

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 05 December 2016

**Public Authority:** Cardiff Council

**Address:** County Hall  
Atlantic Wharf  
Cardiff  
CF10 4UW

#### Decision (including any steps ordered)

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1. The complainant requested various items of information about advertising revenue generating street furniture structures known as advertising drums. Cardiff Council ('the Council') stated that it did not hold the information requested. The Commissioner's decision is that, on the balance of probabilities the Council does not hold the requested information. However, in failing to respond to the requests within the statutory timescales the Council breached section 10 of the FOIA. The Commissioner does not require any steps to be taken.

#### Request and response

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2. On 25 February 2016, the complainant wrote to the Council and submitted six separate requests for information relating to advertising revenue generating street furniture structures known as advertising drums and the Council's contract with City Centre Posters ('CCP') who installed and maintain the 'drums'. He referred to the Council's response to a previous information request and requested information in the following terms:

##### Request 1

"....who owns all the advertising revenue generating street furniture structures known as advertising drums which are operated by City Centre Posters (CCP) and which are commercially utilising Cardiff Council owned land".

**Request 2**

"....is revenue generated from selling the poster displays by the operating company City Centre Posters (CCP) who operate all the advertising revenue generating street furniture structures known as advertising drums that are commercially utilising City of Cardiff Council owned land".

**Request 3**

"Is any other independent commercial organisation aside from City Centre Posters (CCP) currently involved in this City of Cardiff Council opportunity where advertising revenue generating street furniture structures known as advertising drums are commercially utilising City of Cardiff Council owned land".

**Request 4**

".....can we please see all information (redacted where necessary) relating to the formal Cardiff Council "extension" process "of an existing contract" This would include (but not be limited to) all correspondences between all the involved Cardiff Council service areas, such as the City Centre Management Team, Planning, Property and Building Control, Finance and Support, Environmental Health, Tenders, Commissioning and Procurement, Trading Standards, Neighbourhood Regeneration, Community Safety, Licences and Permits and the likes involved at the time the "extension of an existing contract" was granted and who were involved in the decision making process prior to the extension being granted given the City Centre Posters (CCP) operated advertising revenue generating street furniture structures known as advertising drums are commercially utilising Cardiff Council owned land".

**Request 5**

"....can we please see evidence of the the original tender that one would assume took place given the City Centre Posters (CCP) operated advertising revenue generating street furniture structures known as advertising drums are commercially utilising Cardiff Council owned land. For example this would include (but not be limited to) the date it was published, Instructions to Tenderers, the Tenders submission, Pricing Schedule, Specification and the likes".

**Request 6**

"Can we please see all information held (redacted where necessary) which would include (but not be limited to) correspondences, emails, documents - minutes of meetings, reports, summaries, memos, statistics etc. relating to the advertising revenue generating street furniture structures known as advertising drums which are owned and operated City Centre Posters (CCP) and which are commercially utilising

Cardiff Council land as well as evidence of the protocols, procedures etc. that relate to liaison / discussion between all involved Cardiff council service areas and City Centre Posters (CCP) when dealing with the advertising drums in line with information provided by the council in their responses to FOI07468 & FOI07543 where it is clearly stated that "It's a five year contract ", "this was an extension of an existing contract" & "CCP were the preferred supplier".

### **Request 7**

"Can we please see all information held (redacted where necessary) which would include (but not be limited to) correspondences, emails, documents - minutes of meetings, reports, summaries, memos, statistics etc. relating to the advertising revenue generating street furniture structures known as advertising drums which are owned and operated City Centre Posters (CCP) and which are commercially utilising Cardiff Council land as well as evidence of the protocols, procedures etc. that all relate to enquiries from other independent commercial organisations and members of the public who have shown an interest in this scheme".

3. The Council responded to requests 1, 2, 3 and 7 on 31 March 2016 and stated that it did not hold any recorded information. The complainant requested an internal review of the Council's handling of these requests on 4 April 2016. The Council provided an internal review response on 21 April 2016 and upheld its position that it did not hold any recorded information relevant to the requests. In this response, the Council also stated that it would provide a response to the outstanding requests within a few days.
4. The Council sought clarification in relation to requests 4 and 6 on 14 March 2016, which the complainant subsequently provided on 17 March 2016. The complainant also requested an internal review of the Council's handling of request 5 on 5 April 2016. The Council responded to requests 4, 5 and 6 on 22 April 2016 and stated it did not hold the information requested.
5. On 3 May 2016, the complainant wrote to the Council and requested it conduct an internal review into its handling of **all** the requests he had submitted. The Council provided the outcome of its internal review on 29 July 2016 and upheld its position that it did not hold any further recorded information relevant to the requests. The Council confirmed that this second internal review response only related to requests 4, 5, 6 and 7 as it had already review the handling of requests 1, 2 and 3 (on 21 April 2016).

