

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 September 2014

**Public Authority:** Liverpool City Council

**Address:** Municipal Buildings

Dale Street

Liverpool

L2 2DH

### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to taxi licence income and expenditure. Liverpool City Council ('the council') initially stated that it does not hold the information requested. During the Commissioner's investigation, the council provided some information within the scope of the request but the complainant was not satisfied that all information had been provided. The Commissioner's decision is that, on the balance of probabilities, the council does not any further information. He does not require the council to take any steps to ensure compliance with the legislation.

### **Request and response**

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2. On 3 January 2014, the complainant wrote to the council and requested information in the following terms:

"Please supply for the last 6 annual accounting periods

1. Annual details of ALL income from Liverpool taxi licence fees (i.e. Hackney Carriage Driver, Hackney Carriage Vehicle, Private Hire Driver, Private Hire Vehicle and Private Hire Operator licence fees)
2. Annual details of ALL expenditure by Liverpool City Council in respect of Hackney Carriage and Private Hire licensing and enforcement (costs of issuing licences and all taxi specific enforcement activity)
3. All six year-end surpluses (or deficits) for the taxi licensing budget."

3. The council responded on 31 January 2014 and stated it does not hold the information requested. It said it does not record information at such a detailed level as set out in the request and the recorded information in relation to the request is only held in an overall subtotal, i.e. total income, total expenditure etc. The council provided a table showing the overall income and expenditure for the last 6 annual accounting periods.
4. The complainant requested an internal review on 11 February 2014. The council provided an internal review on 24 March 2014 in which it upheld its position but said that 'a more detailed response with additional information would have been appropriate'.

### **Scope of the case**

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5. The complainant wrote to the Commissioner on 11 April 2014 to complain about the way his request for information had been handled.
6. During the course of the Commissioner's investigation, the council provided the Commissioner and the complainant with further information. As a result of a manual extraction exercise of previous years' figures, it provided a table detailing expenditure, broken down into seven categories, and total income for the years 2008/2009, 2009/2010, 2010/2011 and 2011/2012 in relation to 'the relevant subject matter'.
7. The complainant remains unsatisfied with the further response as the information provided only covers a period up to 2011/2012 and he believes the expenditure details are too wide ranging and should be more explicit.
8. The Commissioner has therefore considered whether further information is held.

### **Reasons for decision**

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9. Section 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.
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 argument. He will also consider the actions taken by the authority to

check that the information is not held and 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.

11. The complainant believes that the requested information does exist, or at least, used to exist. In the internal review request, he referred to a response to a previous information request dated 27 October 2011 (council reference FOI/167041) where taxi licensing income and expenditure was provided for 2010/2011 and broken down into five categories for expenditure and two categories for income.
12. The complainant also believes that the following statement, made by the council in its internal review response, demonstrates that information within the scope of the request must exist:

“The City Council is aware of its precise income and expenditure as was confirmed in our original response. We can confirm that we have individual cost codes for each licensing regime which identifies income and expenditure as it happens throughout the budgetary year and period of the license.”

13. In addition, the complainant has said that the council is legally required to keep the requested financial records. He said that there is a legislative requirement to keep full and accurate records for audit purposes and so that the public can identify the precise source of all council income and exactly what it has been spent on. The following was also submitted:

“The Council must keep detailed accounts for each licensing department so that there is a clear record of what each licensing department’s licensing fees have been spent on. This is because local authorities are not permitted to use licence fees as a revenue raising tool (as per *R V Manchester City Council, ex p King (1991)* and *R (app Simply Pleasure and Ors) v Westminster City Council (2012)*) and the most that the fee can cover is the cost of the particular licensing regime. Fee setting for taxi licences (both hackney carriages and private hire vehicles) is governed by Section 53 and Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 which allow a local authority to charge a fee to cover the cost of issue and administration of the licence; this does not cover enforcement action against drivers and operators.

Furthermore, each licensing department must be accounted for separately and there can be no cross subsidy from one to another. Any surplus from an individual licencing department must either be carried forward to the next year (and therefore there would be a reduction in licence fees the following year) or repaid to relevant parties.”

14. The Commissioner enquired as to whether the information has ever been held, the scope, quality, thoroughness and results of the searches carried out by the council, whether information had ever been held but deleted and whether copies of information may have been made and held in other locations. He asked the council to bear in mind that that it appears likely, from the correspondence received on this case, that more detailed information is held because the council said in its internal review response that it 'is aware of its precise income and expenditure' and has 'individual cost codes for each licensing regime which identifies income and expenditure throughout the budgetary year and period of the license'. The Commissioner also expressed his view that it seems reasonable to assume that more detailed information is held, along the lines of that provided by the council in response to FOI/167041 (as referenced by the complainant in his internal review request), in order for the summaries provided in the initial response to this request to be produced.
15. The council explained that its electronic corporate financial system is its sole source of financial information. It said that electronic searches of the corporate financial system were carried out using the search terms 'Licensing revenue / Expenditure statement' and that this data was provided in the initial response. It said that no information relevant to the scope of the request had ever been held which had since been deleted or destroyed or held in other locations. The council also said that it adheres to its data retention policy of seven years and that all records held are kept in accordance with Liverpool City Council Financial Regulations.
16. The Commissioner also enquired whether there was any legal requirement or business need for the council to hold the information. The council explained that the licensing spend is retained as a whole across the service area. It said that the service area does not break down the licensing spend into individual streams and the cost of the licensing cannot be easily broken down over the various streams. It explained that it is of no benefit to the council to carry out this exercise and that the process would be resource intensive and still inaccurate. It also said that there is no statutory requirement to retain the requested information.
17. As the above response did not specifically address the Commissioner's enquiries as regarding it having individual cost codes and having

provided more detailed information to a previous request, the Commissioner asked the council to explain its position further.

