

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 1 October 2012

**Public Authority:** West Yorkshire Fire and Rescue Service

**Address:** Oakroyd Hall  
Bradford Road  
Birkenshaw  
West Yorkshire  
BD11 2DY

#### Decision (including any steps ordered)

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1. The complainant has requested a range of information relating to fire training provided by West Yorkshire Fire and Rescue Service. The public authority provided some of the requested information, confirmed some information was not held and withheld some information under the exemption where disclosure would be likely to prejudice its commercial interests.
2. The Commissioner's decision is that the public authority has correctly confirmed that information relating to gross profits derived from the provision of fire training is not held. In relation to the list of customers in receipt of fire training, the Commissioner has decided that the public authority has incorrectly applied the commercial interests exemption.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the withheld information
4. The public authority 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

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5. On 20 February 2012 the complainant made the following request:

"The Fire Industry Association has the following questions of West Yorkshire Fire and Rescue Authority under the Freedom of Information Act 2000 and would like to be provided with information that provides a response to these questions: -

1. What revenue has been derived from the provision of Fire Training by the West Yorkshire Fire and Rescue Service in 2011, 2010 and 2009?
2. What gross profit has been derived from the provision of Fire Training by the West Yorkshire Fire and Rescue Service in 2011, 2010 and 2009?
3. How does West Yorkshire Fire and Rescue Service calculate its cost of providing Fire Training and has this procedure varied in 2011, 2010 or 2009?
4. What has been West Yorkshire Fire and Rescue's cost of the provision of Fire Training in 2011, 2010 and 2009? How many people on average has West Yorkshire Fire and Rescue Service employed in the provision of Fire Training in 2011, 2010 and 2009?
5. Please provide a list of customers that have received Fire Training from West Yorkshire Fire and Rescue in 2011, 2010 and 2009?

Note: Fire Training in the above questions refers to the services offered as detailed on the webpage <http://www.westyorksfire.gov.uk/fire-training>"

6. The public authority responded on 8 March 2012 and provided some information within the scope of the request but refused to provide the information at point 5 citing the exemption at section 43(2) of the FOIA as its basis for doing so. It also stated that precise information is not held for points 2 and 4 (where that request relates to the cost of the provision of Fire Training).
7. An internal review was requested on 12 March 2012 in relation to points 2, 4 and 5. The public authority provided an internal review on 5 April 2012 in which provided some information in relation to point 4 and maintained its original position in relation to points 2 and 5.

## Scope of the case

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8. The complainant contacted the Commissioner to complain about the way his request for information had been handled in relation to points 2 and 5.
9. The Commissioner has therefore considered whether information is held in relation to point 2 and whether the commercial interests exemption at section 43(2) applies to the information requested at point 5.

## Reasons for decision

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### Section 1 - is the information held?

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
11. The Commissioner considers that the normal standard of proof to apply in determining whether a public authority holds any requested information is the civil standard of the balance of probabilities.
12. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held. This may include arguments that there is no legal or business reason to hold or retain the information. He will also consider any reason why it is inherently likely or unlikely that information is not held as well as any arguments or evidence that information is held put forward by the complaint.
13. The complainant has stated that the public authorities initial response that whilst the precise information is not held, no financial gain or loss has been made, does not constitute a comprehensive response as the 'right to know' under the FOIA is a right to information and not documentation. He has stated that even if the information has not been recorded in one single document, the public authority is required to provide any information that relates to the fact that it has derived no financial gain or loss year on year.
14. In its internal review, the public authority explained that it does not make any profit from training and that the current charges are

calculated to cover the direct costs of providing the training including salaries, consumables, catering costs etc. It further explained that any surplus from individual courses would be treated as a contribution towards the fixed cost of running the training centre which are not included within the fees.