## Scope of the case

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6. The complainant contacted the Commissioner on 20 June 2016 to complain about the way his request for information had been handled.
7. The Commissioner considers that the scope of her investigation is to determine whether, on the balance of probabilities, the requested information is held by the Council.
8. The requests which are the subject of this notice were submitted separately via a public website and the Council issued separate initial responses to the requests. However, as the requests were submitted on the same day, the Council issued "combined" internal review responses and because of the linked nature of the requests, the Commissioner has issued one decision notice relating to the Council's handling of all seven requests.

## Reasons for decision

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### Section 1 – general right of access

9. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and she will consider any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held; she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
11. As background information relating to the subject matter of the request, the Council advised the Commissioner that the scheme goes back to 1999, when Cardiff hosted the Rugby World Cup. A decision was taken at that time by the Council and Cardiff Initiative to eradicate fly posting across the city centre. An invitation to provide an alternative approach to manage flyposting was issued to a number of companies. CCP was the only business that responded to the Council's invitation to install and

maintain the concept to 'clean up' the core areas of the city centre that were blighted by flyposting and general littering.

12. The Council advised the Commissioner that the contract for the project/initiative to install and maintain the advertising drums in question has been in place since the scheme was launched 16 years ago. The Council confirmed that it has not contributed anything to the scheme and any advertising revenue which may be generated from selling poster displays on the advertising drums is determined by CCP itself. The Council does not receive any income, revenue, rent or fees from CCP in respect of the scheme and has not done so throughout the duration of the contract. It is a self-generating/sustainable scheme that enables small clubs and independent operators to be able to advertise at a low cost. CCP manage the space, install and maintain the drums and clean around the areas in question accordingly.
13. The contract with CCP provides that CCP will clean a 300 metre area around the positioning of the advertising drums. The Council advised that the project has delivered a high standard of cleanliness and reduced the incidents of flyposting by 90%. As a result, the original contract was extended and then renewed every 5 years. The decision making process to renew the contract was based on the factual results of the scheme, whilst taking into account the benefit it delivered for the city centre.
14. The contract with CCP was last extended for a five year period in 2014. As such the existing contract in place runs from October 2014 to October 2019. In relation to a separate request from the complainant, the Council disclosed a copy of this contract. In responses to requests for information about the subject matter the Council has confirmed that it does not hold any tender documentation in respect of the existing contract because "no documents were released as this was an existing contract, and as there are no financial benefits to CCC – CCP were the preferred supplier". The Council has also confirmed that it does not hold any recorded information about the contract extension that took place in 2014 as the extension was agreed following "A verbal request was made based on the investment programme of the previous 15 years"
15. The Council advised that its procurement department does not hold any recorded information about the topic. The Council confirmed that there are no legal requirements in place that requires it to invite tenders for all contracts. "The onus on any contract is with the contract manager within each service to set out whether a contract is required to be advertised or whether a single tender award should take place". With reference to the contract with CCP, the Council advised that "a full analysis of CCP would be looked at and decision made accordingly – decisions are made based on results – the most important criteria is to

determine how effective the scheme has been, the decide on the way forward. A preferred supplier is then chosen based on factual performance."

16. In terms of the searches which the Council undertook to identify information relevant to the requests, the Council advised the Commissioner that it does not hold any electronic records relating to the contract in question. The responsible officer for the contract also conducted searches of the shared drive within the service using the search terms "CCP", "drum advertising" "poster scheme" and no relevant information was identified. The Council confirmed that the only information held relevant to the subject matter is a paper folder that was provided to responsible officer when he took up post. This paper folder is held within the City Centre Management Department which has been responsible for the service since 2000. The Council confirmed that it had carried out searches of the paper folder and it did not identify any information relevant to the requests in question.
17. The Council confirmed that no other Council service would hold any information in respect of the advertising drums and it is a function solely of the City Centre Management Department. However, searches for information were carried out in a number of premises including City Centre Management, Tourism, Economic Development and the relevant department officers to ensure that no information was held.
18. As further background information, the Council advised the Commissioner that the officers who were involved in the original contract process left the authority some time ago. As such, the mailboxes for the individuals in question were deleted in line with normal Council policy. Therefore the only information the Council holds regarding the advertising drums is held in the paper folder, which has been fully searched.
19. In support of his view that the Council does/should hold information relevant to his requests he pointed out that the existing contract in place with CCP provides that a significant number of posters can be displayed on the advertising drums – a total of 80 posters 30' x 40' and 211 posters 60' x 40'. The complainant argues, therefore, that the advertising drums are capable of generating significant revenue. He advised that, just taking the larger posters in isolation, could mean that the advertising drums have potentially generated a revenue of £3.29m over the 20 year period – based on 211 posters @ £15.00 per poster each week X 20 years. Based on this, the fact that advertising drums are situated on/occupying Council owned land and the fact that the contract with CCP has been in place for 20 years, the complainant finds it difficult to believe that no information is held relevant to his requests. He also considers that a "verbal request" to extend such a potentially

lucrative contract and the absence of key fundamental and supporting project information seems to be “unusual but perhaps improper given the revenues and council assets involved”.