18. In response, the council said that it had spoken at length with its Trading Standards and Treasury department and that its original response was, after interrogation, found to be inaccurate. It said that it does not have individual cost codes for all licensing regimes but it does have some licensing cost codes (such as taxis) that identify income, not expenditure. It explained that the financial information it holds for licensing covers the following areas:

- Total expenditure for the whole of Licensing Service which cannot be split across each stream/area of Licensing
- Total income for the whole of Licensing Service which can be split across the larger streams (of which taxis is one) with a total for the minor streams (such as misc. licensing)

The council also said that it can and has provided Taxi Licensing income details for the past 6 financial years along with the total surplus for each year for Licensing Services as a whole.

19. As this further response appeared to contradict previous responses, in that the council said that it had provided Taxi Licensing income details for the past 6 financial years but had only provided the income and expenditure for the whole of the licensing department in its initial response, the Commissioner again asked the council to further explain its position. The Commissioner also commented that it was still difficult to understand why the council doesn't hold further information given the previous response providing a breakdown of taxi licensing income and expenditure.

20. The Commissioner was then provided with the following response:

"In relation to our correspondence I can confirm that, after liaising with the relevant officers, we do not break licensing budgets down into individual streams. In terms of what was provided previously in the response of October 2011, a decision was taken to stop breaking information down on this basis as it was deemed inaccurate as it was based purely on estimates of staff activities which were felt to be unreliable for the purposes of reporting.

This decision was taken at the end of the financial year 2011/12 as it was felt that this level of information was inaccurate, unnecessary and not required either for accounting, audit or budgetary matters."

At this point the council also provided the information referred to in paragraph 6 above, that being a table detailing expenditure, broken down into seven categories, and total income for the years 2008/2009, 2009/2010, 2010/2011 and 2011/2012 which it said was produced as a result of a manual extraction exercise of previous years' figures.

21. As information within the scope of the request was provided as detailed above, it appears that such information was held at the time of the request but not provided as it was considered "inaccurate, unnecessary and not required either for accounting, audit or budgetary matters". The Commissioner notes that under FOIA the right of access is to the information which is held, regardless of its accuracy.
22. In relation to the complainants assertion that more detailed information must be held in order to set appropriate fees for taxi licences, the Commissioner notes that the council said, in its internal review response, that the statutory requirements referred to are correct and stated the following:

"However, this is controlled by the Provisions of Services Directive which, where it applies, controls the authority's ability to set a fee and on what that fee can be used for. There are however other statutory provisions allowing expenditure and fee setting over and above the requirements of the directive and where this applies it is used, although not in the current taxi licensing fee regime."
23. The Commissioner is unclear as to the exact meaning of the above statement and received no further clarification of it from the council. Whilst he acknowledges the complainant's view that detailed accounts must be held for each licensing department in order to set appropriate fees, he is not in a position to adjudicate on whether the council is adhering to legislation governing this matter.
24. In order to reach a decision as to whether further information within the scope of this request is held, the Commissioner also considered whether the council had any reason or motive to conceal further information. Although not specifically stated, it appears that the complainant believes that the information would show that surplus income from licensing fees should have been used to reduce fees in subsequent years or to repay taxi drivers. The Commissioner has not seen any evidence that the council is concealing information in order to avoid reducing or refunding fees and has therefore not identified any reason or motive to conceal the requested information.
25. Given the history of this case, the Commissioner appreciates that the complainant may remain sceptical that further, more detailed information does not exist. However, in the circumstances, the

Commissioner does not consider that there is any evidence that would justify refusing to accept the council's position that it does not hold any further information relevant to this request. The council has clearly stated that it does not have any statutory requirements to hold further information and explained why the information it has provided for previous years is not held from onwards of 2011/2012. The Commissioner is therefore satisfied that on the balance of probabilities, the information is not held by the council.

## **Other matters**

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26. The Commissioner found it necessary to seek clarification from the council several times during this investigation. He is concerned about the inconsistent responses to this request and the delays in responding to the Commissioner's enquiries. The council should ensure in future that its first step upon receiving an information request is to identify all the relevant information it holds and provide it regardless of its accuracy, unless a relevant exemption applies. The council should also ensure that its responses to the Commissioner's enquiries are as thorough and timely as possible.

## Right of appeal

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27. 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)

28. 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.
29. 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**  
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**Information Commissioner's Office**  
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