

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **8 November 2018**

Public Authority: **Lancashire County Council**

Address: **PO Box 78
County Hall
Preston
Lancashire
PR1 8XJ**

Decision (including any steps ordered)

1. The complainant has requested information about the decision by Lancashire County Council ("the Council") to withhold reimbursement payments to a bus company. The Council responded that all held information had been previously disclosed in 2012, and that some outstanding information was withheld under section 41.
2. The Commissioner's decision is that the Council has failed to fully consider and respond to the request in accordance with the FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Undertake fresh searches for recorded information that would fall within the parameters of the request, and issue a fresh response that complies with the terms of the FOIA.
4. The Council 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

5. On 30 November 2017, the complainant wrote to the Council and requested information in the following terms:

In 2012 Blackpool Council, (I understand through their Transport Officer [redacted name]), made what I consider to be a malicious allegation against both me personally and my bus company. The allegation led to Lancashire County Council withholding concessionary fare reimbursement payments.

Can you please provide all of the information Lancashire County Council holds, to include correspondence/emails/meeting notes received from Blackpool Council or any other organisation, which contributed to the decision to withhold reimbursement payments. We are particularly interested in the instructions received on behalf of Blackpool Council and dialogue between Blackpool Council and Lancashire County Council on this matter, or any other organisation involved.

The payments related to bus routes 12 and 22 operated by [redacted business] (known then as [redacted business]) and [redacted business] between June 2012 and January 2013, when the matter was resolved through court action and subsequently through mediation with [redacted council officer name] on behalf of Lancashire County Council.

6. The Council responded on 5 January 2018. It stated that it held information that had previously been disclosed (in 2012), and that the remainder was withheld under section 41.

Scope of the case

7. The complainant contacted the Commissioner on 5 January 2018 to complain about the way his request for information had been handled.
8. The ICO initially accepted and investigated this case on the basis that the scope of the case would be the determination of whether the Council was entitled to withhold information under section 41.
9. However, having now considered the representations of both parties, the Commissioner considers that the scope of the case must be the determination of whether the Council has complied with section 1(1).

Reasons for decision

Section 1(1) – General right of access to information

10. Section 1(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 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.

Context

11. In the circumstances of this case, the ICO initiated an investigation to consider the Council's application of section 41. Following receipt of the Council's representations (including copies of the withheld information), the ICO identified that this withheld information was only part of wider information currently held by the Council that would seemingly fall within the parameters of the request, but which had not been disclosed in response to the request of 30 November 2017.
12. Whilst the Council has referred to having disclosed this wider information in 2012, the complainant has contested (in an email to the ICO on 12 May 2018) that the Council "...has never disclosed ANY information in response to an earlier request...", and has continued to assert this.

The Commissioner's conclusion

13. In the circumstances of this case, the representations from both parties indicate to the Commissioner that, before any consideration of an applied exemption, the Commissioner must address whether the Council has considered the full parameters of the request and issued a response that complies with section 1(1).
14. Whilst the Commissioner has noted the Council's position that it disclosed some relevant information in 2012, it is not feasible for the Commissioner to make a determination under section 1(1) on actions carried in 2012.
15. It is also reasonable for the Commissioner to consider that the Council's response to a request in 2017 may be entirely different to a response to an identical request in 2012. However, the Council's submissions indicate strongly that it has failed to consider and address this by undertaking fresh searches for information that would fall within the parameters of the request. In particular, the Commissioner notes that when asked to provide a copy of the information withheld under section 41, the Council indicated that it would need to undertake a search for it;

suggesting that the Council has failed to collate and review the information before providing its response.

16. The evidence available to the Commissioner therefore indicates that the Council has failed to undertake appropriate searches for held information, and issue a response that complies with section 1(1).

Right of appeal

17. 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

18. 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.
19. 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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