

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 19 April 2012

Public Authority: Liverpool City Council
Address: Municipal Buildings
Dale Street
Liverpool
L2 2DH

Decision (including any steps ordered)

1. The complainant has requested a copy of the first 'Partnership Refresh Proposal' from BT as part (3) of a five part request. Despite the intervention of the Commissioner, Liverpool City Council has not provided an adequate response to this part of the request in accordance with the Freedom of Information Act. The Commissioner therefore reminds Liverpool City Council of its obligations under the Freedom of Information Act and requires that it either respond to the request in accordance with the legislation or issue a valid refusal notice under section 17(1).
2. The public authority must take this step 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

3. On 29 June 2011, the complainant wrote to Liverpool City Council ('the council') and requested information in the following terms:

"I note that on 29 June 2011 the Cabinet received an executive summary from Ernst & Young ref EY/LCC/LDL/001 dated 27 June 2011 containing the following quote on page 1:

"Our engagement was performed in accordance with our engagement agreement dated 7 June 2011... At the request of Liverpool City Council a Partnership Refresh Proposal was received and further updated on 27 May 2011 which sets out the position of BT, its

proposals, ideas and suggestions going forward in partnership to 2017..."

Please may I be sent:

- (1) A copy of the engagement agreement with E&Y dated 7 June 2011
 - (2) The invoice from E&Y for the performance of this work (including the billed time and value)
 - (3) A copy of the first Partnership Refresh Proposal from BT
 - (4) A copy of the updated Partnership Refresh Proposal from BT
 - (5) Any documents (if they are not included in the above) substantiating the merits or otherwise of the assertion that BT has the potential to make a legal claim against the Council for £56million if it were to terminate the contract in accordance with the contract that is in force. This would be done in relation to calculations in Schedule 21 of the December 2006 version of the contract or some other agreement that is not currently known.[2]"
4. The council responded on 2 August 2011. In relation to part (3), it sought to rely on the exemption at section 41 of FOIA for withholding the information.
 5. The complainant requested an internal review on 5 August 2011. The council responded on 16 November 2011. Regarding part (3) of the request, the council stated that it does not hold the requested information as Liverpool Direct Limited ('LDL') submitted the updated refresh proposal to the council and consequently the first proposal was withdrawn and returned to LDL. It further stated that officers involved with the first proposal have confirmed they do not hold a copy.

Scope of the case

6. The complainant contacted the Commissioner on 17 November 2011 to complain about the way his request for information had been handled.
7. On 2 February 2012, in relation to part (3) of the request, the council informed the Commissioner that it did in fact hold a copy of the first Partnership Refresh Proposal. It stated that in response to the Commissioner enquiries as to whether this document was held further searches were undertaken and the document was located. On 29

February 2012, the council provided the Commissioner with an unredacted version of the information and arguments as to why the exemption at section 41 applies. The council stated that not all the information would be exempt but did not identify which parts of the information they would withhold. The Commissioner is therefore not in a position to decide whether the exemption applies until the council identifies which parts of the information it considers exempt. The Commissioner has therefore deemed it appropriate to consider the council's response to part (3) of the request as a separate case from parts (1), (2), (4) and (5) (case reference FS50424953).

8. For the avoidance of doubt, this decision notice considers the following:
 - The council's handling of part (3) of the request only.

Reasons for decision

9. Section 10(1) of the FOIA states that a public authority in receipt of a request for information has a duty to respond within 20 working days.
10. On 6 March 2012, the Commissioner required that the council issue a response to the complainant within 20 working days enclosing the information that the council does not consider to be exempt and providing the reasons why the exemption at section 41 applies to the withheld information.
11. To date, the council has not provided such a response to the complainant.
12. It is clear to the Commissioner that, in relation to part (3) of the request, the council has failed to respond adequately in the time limit set within the FOIA.

Right of appeal

13. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

14. 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.
15. 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