

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 April 2016

Public Authority: City of York Council

Address: West Offices
Station Rise
York
YO1 6GA

Decision (including any steps ordered)

1. The complainant has requested recorded information which relates to the lease of two offices to Conserve Africa Foundation, which are subject to a dispute and possible recovery action in respect of council tax.
2. Where City of York Council holds recorded information which falls within the scope of the complainant's request, the Commissioner has decided that the Council is entitled to rely on section 31(1)(d) of the FOIA to withhold it.
3. Where the Council says that it does not hold recorded information falling within the scope of the complainant's request, the Commissioner has decided that, on the balance of probabilities, the Council has complied with section 1 of the FOIA, in advising the complainant of this position.
4. The Commissioner requires the public authority to take no further action in this matter.

Request and response

5. On 22 April 2015, the complainant wrote to the City of York Council and requested information in the following terms:

"For monitoring and evaluation purposes, could you please send me the following information?"

1. All copies of the signed leases in relation to the above account[*] or any other account in the name of Conserve Africa foundation

2. All correspondence from the person and landlord who contacted the Council to let them know that Conserve Africa is renting the property and is liable for business rates, e.g. the person who contacted the Council in the first place or who signed the leases
3. How much business rates are being charged to Conserve Africa Foundation and for what period
4. What is the value of the properties
5. Amount awarded for business rates relief
6. Rateable value for each property
7. The name and address of the landlord
8. Total charges and rateable values for the period of 2012-2016
9. Amount of empty property charges
10. Total liability for each property
11. Total amount already paid for each property
12. The address of the properties
13. Details of any other account in the name of Conserve Africa Foundation"

*Account Numbers: 4010470443, 4010470476, 4010470487, 4010470498, 4010459793, 4010459817, 2002270, 2000084¹

6. The Council provided its response to the complainant on 12 May, under reference CFT 0402.
7. The complainant wrote to the Council again on 19 May to ask for information of substantially the same description as that in his previous request (above).
8. The Council responded to the complainant's second request on 23 June under reference CFT 0573, informing the complainant that the information he seeks at questions 1, 3 to 12 and 14 is exempt under section 21 of the FOIA, as they are the same questions he asked in his previous FOI enquiry under reference CFT 0402.
9. The Council also advised the complainant that the information at questions 2 and 13 is exempt from disclosure under section 31(1)(d) on

¹ Account numbers 2002270 and 2000084 relate to two properties leased to Conserve Africa Foundation.

Accounts 4010470443, 4010470476, 1010470487, 4010470498, 4010459793 and 4010459817 are historic billing numbers relating to the two properties.

the grounds that disclosure would prejudice the collection of tax, or be of use by those avoiding tax.

10. The complainant wrote again to the Council on 15 October. In his email, the complainant asked the Council to supply the following additional information:

- "All Notices of enforcement, Summons, Notices of outstanding bills, Reminder Notices, Notification of enforcement Agent Visit, Copies of liability orders, NDR Demand Notices, NDR Bills;
- All correspondence from the Council to [a named individual] and other people who were acting on behalf of Conserve Africa including [the named individual's] solicitor, Agent ([first company name redacted]);
- All the evidence submitted by your solicitor for all legal actions;
- All the evidence held by debt recovery Agencies,
- Why did you not evict the charity when you found out that it was not paying the debts owed to the Council that it was not occupying the property for charitable activities or the property was empty.
- All Contact between [second company name redacted]
- The copies of authorisation provided to the solicitor and the Agent [first company name redacted] to represent Conserve Africa Foundation in NDR matters regarding Conserve Africa foundation."

11. On 16 October the complainant wrote to the Council again. The complainant provided clarification for the Council that his request was for "All correspondence between the Council and [the second company]" and not for "All contact between [the second company]".

12. The complainant wrote again to the Council on 27 October. He asked the Council to supply him with the landlord's telephone number and email address. In a second email, also dated 27 October, the complainant explained his need to obtain copies of the leases and the contact details of the persons acting on behalf of the charity. He asked the Council to supply evidence which demonstrates that these agents were authorised to act on behalf of the charity.

13. The Council carried out an internal review of case CFT 0402. It determined that, "the Council has applied the exemptions inappropriately in its reply..." and therefore the recommendation was for the Council to reconsider the information it holds and to issue a further response. The Council made clear to the complainant that exemptions may still be applied to some of the information.

14. On 27 November the Council provided the complainant with the demands, reminders and summons notices which have been issued to Conserve Africa. The Council also confirmed that no solicitors and no

debt recovery agencies had been involved in this case and that all correspondence with [the second company] would not be released to him without [the second company's] authorisation. The Council also advised the complainant that it does not hold the authorisation provided to the solicitor and the Agent – [the first company].

Scope of the case

15. The complainant contacted the Commissioner on 15 October 2015 to complain about the way his request for information had been handled. The complainant made clear his requirement to receive:

- "All Notices of enforcement, Summons, Notices of outstanding bills, Reminder Notices, Notification of enforcement Agent Visit, Copies of liability orders, NDR Demand Notices NDR Bills;
- All correspondence from the Council to Miss Harriet Jackson and other people who were acting on behalf of Conserve Africa including Harriet Jackson's solicitor, Agent (Sheridan Gills Limited);
- All the evidence submitted by your [the Council's] solicitor for all legal actions;
- All the evidence held by debt recovery Agencies;
- All Mandale Investments limited
- The copies of the authorisations provided to the solicitor and the Agent (Sheridan Gills Limited) to represent Conserve Africa in NDR matters regarding Conserve Africa foundation"

16. The Commissioner has investigated whether the Council has handled the complainant's request in accordance with the FOIA. He has limited his decision to the Council's handling of the complainant's first request, which was dealt with by the Council under reference CFT 0402. This is because it is this case which the Council has been afforded the opportunity to review.

