

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 April 2017

Public Authority: Lancashire County Council
Address: PO Box 78 County Hall
Fishergate
Preston
Lancashire
PR1 8XJ

Decision (including any steps ordered)

1. The complainant has requested information relating to Lender Option, Borrower option (LOBO) loans. Lancashire County Council refused the request, citing section 43(2) of the FOIA - the exemption for prejudice to commercial interests. During the Commissioner's investigation the public authority disclosed the withheld information to the complainant.
2. The Commissioner's decision is that Lancashire County Council disclosed the requested information outside the statutory time for compliance and breached section 10(1) of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 15 February 2016 the complainant wrote to Lancashire County Council (the "council") and requested information in the following terms:

"For each of the Lender Option, Borrower option (LOBO) loans Lancashire County Council currently has on its books, and for any historical LOBO loans, please provide:

1) Loan principal? 2) Maturity date? 3) Trade date when the loan was signed? 4) Initial interest rate? 5) Current stepped-up interest rate and step-up date where applicable? 6) Any formula or structure determining the interest rate where applicable? 7) The first LOBO option call date? 8) The LOBO option call frequency? 9) Day count convention used for calculation of interest payments? 10) The original broker of the loan and fee paid? 11) Broker and fee paid for any subsequent restructuring? 12) The relevant bank or financial institution(s) which issued each LOBO loan? 13) The name of the Treasury Management Advisor who advised on each LOBO loan? 14) Where available, the original unredacted LOBO loan contracts."

5. The council responded on 13 April 2016 and confirmed that it was withholding the information under the exemption for prejudice to commercial interests – section 43(2) of the FOIA.
6. Following an internal review the council wrote to the complainant on 24 November 2016. It stated that it was maintaining its position.

Scope of the case

7. On 13 October 2016 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. Initially, the Commissioner confirmed with the complainant that her investigation would consider whether the council had correctly withheld the requested information under section 43(2) of the FOIA.
9. During the course of the Commissioner's investigation the council withdrew its reliance on section 43(2) and disclosed the withheld information to the complainant.

10. The Commissioner advised the complainant that, in cases where information is disclosed during an investigation she does not investigate the original grounds for refusal. This decision notice is, therefore, confined to the timeliness of the council's provision of information.

Reasons for decision

Section 10(1) – time for compliance

11. Section 1(1) of the FOIA requires public authorities to inform a requester whether information specified in a request is held and, where it is, to communicate it to the requester.
12. Section 10(1) of the FOIA requires public authorities to comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
13. In this case the complainant submitted their request on 15 February 2016 and the council communicated the information to them during the Commissioner's investigation, on 11 April 2017.
14. As the council failed to communicate the requested information within twenty working days in this case the Commissioner has concluded that it breached section 10(1).

Other matters

15. Although they do not form part of this notice the Commissioner would like to note the following matters of concern.

Internal Review

16. The code of practice issued under section 45 of the FOIA (the "code") recommends that public authorities should provide a procedure for dealing with complaints about the handling of requests for information¹.
17. The code recommends that such complaints procedures or "internal reviews" should encourage prompt determinations of complaints.
18. The Commissioner considers that 'prompt determinations' in this context equates to 20 working days and that, only in rare cases, should internal reviews take longer. In any event, the Commissioner considers that no internal review should take in excess of 40 working days to complete.
19. In this case the complainant requested an internal review on 13 April 2016 and did not receive a response from the council until 24 November 2016. The Commissioner further notes that the internal review response was only issued by the council after her intervention.
20. The Commissioner expects that, in its future handling of requests, the council will observe the statutory deadlines and follow the recommendations of the code and the Commissioner's guidance.

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<http://webarchive.nationalarchives.gov.uk/20150730125042/http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

Right of appeal

21. 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

22. 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.

23. 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