

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **6 March 2013**

Public Authority: **City of Bradford Metropolitan District Council**

Address: **City Hall
Bradford
BD1 1HY**

Decision (including any steps ordered)

1. The complainant has requested information relating to Council Tax summons and liability order costs. The Commissioner's decision is that, on the balance of probabilities, City of Bradford Metropolitan District Council ('the council') does not hold the requested information in relation to some elements of the request but does hold the requested information in relation to others elements of the request. Therefore the council has breached section 1 of the FOIA. The Commissioner has also decided that the council has not provided an adequate response to certain elements of the request in accordance with the FOIA and has not provided sufficient evidence to apply the exemption where disclosure would prejudice the commercial interests of any person at section 43(2) of the FOIA.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - In relation to request 3, the Commissioner reminds the council of its obligations under sections 1 and 17 of the FOIA and requires that the council issue a proper response under the FOIA.
 - In relation to the elements of question 4 detailed in paragraph 31, the Commissioner reminds the council of its obligations under sections 1 and 17 of the FOIA and requires that the council issue a proper response under the FOIA.
 - Disclose the information relating to 'monies collected' within the scope of request 4.

3. 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

4. On 26 September 2011 the complainant made the following request for information under the FOIA via the WhatDoTheyKnow website:

"1. In respect of the preparation of summonses and liability orders in relation to financial years 2010/11 and 2011/12, please could you itemise separately in respect of each year and document (making four heads in all), the following information.

a. The number of staff directly engaged on the preparation of summonses and liability orders, their job descriptions/designations, salary bands and gross annual employment costs (salaries, pensions, bonuses, national insurance, etc).

b. The number of working hours accrued by each of the members of staff so engaged, as listed in item one, by function or operation (i.e., computer operation, clerical, management, etc), for each document and each year, expended directly and exclusively on the preparation of these documents.

c. Court fees incurred in the preparation or issuance of each document.

d. The cost per year of software acquisition/leasing/licensing (as applicable) attributable specifically and exclusively to the preparation and printing of summonses and liability orders.

e. The total computer time required for each of the documents in each of the years, the type of equipment used and the cost of the computer time attributable specifically and exclusively to sorting data, generating lists, and printing forms.

f. The total cost for each of the documents for each of the years for running the print/folding/insertion equipment (including lease or other charges specifically and exclusively attributable to each print job), and the cumulative total time of print runs for each document and each year, the equipment and the number of units used.

- g. Total cost of consumables for each year and each document: paper, ink (where not included above), envelopes and postage (please itemise main expenditure heads).
- h. Any other costs not identified above (please itemise) attributable directly and exclusively to the preparation, processing and despatch for each document and each year.
2. What is/are the name(s) of the "authorised officer(s)", the signature(s) of whom is/are appended to the Bradford Magistrates summons for the non payment of council tax in respect of Bradford MDC; what are the normal job description and the qualifications of the authorised person(s), who is the employer; what is the nature of the authorisation, who authorised the said person or persons; when and under what legal basis was that authorisation granted?
3. In respect of the collection of Council Tax, with specific reference to S. 34 of The Council Tax (Administration and Enforcement) Regulations 1992 (as amended), what is the nature and physical form of the complaint made to justice of the peace concerning Council Taxpayers alleged not to have paid the amount which has fallen due, what is the nature and physical form of the justice's assent to the issue of a summons, how is this processed by the Council and how and by whom is the physical form of the summons actually produced and issued?
4. How many commercial bailiff companies are employed/retained by Bradford MDC, the names of the companies, when they were first appointed and what is the duration of any service contract(s) and when were those contracts last renewed, and for what purpose(s) they were appointed? Whether Bradford MDC pays the bailiff companies, or whether the companies pay any fees or other sums - other than the exact sums of the debts recovered - to the council, what form any such payments take, their frequency and value, by company and total for each financial year, and whether they represent a percentage of any sums, by way of fees or debt recovered?"
5. The council responded on 8 November 2011 and refused to provide the requested information citing the vexatious exclusion at section 14 of the FOIA. The council did provide some information which was already in the public domain, that being the number of summonses and liability orders issued for non-payment of Council Tax in 2010/2011 and 2011/2012 along with the total amounts charged.

6. The complainant requested an internal review on 28 January 2012. The council responded on 13 February 2012, maintaining its original position.
7. Following a complaint to the Information Commissioner, the council provided a response on 12 October 2012. It provided some further information, stated that some information was not held and withheld a small amount of information under section 40(2) and section 38. The council also informed the complainant that some of that information could be obtained by contacting HMRC or Bradford Magistrates Court direct.