Reasons for decision

Where the Council holds information specified in the complainant's request

17. The Council has provided the Commissioner with copies of the information it holds and which has been withheld from the complainant. It has also given the Commissioner assurances in respect of the information which it does not hold.

18. The information held by the Council comprises:
 - Signed and dated tenancy agreements for two offices.
 - Correspondence between the Council, the property landlord, the individual named in the complainant's request and the agents acting on behalf of the parties associated with the leasing of the two offices.
 - Correspondence between the Council and the person named in the complainant's request and correspondence between Mandale Investments Ltd and the Council.
 - Correspondence between the Council and the lawyers acting on behalf of Mandale Investments Ltd.
19. The Council has confirmed to the Commissioner that all of the withheld information it holds is subject to its application of section 31(1)(d) of the FOIA.
20. Section 31(1)(d) of the FOIA states that:

“(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(d) the assessment or collection of any tax or duty or of any imposition of a similar nature...”
21. The Council has advised the Commissioner that the withheld information should be considered in the context of an investigation relating to tax liability. The Council considers that Conserve Africa Foundation is liable for outstanding council tax charges. It has suspended recovery action due to an on-going dispute between the Council with the complainant.
22. The Council considers that disclosure of the withheld information would prejudice its, and other local authorities, ability to investigate assess and collect council tax.
23. The Council considers that disclosure of the withheld information would allow parties linked to Conserve Africa Foundation to obstruct the Council's investigation and avoid council tax liability. Furthermore, the Council believes that disclosing the withheld information would harm the robustness of any case which the Council might need to pursue in the future for the purpose of council tax recovery.
24. The Commissioner has examined the withheld information and has found it to relate to Conserve Africa Foundation's liability for council tax. He is satisfied that disclosure of the withheld information would, or would be

likely to, prejudice the Council's ability to collect council tax. The Commissioner therefore finds that the exemption provided by section 31(1)(d) of the FOIA is properly engaged.

25. The exemption provided by section 31 is subject to consideration of the public interest test. Under this test, information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

Public interest factors which favour disclosure of the requested information

26. The Commissioner will always give necessary weight to the public interest where disclosure of information provides accountability and transparency for decisions taken by public authorities and where, as in this case, the decisions relate to a potential legal action for the recovery of council tax.
27. Disclosure of the withheld information in this case would allow the public to judge whether the Council is investigating the possible avoidance of council tax, and that it is pursuing potential legal action to recover the tax which it considers is payable.
28. The information, should it be disclosed, could promote public debate and allow the Council's council tax payers to greater understand the decisions which affect them.

Public interest factors which favour the withholding of the requested information

29. In this case, the withheld information could be used by the complainant and others to undermine the integrity and effectiveness of the Council's tax recovery operations. This would significantly harm the Council's ability to combat tax avoidance and fraud, and thereby its ability to maximise the funds available to the Council via this route.
30. Releasing the withheld information into the public domain could jeopardise the relationship which exists between this local authority and other councils believed to be investigating matters associated with Conserve Africa Foundation.
31. Disclosure of the withheld information would likely have a negative impact on the Council's ability to combat fraud and tax avoidance in the future. It would do this by limiting the necessary cooperation it requires from landlords and charities to provide accurate and potentially confidential information.

The Commissioner conclusions

32. Weight must always be given to the disclosure of information which promotes and furthers the transparency and accountability of a public authority's decisions. This is especially so where the requested information relates to steps taken to investigate and pursue potential fraud and the avoidance of council tax.
33. The Commissioner recognises the inherent public interest in the ability of the Council to maximise its collection of council tax where it is due, and to be seen to be properly engaged in this process.
34. Likewise, the Commissioner must recognise the potential damage disclosure would present to the Council's ability investigate instances of fraud and to bring successful actions in court.
35. For these reasons, the Commissioner has decided that the Council is entitled to withhold the requested information in reliance on section 31(1)(d) of the FOIA.

Where the Council asserts that the requested information is not held

36. Section 1 of 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."
37. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds the information which the complainant believes it holds or should hold.
 38. The Council has assured the Commissioner that it has searched all customer information, including letters and email correspondence, which has been received by its Business Rates department. This information is stored in the Council's document management system – "Anite".
 39. Information can be retrieved from the Anite system by searching the property reference number or payment reference number.
 40. The Council assures the Commissioner that all relevant manual and electronic correspondence and documentation would be retained within its Business Rates department and held on the Anite system.

41. No recorded information within the scope of the complainant's request has been deleted or destroyed and the Council has conformed to its own records management policy. This policy requires documentation to be retained for six years from the date an account is closed to allow for any civil recovery action and for credit referencing requirements.
42. The Council is required to retain documents which may be relevant to civil action and litigation. This is required by the Limitation Act 1980.
43. The Commissioner has considered the Council's representations in respect of the information which it asserts is not held. The Commissioner finds these representations both plausible and persuasive and he has decided that, on the balance of probabilities, the Council does not hold any information, relevant to the complainant's request, other than the information referred to in paragraph 18 above.
44. The Commissioner finds that the Council has complied with section 1(1)(a) of the FOIA in respect of the information which the Council does not hold.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Andrew White
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