

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 11 July 2011

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

### Summary

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The complainant requested a breakdown of a figure of £135,000 quoted in the press as the value of a series of thefts of tram cable. The complainant was unhappy with the response provided as he alleged that it contradicted responses to previous requests for information. The Commissioner investigated but found no breaches of the Act and therefore 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 25 August 2010 the complainant made the following request for information:

"We refer to the attached press article from the Gazette dated 03 March 2010. Please provide a full breakdown of the figure of £135,000 that the paper attributes as a loss to theft of overhead cable to Blackpool Council. As the article refers to only overhead cable being stolen in these thefts amounting to the value of £135,000 identify precisely the types, lengths, amounts and specifications of the stolen cable that amounted to a value of £135,000. Please provide any other information

that the Council feels to be relevant to this request. To assist the article only refers to 4000 metres having been stolen."

3. The council responded on 14 September 2010 stating that the £135,000 was an estimate based on industry figures at the time and detailed the cost per metre of cable to be £20-24. It explained that as the cost of materials used in the manufacture of the cable fluctuates, the actual cost may vary at the time of procurement and procurement negotiations may impact on final costs. It also stated that is unable to identify the lengths of cable stolen each time, that the 4000 metres is a collective figure and that the specification of the cable should be on the copy invoices provided in response to previous requests.
4. On 14 September 2010 the complainant requested an internal review of the response. He stated that the response is different to the story that had been in press since 3 March 2010 and that the council's stated cost of new wire is more expensive than that in a previous FOI response.
5. The council provided it's internal review response on 13 October 2010. It stated that, after having spoken to various officers involved in previous request, all relevant information has already been disclosed and nothing further can be provided.

## **The Investigation**

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### **Scope of the case**

6. On 3 November 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - He alleged that Blackpool Council told lies in the response of 14 September 2010 in relation to the cost of a metre of new wire as information provided in response to previous requests proved that a metre of wire cost £5.36.
  - He stated that he had reasonably given the council ample time to correct the 'serious and gross anomalies' but, in not doing so, the council had acted entirely deliberately and possibly illegally.
  - He requested that the Commissioner investigate whether a section 77 offence had been committed.

7. The complaint did not request consideration of the council's response in relation to identifying the types, lengths, amounts and specifications of the stolen cable that amounted to a value of £135,000, and as such this Decision Notice is solely focused on the breakdown of the figure of £135,000.

## **Chronology**

8. The Commissioner visited the council on 12 May 2011 to investigate the claim that the council had deliberately provided the complainant with false information. It was established that the information which appeared in a press release on 3 March 2010 was as a result of information given to the newspaper reporter at the time by [a named individual], Engineering Director, Blackpool Transport and that the figures released were an estimate based on his 30/40 year experience and knowledge of the cost of old cable, labour etc. There was no recorded information relating to this. It was also established that the figures and invoices released to the complainant in response to previous requests was the cost of the new overhead cable and not the old cable.
9. On 23 May 2011, the Commissioner wrote to the complainant with the result of the section 77 investigation. The complainant was informed that there is no evidence available to prove beyond reasonable doubt that any member of Blackpool Council committed a criminal offence contrary to section 77 of the Act.

## **Findings of fact**

10. The tram system in Blackpool is operated by Blackpool Transport Services (BTS) which is a wholly owned company of the council.

## **Analysis**

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### **Substantive Procedural Matters**

#### **Section 1**

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

11. 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."
12. The council has explained that the breakdown of the £135,000 provided in response to the request was not based on recorded information as the council do not hold any recorded information in relation to the figure quoted in the press.
  13. The council has further explained that the figure of £135,000 quoted in the press was a figure provided verbally, on the spot, to the newspaper reporter by the Engineering Director of BTS based on his 30/40 years experience and knowledge of the costs of old cable, infrastructure and labour costs.
  14. The Commissioner's investigation has established that the figure of £20-£24 per metre was provided in the council's response to the complainant in an attempt to answer the request despite the council not holding such recorded information.
  15. The complainant asserts that the council's stated figure of £20-24 per metre of cable cannot be correct as responses to previous requests show the cost per metre of new cable to be £5.36. However, on investigation, the Commissioner does not agree that the discrepancy between these figures are relevant as he believes that a clear distinction can be made between what these costs relate to; the £20-24 relates to the estimated value of the stolen cable whereas the £5.36 relates to the cost of the new replacement cable.
  16. As stated in paragraph 8, the Commissioner visited the council's office as part of the investigation in this case. During that visit, the council explained that the reason for the discrepancy between the figures of £20-24 per metre and £5.36 per metre was because the figures actually relate to different cables. The higher figure relates to the likely purchase cost of the cable that was stolen and was an estimated price provided by one individual to the press. The lower figure relates to the cost of the new replacement cable based on actual invoices. The council explained that costs of materials used to produce the overhead tram cables can and do fluctuate over time and that procurement negotiations can have a significant impact on costs. The Commissioner had no reason to doubt the explanation provided during the visit to the council.
  17. The Commissioner has therefore considered whether the council holds any information, other than the estimated figures based on an individual's knowledge and experience rather than recorded

information, in relation to the breakdown of the £135,000 quoted in the press.

18. In reaching a decision the Commissioner has considered if the requested information was what he would expect the council to hold, and whether there is any evidence that the information was once held. The Commissioner believes that as the figure of £135,000 was a verbal figure based on an individual's knowledge and experience, it is reasonable to accept that the council would not hold a breakdown of such a figure.
19. The Commissioner also considered whether there was any legal requirement or business need for the council to hold the information. In a related complaint to the Commissioner, the complainant has asserted that the reportedly substantial value of the stolen cable makes it likely that the council would hold information for insurance purposes. However, as explained in the Decision Notice for the related complaint (reference FS50310644) the council confirmed that the cable was not insured therefore the Commissioner is satisfied that there is no clear business need to hold the information and could not identify a legal requirement to hold the information.
20. The Commissioner also considered whether the council had any reason or motive to conceal the requested information. In correspondence with the Commissioner, the complainant expressed his view that the council stated 'an wholly unjustified and highly disproportionate figure' in the press in order to excuse the delays to the upgrade of the tram network. However, the Commissioner does not view this as evidence that the council is concealing information as the council has explained that the delay in replacing the cable was due to security concerns that the new cable would also be stolen. The Commissioner also notes that the press article of 3 March 2010 does not state that the delay in the tram network upgrade is due to the monetary value of the thefts.
21. During the course of the investigation the Commissioner also considered whether the information might be held by another public authority, namely BTS, and whether it had advised the complainant accordingly. It was found that the council had liaised with BTS and confirmed to the complainant that BTS did not hold the requested information.
22. In the circumstances, the Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold the information requested in this case. The Commissioner is therefore satisfied that on a balance

of probabilities, the information which the complainant requested is not held by the authority. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the Act.

## **The Decision**

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23. 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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24. The Commissioner requires no steps to be taken.

## Right of Appeal

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25. 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)

26. 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.
27. 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 11<sup>th</sup> day of July 2011**

**Signed .....**

**Andrew White  
Group Manager  
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 –

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