

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 June 2015

Public Authority: Northamptonshire County Council

Address: County Hall
Northampton
NN1 1ED

Decision (including any steps ordered)

1. The complainant has requested recorded information relating to Northamptonshire County Council's LGSS shared services organisation. The Commissioner is satisfied that the Council does not hold recorded information which is relevant to questions 2 – 6 of the complainant's request. The complainant also seeks five invoices for goods and services provided to the Council by LGSS and which the Council has withheld in reliance of section 43(3) of the FOIA.
2. The Commissioner's decision is that the Council has failed to demonstrate that section 43(2) is properly engaged and therefore he requires the Council to take the following action to ensure compliance with the legislation.
 - The Council is required to disclose the five invoices referred to in the complainant's request.
3. The public authority must take this action 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

4. On 2 December 2014, the complainant wrote to Northamptonshire County Council and requested information in the following terms:

"Q1) Could you please send me copies of the five invoices¹ listed in the appendix below, which were all paid in April this year?

Q2) Why isn't LGSS set up as a separate supplier in NCC's payment data? Does NCC have plans to do this?

Q3) What do the payments labelled LGSS under the "Service label" and "Expense area" categories represent? How do they fit in with the Comprehensive Income and Expenditure Statement and Balance Sheet from LGSS 2013/14 Financial Statements?

Q4) What explains the record high value of LGSS-labelled payments in April 2014, and very low LGSS-labelled payments in the months since April?

Q5) How can the public measure LGSS-related expenditure and thus judge value for money of the LGSS enterprise?

Q6) Have there been any subsequent credit notes or reversals of the invoices that make up the April 2014 payments? If so, which ones?

Q7) Cambridgeshire County Council began publishing credit notes in May this year. Will NCC also commit to publishing credit notes above £500 in the monthly supplier data, in line with the official guidelines? If so, when? If not, why not?"

5. The Council responded to the complainant's request on 18 December. The Council refused to supply the five invoices the complainant asked for in the first part of his request and it advised him that the invoices were exempt from disclosure by virtue of section 43 of the FOIA.
6. The Council provided the complainant with answers to the remaining six questions which the complainant had asked, although these answers were apparently not given in respect of recorded information which the Council holds.
7. The complainant wrote to the Council on 6 January 2015 to ask it to undertake an internal review of its response to his request for information.
8. The Council carried out its internal review and wrote to the complainant on 3 February 2015. The Council determined that it had satisfied the obligations imposed on it by the FOIA and it upheld its decision to

¹ Invoice numbers and amounts: 10270875 - £432,819.02, 10270794 - £187,317.59, 10270778 - £128,512.84, 1028625 - £95,532.24, 10270781 - £57,195.08

withhold the five invoices in reliance of section 43. The Council confirmed that it had not relied on any other exemptions to withhold information.

Scope of the case

9. The complainant contacted the Commissioner on 1 March 2015 to complain about the way his request for information had been handled. The complainant stated that the focus of his complaint was the Council's decision to withhold the 'five large and anomalous invoices' between two local authorities both controlled by the same shared services organisation.
10. Whilst the primary focus of the Commissioner's investigation is the Council's withholding of the five invoices, he has also investigated whether the Council holds recorded information which is relevant to the six other questions asked by the complainant.

Reasons for decision

Background information

11. LGSS is a large public sector shared services organisation which was established in 2010: It is wholly owned by Cambridgeshire County Council and Northamptonshire County Council.
12. LGSS provides both County Councils with all professional, transactional and operational services. Its website states:

"LGSS has a business ethos based on "By the public sector, for the public sector" and operates on an open partnership with a joint risk / reward business model, whereby all savings are shared between LGSS and the customer so it operates on a 'not for profit' basis. This allows LGSS to operate as a genuine trust partner when compared to private sector based partnership alternatives. After nearly four years in operation we now have over 1250 staff providing services to over 300 public sector customers in our region."