Scope of the case

8. The complainant originally contacted the Commissioner on 3 April 2012 to complain that his request for information had been considered vexatious. That complaint was closed as, following the Commissioner's intervention, the council withdrew its reliance on section 14(1) and provided a response to the complainant on 12 October 2012. This complaint was opened on 22 October as the complainant was not satisfied with the council's responses to questions 1b, 1c, 1e, 1f, 1g, 3 and 4.
9. The Commissioner has considered whether further information is held in relation to questions 1b, 1c, 1e, 1f, 1g, 3 and 4.
10. The Commissioner has also considered whether section 43(2) applies to some of the information requested at question 4 as this exemption was cited by the council in correspondence to the Commissioner on 23 November 2012.
11. For clarity, the Commissioner has not considered the council's application of section 40(2) to some of the information requested at question 1a, or the application of section 40(2) and section 38 to the information requested at question 2, as this has not been disputed by the complainant.

Reasons for decision

12. Sections 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.

13. 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 argument. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. He 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, he is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
14. The Commissioner enquired, in relation to each of questions 1b, 1c, 1e, 1f, 1g and each element of questions 3 and 4, as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council and whether copies of information may have been made and held in other locations. The council did not provide separate answers to the Commissioner's enquiries for the separate questions within the request. It stated that

"The search was not carried out for this request as the process is already known to the officers who deal with individual requests from Council taxpayer who wish to see their entry on the complaint list which held manually [sic]."
15. The Commissioner also enquired, again in relation to each of questions 1b, 1c, 1e, 1f, 1g and each element of questions 3 and 4, as to what the council's record management policy says about records of this type. The council informed the Commissioner that:

"The formal records management policy is currently being redrafted however, the time scale of 6 years plus current has been the Council's general guideline to document retention to date plus any legislative retention requirements."
16. In response to the Commissioner enquiring, again in relation to each of questions 1b, 1c, 1e, 1f, 1g and each element of questions 3 and 4, whether there was any business need or statutory requirement, for the council to hold the information, the council stated 'Yes legal requirement'. The Commissioner notes that this answer seems to be at odds with the position that information is not held for questions 1b, 1c, 1e, 1f and 1g. However, he does not view this as evidence that the requested information must exist as the council appears to have misunderstood the nature of the Commissioner's enquiries by providing a single answer to each question rather than one answer to each question for each element of the request.

17. The complainant has asserted that, in relation to questions 1b, 1c, 1e, 1f and 1g, these items need accounting for in order for the council to claim an award of reasonable costs from the Magistrates court and therefore, on the balance of probabilities, the council holds the information.
18. The complainant has also stated that the response to question 3 was nowhere near satisfactory and that the third element to that question was completely ignored.
19. In relation to question 1b, the council has stated that it does not hold this information as staff deal with all aspects of Council Tax billing and collection on a daily basis.
20. In relation to question 1c, the council has stated that it does not hold this information and explained that the court costs are agreed in terms of what is reasonable with the local courts. The Commissioner enquired as to how such reasonable costs are arrived at and the council explained that council officers have a meeting with the local courts when reviewing the costs but do not have to provide a scheduled breakdown. The council provided a link to Schedule 1 of The Magistrates' Courts Fees (Amendment) Order 2009 to demonstrate that it has to pay £3 to the court for the Liability Order for each case but explained that it is also allowed to include a reasonable element for the administration.
21. In relation to question 1e, the council has stated that it does not hold this information. It explained to the Commissioner that it operates a single integrated system for the management of Housing Benefits, Council Tax and Business Rates and that it is not possible to identify the resources used by any individual aspect of the system.
22. In relation to question 1f, the council has stated that it does not hold this information. It explained to the Commissioner that it operates two bulk printers for the purpose of printing all computer generated output and it is impossible to allocate costs to individual print runs as that information is not stored or generated by the equipment in use. The council also stated that it isn't possible to give figures regarding the folding costs as these are covered by a centralised budget which covers all aspects of stationary.
23. In relation to question 1g, the council stated to the complainant that it does not hold this information. It explained to the Commissioner that the Liability Orders are part of the bailiff packs and are produce on plain paper and it is not possible to break down the cost of this. It said that it is impossible to apportion ink or any other consumable costs to individual print runs as this information is not stored or generated by the equipment in use and that it isn't possible to give figures regarding

the enveloping costs as these are covered by a centralised budget which covers all aspects stationary. Regarding the postage costs, the council said that this is difficult to calculate. It explained that the basic cost for a summons (1st class) is 44p and the basic cost for a liability enquiry form (2nd class) is 31p but it uses a Royal Mail service called Cleanmail which gives a discount on these prices and that the discount varies depending on how many items meet the strict Royal Mail specification and on how many items are posted on any day. It did provide figures for the cost of pre-printed stationary for the purpose of printing summonses as follows:

2011-12 40,000 at £783.85

2010-11 20,000 at £400

The council informed the Commissioner that it is only the back of the stationary that is pre-printed.

