

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 26 May 2011

**Public Authority:** Blackpool Borough Council  
**Address:** Town Hall  
Blackpool  
Lancashire  
FY1 1GB

### Summary

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The complainant requested information about a series of thefts of overhead cable from the Blackpool tram system. The public authority stated that it did not hold the requested information. The Commissioner finds that, on the balance of probabilities, the requested information is not held by the public authority. He does not require any steps to be taken.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 7 March 2010 the complainant emailed Blackpool Borough Council (the council). He referred to a press cutting about the theft of substantial sections of overhead power cable from the Blackpool tram system and submitted the following request:

*"Please provide all dates and times of the thefts and the length of wire stolen at each theft of publicly owned materials. Please also provide evidence and detail of all reports to the police in regard to each individual theft of publicly owned materials. Also provide detail of any claims made to any insurer as regards these thefts of publicly owned materials. Please also provide all evidence of*

*measures taken to identify any culprits and extra security measures taken in order that these monumental thefts of publicly owned materials are not allowed to continue. In regard to this request I only require material of a general nature and not specific or classified information. Please also provide any other internal information that the council may feel is relevant to this request."*

3. The council replied on 17 March 2010. It stated that it did not hold information relating to dates, times and lengths of wire stolen at each incident, evidence and detail of all reports to the police and evidence of measures to identify culprits. It advised the complainant to contact Lancashire Constabulary, explaining that it should hold the information. The council provided the complainant with contact details for Lancashire Constabulary and also offered to transfer the request, if given permission to do so by the complainant.
4. The council also stated that no claims had been made to an insurer. It explained that it was withholding information about evidence of extra security measures taken to prevent future thefts on the basis of the exemption provided at section 22 of the Act – that the information was intended for future publication. It explained that a press release was planned when the strategy being developed with Lancashire Constabulary and local CCTV had been confirmed and implemented.
5. The complainant replied on 17 March 2010, requesting an internal review of this response. He expressed his concern that no information was held in relation to any reports of the thefts to the police or to any insurer. He referred to the press reports of the thefts being for 2.48 miles of cable, at a value of £135,000 and his doubts that such substantial matters would not be recorded by the council.
6. After further exchanges of emails, in which the council sought clarification of various matters and some matters were explained to the complainant, the council conducted an internal review and wrote to the complainant on 20 May 2010 with the outcome. The internal review confirmed that information about the dates, times and amounts of material in each theft were not held, and repeated its advice to refer the complainant to Lancashire Police. It confirmed that no information was shared with the police to identify culprits, as no such information was held. It also confirmed that no insurance claims or reports to the police had been made. In respect of the information previously refused under section 22 of the Act, it explained that the council had been working with Blackpool Transport and the police to improve security, which included consideration of the use of mobile CCTV and also that a private security firm was assisting with that project.

## The Investigation

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### Scope of the case

7. On 27 April 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He expressed significant doubts about the council's response, subsequently he specifically he asked the Commissioner to consider the following points:
  - he described it as an "absolutely ridiculous response" and complained about the lack of records held by the council;
  - he expressed his scepticism about who had reported the thefts if not the council;
  - he raised concerns about the lack of insurance claim; and
  - complained about the application of the exemption at section 22 of the Act.
8. The Commissioner observes that the council responded to the element of the request previously refused under section 22 of the Act, providing an answer to the enquiry in its internal review. As the Commissioner will consider the response at the time of a public authority's internal review, this element of the complaint has not been pursued further.
9. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.
10. The Commissioner wrote to the complainant about the proposed scope of his investigation. He explained his understanding that the complaint related to the council's response to those elements of the request for which the council claimed no information was held, namely the elements of the request relating to the reports of the individual thefts to the police; the dates, times and amounts of wire stolen in each theft; and any measures taken to identify culprits. With regard to the request for information about any insurance claims, the council response was that no such insurance claims had been submitted, therefore this is also understood to confirm that no information is held.
11. The complainant did not dispute the proposed scope of the Commissioner's investigation, therefore the scope of this case has been to examine whether the council held any information described in the request which has not been disclosed to the complainant.

## **Chronology**

12. The Commissioner corresponded with the complainant and received responses to various matters relating to the scope of the case, during January, February and March 2011. As a result of that correspondence, the Commissioner's investigation focussed on the council's 'not held' responses.
13. The Commissioner also made enquiries to the public authority by telephone and by email during February, March and April 2011. The responses are not summarised further, but will be dealt with as necessary in the analysis section, below.

## **Findings of fact**

14. The tram system in Blackpool is operated by Blackpool Transport Services (BTS), a wholly-owned company of the council. The tramways, tracks and cable are owned by Blackpool Council. Extensive refurbishment of the tram network, in an area governed by Wyre Borough Council, has been taking place, including replacement and updating of the overhead power line system. The thefts of cable from the overhead power line took place from sections of the tram network which had been shut down for this refurbishment and are understood to have involved the theft of the old power cable, before it could be taken down for replacement.
15. The 'valuation' of the stolen cable, reported by the local press at £135,000, is understood to be the estimated cost of replacement cable, extrapolated from invoices for small quantities of similar cable. This is not the value of the stolen cable, however, as that was essentially scrap material which would have required replacing in any event. The council explains that any losses suffered as a result of the thefts are therefore confined to the loss of the notional scrap value which might have been recouped from 'weighing-in' the old cable after replacement. This would be a much more modest sum.