20. With specific reference to request 7 the complainant expressed surprise that correspondence he and/or the company he works for had sent to the Council about the subject matter had not been disclosed by the Council (with appropriate redactions) in response to the request. The Council confirmed to the Commissioner that enquiries it had made with the Manager and Department responsible for the advertising drums had not revealed any correspondence from the complainant or his company. The Council confirmed that there was no legal requirement on it to retain such correspondence. As the searches it had conducted had not revealed any information, the Council advised that it can only assume that any such correspondence which the complainant may have sent to it had been deleted/destroyed as there was no legal reason or business purpose for it to be retained.
21. The Commissioner has some sympathy with the complainant in this case as he considers it reasonable for an individual to assume that the Council *does/should* hold more information relating to the project. However, it is not within the Commissioner's remit to investigate what information a public authority *should* hold. The Commissioner is limited to assessing whether, on the balance of probabilities, whether a public authority held information relevant to a request at the time a request is made.
22. Based on the representations provided by the Council the Commissioner is satisfied that it has carried out searches of the places where relevant information would be held. There is no evidence of any inadequate search or grounds for believing there is a motive to withhold information. The Commissioner has also considered the Council's representations in relation to background information and explanations about the contract/scheme in question. Based on the searches undertaken and the other explanations provided, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any recorded information relating to the requests.

## **Section 10 – time for compliance**

23. Section 1 of FOIA provides for a general right of access to information held by public authorities. Section 10(1) provides that a public authority must comply with section 1 promptly and in any event not later than the twentieth working day following the date of receipt of a request for information.

24. The Council explained to the Commissioner that the volume of requests submitted, the subsequent correspondence in respect of each request and blanket internal review requests from the complainant contributed to difficulties it experienced in dealing with the requests within a timely manner. In addition, at the time of the requests there were limited resources within the City Centre Management team due to "the department being reduced by 70%". The Council acknowledges that whilst these factors do not justify its failure to answer requests within the statutory timescales it had an impact on performance.
25. In this case the complainant submitted the seven requests which are the subject of this notice, separately, to the Council on the same day – 25 February 2016.
26. The Council responded to requests 1, 2, 3 and 7 on 31 March 2016 and stated that it did not hold any recorded information. The Council sought clarification in relation to requests 4 and 5 on 14 March 2016, which the complainant provided on 17 March 2016. The Council responded to requests 4, 5 and 6 on 22 April 2016. Therefore, the Commissioner finds that the Council breached section 10 of the FOIA in failing to respond to each of the requests within the statutory timescale.

## Other matters

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### Internal reviews

27. The complainant requested an internal review of the Council's handling of requests 1, 2, 3 and 7 on 4 April 2016. The Council provided an internal review response on 21 April 2016 and upheld its position that it did not hold any recorded information relevant to the requests. In this internal response, the council quoted its reference number for all of the 7 requests and stated that:

"Due to the volume of requests and correspondence on this matter it has been difficult to establish exactly what you wish to be reviewed under the terms of the Freedom of Information Act".

The Council also stated that it would provide a response to the outstanding requests within a few days.
28. On 3 May 2016, the complainant wrote to the Council and requested it conduct an internal review into its handling of **all** of his requests. The Council provided the outcome of its internal review on 29 July 2016 and upheld its position that it did not hold any further recorded information relevant to the requests. In this internal review response the Council

confirmed that as it had already reviewed its handling of requests 1, 2 and 3 it had not undertaken a further review of these requests.

29. The requests in this case were submitted to the Council separately via a public website ie there is a separate webpage for each request. The Council posted its initial response to each of the requests on each webpage, however, its two combined internal review responses were only posted on the webpage for request 7. In his complaint to the Commissioner the complainant stated that because of the way that the Council had dealt with his internal review request, it was difficult for him to ascertain whether the Council has reviewed each of his requests.
30. The Commissioner considers that the Council could have been clearer in its internal review response of 22 April 2016 as to which request(s) the response relates to as the first paragraph quotes seven Council reference numbers. However in this internal review the Council stated that that a response to the outstanding requests would be issued in due course. In its second internal review response of 29 July 2016 the Council did, however, provide the reference numbers of the requests it had previously reviewed and confirmed that it had not undertaken a second review of the requests in question.
31. In light of the above, in summary, the complainant requested an internal review of requests 1, 2, 3 and 7 on 4 April 2016, an internal review of request 5 on 5 April 2016 and an internal review of all requests on 3 May 2016. The Council provided the outcome of its internal review of requests 1, 2 and 3 on 21 April 2016 and the outcome of its internal review of requests 4, 5, 6 and 7 on 29 July 2016.
32. There is no explicit timescale laid down by the FOIA for completion of internal reviews. However, the Code of Practice issued under section 45 explains that such reviews should be completed within a reasonable timeframe. The Commissioner believes that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
33. Whilst the Commissioner notes the Council's explanations for the delays experienced in this case (as outlined at paragraph 24 of this notice), she does not consider that any exceptional circumstances existed to justify the delay in responding to some of the internal review requests in this case. The Commissioner would like to take this opportunity to remind the Council of the expected standards in this regard and recommends that it aims to complete its future reviews within her recommended timescale of 20 working days.

## Right of appeal

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34. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

35. 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.
36. 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**