



**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
Information Rights**

**Tribunal Reference:** EA/2013/0023  
**Appellant:** Catherine Byrne  
**Respondent:** The Information Commissioner  
**Second Respondent:** Liverpool City Council  
**Judge:** NJ Warren  
**Member:** P Taylor  
**Member:** J Nelson  
**Hearing Date:** 20 September 2013  
**Decision Date:** 27 September 2013

**DECISION NOTICE**

1. The Tribunal is dealing with the fourth of five requests which Mrs Byrne made to Liverpool City Council under the Freedom of Information Act (FOIA) on 27 October 2011.
2. It concerns third party contracts undertaken by Liverpool Direct Ltd.
3. By para 16.1 of what is known as the “joint venture agreement” (page 211) the approval of Liverpool City Council is required before Liverpool Direct can enter into or tender for any third party contract. The agreement appears to add that Liverpool City Council are required to consider and agree such matters as the funding of any third party contract; the economic benefit to be derived by the city council and the other shareholder; and whether any charges payable by the city council should be renegotiated to reflect any economies of scale and efficiencies which result.

**Appellant: Catherine Byrne****Date of decision: 27 September 2013**

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4. Mrs Byrne has asked the City Council what procedure is followed in approving or refusing approval for potential third party work.
5. Liverpool City Council stated that they had no record of their procedure and that therefore they did not “hold” this information for the purposes of FOIA. The Information Commissioner (ICO) upheld that position. Mrs Byrne now appeals against the ICO decision. She points to the huge sums of money involved and finds it inconceivable that the procedure has not been recorded in any form. .
6. When we first heard this case, it seemed to us that there had been some discrepancies in the city council’s responses to the ICO. Furthermore, they did not contain a formal denial of any record of the procedure. In the light of the cogency of Mrs Byrne’s submissions to us we decided that it was appropriate to join Liverpool City Council as a respondent to the appeal and to ask for oral evidence.
7. At the resumed hearing on 20 September we heard sworn evidence from the City Council’s Assistant Chief Executive. She confirmed that there had been in existence for about four months a minute recording the forum in which any expressions of interest in third party work would be discussed. Otherwise, no procedure for approving or refusing approval for potential third party work was recorded. We accept her evidence.
8. The City Council’s Information Manager also attended the hearing. She explained the numerous searches she had carried out at the time of Mrs Byrne’s request and told us that if she had been able to find the procedure she would undoubtedly have disclosed it. We accepted her evidence as well.
9. We therefore conclude that, unlikely as it may seem, the City Council had no recorded procedure for this work at the time of request. It follows that the ICO decision notice is correct and this appeal must fail.

**NJ Warren****Chamber President****Dated 27 September 2013**