## **Analysis**

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### **Substantive Procedural Matters**

#### **Section 1**

#### **Is the information held by the public authority?**

16. The council has explained that reports of the various thefts were made to the police by a number of parties, including members of the public,

security staff or contractors on site, BTS staff and, in some cases, the police themselves became aware of the theft taking place. The reports of thefts submitted by BTS were verbal. The Commissioner recognises that the initial report of a crime to police will commonly be done by telephone, he therefore finds no reason to dispute or query the council's assertion that this was the nature of the reports submitted by BTS staff.

17. The Commissioner notes that, as a company wholly-owned by Blackpool Council, BTS is a public authority in its own right under the provisions of section 3(1)(b) and section 6(1)(b) of the Act. Therefore if any information about its reports of thefts was held by BTS, it was held by BTS in its own right and not necessarily on behalf of the council.
18. The Commissioner did enquire whether the council nevertheless held documents which recorded details of the thefts, or other internal communications which might fall within the description contained in the complainant's request, for example emails from BTS or security staff, informing it of the thefts.
19. The council's response confirms that its searches have not located any other information of this nature. It explains that it searched all files and papers held by itself, and by BTS and the external consultant for the actual tram track refurbishment project. It comments that it has continually searched these records because the complainant has submitted numerous requests for information about the thefts, and it has informed him of what it holds on each occasion.
20. The council also explains that, because it had no knowledge of who had stolen the cable, it was unable to take any measures to identify the culprits. The Commissioner acknowledges that there is no apparent reason why information would be held on this specific element of the request.
21. The council explained that it has liaised closely with BTS, not least because the complainant had also submitted requests to BTS on the same general subject. It is therefore familiar with what information is held by either itself, or BTS in relation to the thefts, and that its extensive searches of both its and BTS' records have not located any further information beyond that which has been disclosed to the complainant.
22. The complainant takes the view that the reportedly substantial value of the stolen cable makes it likely that the council will have taken the matter of the thefts very seriously, and therefore it is likely that it holds considerably more information than it claims. He also cites a response he received to a related request, for the dates, times and lengths of cable stolen, which he submitted to Lancashire Constabulary. He argues

that this contradicts the council's response because the constabulary's letter, which contains the table of data compiled on the various thefts, describes the information disclosed as *"as provided by [the council engineers] when reporting the various thefts."*

23. For the reasons explained in the 'Findings of Fact' section, above, the actual seriousness (in financial terms) of the losses are modest. Furthermore, the Commissioner understands that it is likely that any interest in the scrap value of the cable was held by the contractor, not the council, as the cost of demolition contracts normally includes an offset to take account of the value of any materials which can be recovered by contractors. Consequently, the Commissioner considers it likely that the council does not share the complainant's view of the seriousness (to it) of the thefts.
24. With regard to the apparently contradictory information in the disclosures made by the police, the Commissioner is satisfied, for reasons explained at paragraph 16 above, that the various reports of the thefts came from a number of sources, not from 'the council engineers' and that it is more likely that the comment in the police disclosure is mistaken in its characterisation of the source of the data disclosed to him.
25. The Commissioner is satisfied that the council has conducted sufficiently thorough and appropriately directed searches for information in response to the complainant's request. He accepts that reports of the thefts were not made by its staff, in which case records might have been expected to be made, but by a variety of individuals in various circumstances, including members of the public.
26. The council explained to the complainant that no insurance claims had been submitted about these thefts of cable. In subsequent discussions with the Commissioner, the council clarified that the cable was not insured, hence no claim was possible. It explained that, in common with much public property located outdoors, insurance for such items is problematic due to the inherent vulnerability of the property. The council was initially reluctant to admit this to the complainant, being concerned that if this knowledge entered the public domain it might stimulate further thefts. It has subsequently decided to make this public knowledge, due to the high level of local interest. The Commissioner is therefore satisfied that no information will be held on the *"detail of any claims made to any insurer as regards these thefts[...]"*.
27. While he agrees with the complainant that it is likely that the council would have been informed about the thefts, at least by BTS, there is no clear business need for the council to hold the requested information because no insurance claims would be submitted in respect of the thefts

and the matter was already in the hands of the police. He is therefore unable to conclude that information would be required to be held, and accepts that any such notification of the thefts might well have been verbal.

28. Consequently, having determined that there is no clear business need to hold the requested information and that appropriately directed searches have not located it, the Commissioner finds that, on the balance of probabilities, no information is held by the council of the description specified in the request.

### **The Decision**

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29. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

### **Steps Required**

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30. The Commissioner requires no steps to be taken.

## Right of Appeal

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31. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

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

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 26<sup>th</sup> day of May 2011**

**Signed .....**

**Gerrard Tracey  
Principal Policy Advisor  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## Legal Annex

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### General Right of Access

#### **Section 1(1) provides that -**

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

#### **Section 2(3) provides that –**

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
  - (i) subsection (1), and
  - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
  - (iii) section 41, and
  - (iv) section 44"