

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 April 2013

**Public Authority:** East Riding of Yorkshire Council  
**Address:** County Hall  
Beverley  
East Riding of Yorkshire  
HU17 9BA

#### Decision (including any steps ordered)

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1. The complainant has requested information regarding East Riding of Yorkshire Council's (the council) expenditure on a specific service called Citizenlink. The council maintains that it does not hold the information.
2. The Commissioner's decision is that on the balance of probabilities, the requested information is not held and therefore the council responded appropriately to the request.
3. The Commissioner does not require the council to take any steps

#### Request and response

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4. On 9 May 2012 the complainant made a request for the following information:  
*"1. Total number of Citizenlinks in the East Riding.  
2. Customer usage of all Citizenlink for the past year, 1 April 2011 to 31 March 2012.  
3. All budget expenditure in relation to Citizenlink for the same period.  
4. Customer usage of Nafferton Citizenlink for the same period."*
5. The council responded on 16 May 2012 and provided the information that fell within the scope of the request. With regard to point 3 the council stated that it did not hold information on the budget for Citizenlink as this service was delivered by the council's partner, and the council did not therefore hold this information.

6. On 16 May 2012 the complainant then wrote to the council again and requested the following additional information:

*"Thank for your reply in the letter attached in your email. I note that you say that the service in relation to Citizenlink is delivered by the Council's partner and that the Council does not hold their budgetary information. However you do not say who this partner is and I would therefore ask for two pieces of information:*

- *the name and contact details of this partner*
  - *the value of the contract (ie the money paid by the Council to this partner) for the past year, 1 April 2011 to 31 March 2012."*
7. The council responded on 25 May 2012 and provided the name and address of the partner which delivers Citizenlink. However, it withheld the value of the contract under section 43(2) as it considered that its release would be prejudicial to commercial interests.
8. Following an internal review the council wrote to the complainant on 24 July 2012 upholding its original position.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 25 September 2012 to complain about the way his request for information had been handled.
10. The Commissioner wrote to the council to inform it that he had received the complainant's complaint and that he had deemed it eligible for investigation. In response to this, the council wrote to the complainant on 2 November 2012 and provided him with the total value of the contract with the third party for the financial year 2011 to 2012.
11. The Commissioner therefore contacted the complainant to ascertain if he was now satisfied with the council's response to his request. He stated that he was not as he required the total value of the contract only in respect of the Citizenlink service as requested at part 3 of the request of 9 May 2012.
12. The Commissioner considers the scope of the case to be to determine whether the council holds any information on the cost of delivering the Citizenlink service.

## Reasons for decision

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### Section 1(1)

13. Section 1(1) of the FOIA states that:

*"Any person making a request for information to a public authority is entitled*

*a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*b) if that is the case, to have that information communicated to him."*

14. Section 2(2) of the FOIA states that:

*"Information is held by a public authority if –*

*a) it is held by the public authority, otherwise than on behalf of another person, or*

*b) it is held by another person on behalf of the authority."*

15. The council initially maintained that it did not hold the information as it would be held by the third party. It also considered that responding to the request would require the council to calculate the cost of Citizenlink by disaggregating it from the information held by the third party, and this would therefore require it to create new information.

16. The Commissioner explained that in line with section 2(2)(b) it may be the case that the third party holds the information on behalf of the council, and therefore the council would be considered to hold the information for the purposes of the FOIA. In addition to this, the Commissioner advised that there are a variety of circumstances in which information is considered as held, including when the information can be extracted or constructed from building blocks.

17. On this basis, the council went on to consider whether the requested information could be considered to be held for the purposes of the FOIA. It provided the Commissioner with information regarding the contract and billing mechanism in place with the third party. The Head of Finance explained that the billing for the services provided by the third party is broken down into seven unitary charges relating to each of the service areas to which the contract relates. Citizenlink falls into the customer Service Network service area, along with a number of other customer service related services. The billing therefore does not provide for a

further breakdown of costs to each specific service that the third party operates on behalf of the council, such as Citizenlink.

18. The council also considered the extent to which any information held by the third party relating specifically to Citizenlink could be said to held on behalf of the council. It explained that the third party is a private sector organisation which provides a number of services to and on behalf of the council. The council pays for these services and the relationship between them is regulated by a partnership agreement. This contract gives the council the right to inspect the third party's open book accounts. The council has explained that Citizenlink is contracted for as part of the customer service network heading, and it is not included in the accounts as a separate cost centre.
19. Due to the terms of the contract, the council considers that any information the third party may hold in relation to the specific costs of running and operating Citizenlink is not information which is held on behalf of the council. The Commissioner is mindful of his guidance on the matter of considering whether information is held by a public authority for the purposes of the FOIA<sup>1</sup>. Paragraph 24 of the guidance states that:

*"where information is held by a third party as a result of a contractual arrangement, the provisions of the contract may indicate whether or not the information is held on behalf of the public authority."*

The Commissioner therefore notes that the terms of the contract in this case give the council access to the open book accounts of the third party. However, he accepts that due to the wide ranging nature of the services provided for in the contract and the way the third party bills the council for those services, the open book accounts do not hold specific information about the cost of the Citizenlink service. Therefore, the Commissioner finds that on the balance of probabilities, the third party does not hold the requested information on behalf of the council, and consequently the council does not hold the information for the purposes of the FOIA.

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[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information_held_by_a_public_authority_for_purposes_of_foia.ashx)

20. It is therefore the Commissioner's view that in replying to the initial request on 16 May 2012 stating that the information was not held, the council has complied with the requirements of the FOIA.

## Right of appeal

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21. 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)

22. 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.
23. 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**  
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