24. For each of these responses, with the exception of the cost of pre-printed stationary for the purpose of printing summonses, the Commissioner considers that the explanations provided for why the information is not held are reasonable and, in the circumstances it seems inherently unlikely that information is held. He does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any information relevant to these parts of the request. The Commissioner is therefore satisfied that on the balance of probabilities, the information is not held by the council. Accordingly, he does not consider that there was any evidence of a breach of section 1 of the FOIA.
25. However, as the council provided information to the Commissioner in relation to the cost of pre-printed stationary for the purpose of printing summonses, which was part of question 1g, the Commissioner considers that such information was held and by not providing this to the complainant the council breached section 1(1)(b) of the FOIA. As the council has agreed that this information can be included in this decision notice (paragraph 23), the Commissioner requires no steps to be taken.
26. In relation to question 3, the council stated to the complainant that it has a process in place in compliance with regulations and if an individual wishes to see their own entry on a court list they may do so by prior arrangement with either the Magistrates' Court or the Billing Authority. The Commissioner notes that this request is phrased as a question rather than a request for recorded information and informed the council that questions should be treated as requests if recorded information exists that would answer them. He therefore asked the council to confirm whether the requested information is held in recorded form and,

if not, to provide explanations. The council replied that the information is held in a recorded format on manual paper record files. Therefore in not supplying such recorded information to the complainant, the Commissioner considers that the council has breached section 1(1)(b) of the FOIA.

27. In relation to question 4, the council informed the complainant of the following:

"The Council has contract with the following two companies:

Jacobs Certificated Bailiff's and Phoenix Commercial Collections

Jacobs are mainly for collection of Penalty Charge Notices for Parking Services and Council Tax

Phoenix collect business rate and council tax.

Both contracts time period run from 01 August 2010 to 31 December 2012."

It also stated that the council received no fees.

28. In correspondence with the Commissioner, the council provided further information relating to the renewal of the contract, the purpose of the appointment and information relating to monies collected to which it applied the exemption at section 43(2). This is considered separately below.
29. The Commissioner considers that some information within the scope of the request has been provided to the complainant; namely, the number of commercial bailiff companies employed/retained by the council, the names of the companies and the duration of the service contracts. Therefore in relation to those elements of the request he does not consider there to be any evidence of a breach of section 1 of the FOIA.
30. In relation to the following section of the request:

"Whether Bradford MDC pays the bailiff companies, or whether the companies pay any fees or other sums - other than the exact sums of the debts recovered - to the council, what form any such payments take, their frequency and value, by company and total for each financial year, and whether they represent a percentage of any sums, by way of fees or debt recovered?",

although the council informed the complainant that 'the council received no fees', the Commissioner does not consider that this element of the request has been adequately addressed. Despite the Commissioner

requesting it, the council did not make it clear whether the requested information is held in recorded form. Therefore, the Commissioner considers that the council has failed to respond to the request in accordance with the legislation in that it did not respond within the statutory time limit in breach of section 10(1).

Section 43(2) – Prejudice to Commercial Interests

31. 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.

32. 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."¹

33. In this instance the council has applied section 43(2) to information relating to the renewal of the contract, the purpose of the appointment and the monies collected by two commercial bailiff companies on behalf of the council.

34. In correspondence to the Commissioner, the council stated that the release of the information would be likely to prejudice the commercial interests of any person including the public authority holding it. It also stated that it had given careful consideration to the public interest test and decided that in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information pending the changes coming in as a result of the welfare reforms and the full facts regarding bailiffs.

35. The Commissioner notes that the council did not provide details of whose commercial interests would be prejudiced, how this prejudice

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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.as_hx

would occur or the likelihood of the prejudice occurring. This was despite the council being informed by the Commissioner that it must justify its position and being provided with the Commissioner's guidance on how he deals with complaints² which clearly states that it is the public authorities responsibility to satisfy the Commissioner that information should not be disclosed and that it has complied with the law.

36. As the council did not provide arguments for the application of the exemption, the Commissioner has no choice but to conclude that it is not engaged.

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[http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Corporate/Practical_application/complaints_guide_for_public_authorities.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/media/documents/library/Corporate/Practical_application/complaints_guide_for_public_authorities.ashx)

Right of appeal

37. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

38. 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.
39. 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

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