15. During the investigation, the Commissioner made enquiries as to the searches carried out to establish whether the information was held. He also enquired whether there is a business purpose for holding the requested information or any accounting or audit purposes for recording details of profits.
16. The public authority stated that the Section 73 officer (Local Government Act 1985) is required to maintain systems to accurately record all expenditure and income and provided information relating to the statutory power to charge for the provision of training. It explained that it applies full cost recovery accounting whereby charges are set which are aimed at compliance with the statutory limitation taking into account overheads etc, and as stated in the internal review response, the surplus from any particular course after taking the direct costs received from income is a contribution towards the overall costs of the training centre. It further explained that under this cost recovery method profit is not recognised until all costs have been recovered and therefore 'gross profit' is not applicable to this isolated function.
17. In the circumstances, the Commissioner does not consider that there is any evidence in that would justify refusing to accept the public authorities position that it does not hold the precise information requested at point 2 in this case. The Commissioner is therefore satisfied that on the balance of probabilities, the information requested is not held by the public authority. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.
18. In addition, in relation to complainants assertion that the public authority should disclose any information that relates to the fact that it has derived no financial gain or loss year on year, the Commissioner notes that the public authority provided the revenue generated by the training on a yearly basis and the direct costs associated with that provision in its responses to points 1 and 4. The Commissioner considers that the provision of the information in relation to points 1 and 4 also fulfills the obligation to provide advice and assistance in relation to point 2.

### **Section 43(2) – Prejudice to Commercial Interests**

19. Section 43(2) of the FOIA provides an exemption from disclosure of information which would or would be likely to prejudice the commercial

interests of any person (including the public authority holding it). This is a qualified exemption and is, therefore, subject to the public interest test.

20. The term 'commercial interests' is not defined in the FOIA, however, the Commissioner has considered his awareness guidance on the application of section 43. This comments that:

"...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services."<sup>1</sup>

21. In this instance the requested information is a list of customers who have paid for fire training provided by the public authority.
22. In determining whether the provision of training constitutes a commercial activity and whether the information falls within the scope of the exemption, the Commissioner has considered whether training constitutes a core function of the public authority and referred to previous Tribunal decisions.
23. The Commissioner is aware that a number of other commercial organisations and fire services offer training of this type but notes that, whilst fire prevention is a strategic priority of West Yorkshire Fire and Rescue Service, and promoting fire safety is linked to the core purpose of the fire service, the public authority has not argued or provided evidence that the educational aspect is a core function.
24. Although the guidance referred to above states that the underlying motive for a commercial activity does not necessarily have to be profit, and commercial interests have been accepted by the Tribunal in relation to not for profit organisations, and the Commissioner considers that there are substantial differences in this case.
25. In *University of Central Lancashire v ICO (EA/2009/0034) – "UCLAN"*, the Tribunal recognised that the University depended upon student fees for survival and ploughed any money it made back into developing the

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[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/AWARENESS\\_GUIDANCE\\_5\\_V3\\_07\\_03\\_08.aspx](http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENESS_GUIDANCE_5_V3_07_03_08.aspx)

courses and assets that attracted students<sup>2</sup>. This was all linked to its core purpose.

26. The Commissioner considers that, according to the scenario provided by the public authority, training doesn't appear to be a core function. Whilst it may be that the public authority needs the revenue from courses to ensure that it can continue to provide the service, if this ceased it could simply stop offering training and it would appear that its 'commercial competitors' would continue to meet the demand.
27. Moreover, though the training function may depend on fees for survival the fire service does not depend on the training as an income stream to contribute towards its core function. The fire service as a whole is publically funded; this is in contrast to the situation described in UCLAN which does depend on student fees (domestic and international). In fact the public authority seeks to make no excess (even for reinvestment into course materials). Its confirmation, discussed in this notice in the section 1 analysis above, that there is no business need to retain information relating to profits reinforces a view that the withheld information does not relate to what is commonly recognised as a commercial activity.
28. In addition, in its response to the Commissioner's enquiries regarding whether information on profits is held, the public authority confirmed that it is 'charging' for training, not 'trading' as that would have to be carried out through the medium of an arm's length limited company set up for trading purposes.
29. The Commissioner accepts that the public authority provides training within a commercially competitive environment. He also recognises that the category of withheld information may, in a different context, relate to an organisation's commercial activity. However, on the basis that the training in question operates on a costs recovery basis, that the provision of training is not a core function of the public authority and that it is not dependent upon training revenue for its continued existence, he has concluded that the interests identified are financial rather than commercial and therefore not inherent within the section 43 exemption.

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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i357/UCLAN\\_v\\_IC\\_&Colquhoun\\_\(E\\_A-2009-0034\)\\_Decision\\_08-12-09\\_\(w\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i357/UCLAN_v_IC_&Colquhoun_(E_A-2009-0034)_Decision_08-12-09_(w).pdf)

30. As he has found that the withheld information does not fall within the scope of the exemption the Commissioner has concluded that the exemption is not engaged. He, therefore, requires the public authority to disclose the information to the complainant.

## 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

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

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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.

**Signed .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**