Question 1 – the request for five invoices

Section 43 – Commercial interests

13. Section 43(2) provides an exemption to the duty to disclose information if its disclosure under this Act would, or would be likely to, prejudice the

commercial interests of any person (including the public authority holding it).

14. The Commissioner asked the Council a number of questions about its application of section 43(2).
15. The Council was asked to identify the party or parties whose commercial interests would, or would be likely to be prejudiced if the five invoices were to be disclosed; to provide a detailed explanation to support the position that disclosure of the invoices would, or would likely, prejudice those parties commercial interests; and to provide him with evidence which demonstrates a clear link between the potential disclosure of the invoices and the prejudice to commercial interests which the Council has identified.
16. The Council chose not to provide specific answers to the Commissioner's questions. Rather, it chose to provide its response by way of making reference to its completed 'Public Interest Test Pro-Forma'.
17. The Council's pro-forma states:

"Disclosure relates to invoices from Northampton Borough Council under the terms of the Partnership and Delegation Agreement (PDA). The core business of LGSS could be affected by the disclosure of the type and level of transactions taking place under the terms of the PDA in relation to both trust and commercial sensitivity between the parties.

Could possibly impact upon the dealings of Northampton Borough Council and/or LGSS with third parties.

There could be an impact upon LGSS's ability to enter into future partnership agreements"

18. Having examined the withheld invoices, the Commissioner is prepared to accept that they relate to the Council's and LGSS's positions as purchasers and service providers. It is clear to the Commissioner that these organisations operate in a commercial environment and that the invoices contain information which relates to the provision of goods and services.
19. To the Commissioner's eyes, the goods and services listed in the invoices are of a type which the public would expect the Council to be buying and using.
20. In the Commissioner's opinion, the contents of the invoices is information which would allow the public to understand how the Council makes decisions in relation to its expenditure on those specific goods and services: It is information which gives substance to the total values

of each of the five invoices – which are quoted by the complainant in his request and it is information which properly promotes transparency and accountability of a large public authority.

21. Regrettably, despite being afforded the opportunity to expand on its rationale for applying section 43(2), the Council has not provide the Commissioner with any explanation, to a necessary degree, of how the information contained the invoices is commercially sensitive.
22. Likewise, the Council has not properly confirmed the likelihood of any specific prejudice to its commercial interests, nor has it explained any causal link between the disclosure of the invoices and any identified prejudice which might occur as a result.
23. Put simply, the Councils representations are too 'generic': They have failed to persuade the Commissioner that the section 43(2) exemption is properly engaged.
24. Where the Commissioner finds that a prejudice-based exemption is not engaged, the Commissioner is not required to go on to consider the public interest. The Commissioner's decision is that Council cannot rely on section 43(2) of the FOIA.

Questions 2 - 6

25. The Council has confirmed to the Commissioner that it does not hold recorded information which is relevant to the complainant's questions 2 to 6, other than the information it previously provided to the complainant under his previous request – referenced FR5346 – 18 December 2014; or information which is available to the complainant on the open-data section of the Council's website..
26. The complainant's request at parts 2 to 6 are made by way of questions rather than requests for specific documents or recorded information.
27. The Commissioner accepts that the FOIA does not require the Council to answer questions. Nevertheless he asked the Council whether it holds recorded information which is relevant to the complainant's questions, from which he could extrapolate answers for himself.
28. The Commissioner is satisfied that, 'on the balance of probabilities', the Council does not hold any further information which is relevant to the complainant's questions.
29. The Commissioner is further satisfied that the Council has conducted appropriate searches for relevant recorded information and he accepts the Council's assurance that its records managements practices are in line with Local Authority retention guidelines.

Question 7

30. On 14 April, the complainant wrote to the Commissioner about question 7 of his request. The complainant advised the Commissioner that he accepts the Council has been publishing credit notes since May 2014 and consequently he withdrew this element of his complaint.

Right of appeal

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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
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