journeys made in York?*
3. *How much the Council has spent on promoting the "all York" ticket?*
4. *How much the Council has spent on processing the allocation of "all York" ticket revenues to individual bus companies (including officer time)."*
6. The council responded on 28 August 2012. It provided some information and confirmed that it was refusing the first two parts of the request under the exemption for prejudice to commercial interests.
7. Following an internal review the council wrote to the complainant on 24 October 2012. It revised its position in relation to request part 1, refusing this under section 41 (information provided in confidence) and, in relation to request part 2, the council confirmed that the information was not held.

### **Scope of the case**

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8. On 21 November 2012 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The Commissioner confirmed with the complainant that his investigation would consider whether the council had correctly applied section 41 of the FOIA in refusing part 1 of the request.

### **Reasons for decision**

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#### **Section 41 – information provided in confidence**

10. Section 41(1) of the FOIA states that information is exempt if it was obtained by the public authority from any other person and if disclosure of the information would constitute a breach of confidence actionable by that or any other person.

*Was the information obtained from another person?*

11. The withheld information is that specified in part 1 of the complainant's request, namely, *"How many "All York" bus tickets have been sold since its launch in July?"*.
12. The council clarified that All York tickets are sold by all bus operators in York and allow a passenger to travel on all companies' buses. It

confirmed that operators provide the council with information about how many tickets they have sold and how many journeys they have provided to passengers holding such tickets. Based on these submissions, the council subsequently apportions sales income to each provider.

13. The council explained to the Commissioner that bus operators consider the information they provide to the council to be confidential since they would not want information regarding sales volumes to be accessible to competing providers.
14. In considering this matter it occurred to the Commissioner that, whilst the aggregate total requested would be the sum of individual operators' submissions to the council, providing there were more than 1 operator, disclosure of a total would not allow for an individual submission to be identified. It appeared to the Commissioner that, if this were the case, the information disclosed would be qualitatively (and quantitatively) different to that provided to the council.
15. The council confirmed to the Commissioner that 9 bus operators participated in the All York tickets scheme.
16. The Commissioner asked the council for its help in understanding how disclosure of an aggregate sum of all tickets sold might constitute disclosure of the confidential information it had identified, namely, the number of tickets sold by an *individual* operator.
17. The Commissioner provided the council with his initial view that disclosure of an aggregate sum would not result in a breach of the confidentiality associated with an individual operator's submission to the council and invited it to present further arguments in support of its use of the exemption.
18. The council confirmed that it maintained that the bus operators considered that it would be harmful to them to disclose the information. It confirmed that it was not submitting any explanation as to why disclosure of the aggregate figure would cause harm or result in the disclosure of confidential information.
19. In the absence of a submission from the council which explains how an individual operator's ticket sales can be derived from the sum of all tickets sales, the Commissioner cannot conclude how this is possible.
20. Having considered the specific nature of the request and the arguments provided by the council, the Commissioner considers that the withheld information was not itself provided by another party by virtue of it being a composite of all the information provided by a number of parties. In short, the information identified by the council as being subject to a duty of confidence (individual operators' ticket sales) is not the information

which has been requested and would not be disclosed by making details of an aggregate sum available.

21. As the Commissioner has found that the information identified by the council as being provided by third parties is not the information which has been requested he has concluded that the exemption is not engaged.

## Right of appeal

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22. 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)

23. 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.
24. 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**