

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 December 2022

Public Authority: East Lindsey District Council
Address: Tedder Hall
Manby Park
Louth
Lincolnshire
LN11 8UP

Decision (including any steps ordered)

1. The complainant requested information about whether a particular superstore was liable to pay the BID levy. The Commissioner's decision is that the response issued by East Lindsey District Council (the Council) did not comply with section 1 of the FOIA as it did not confirm or deny whether the specific information requested is held.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to parts 1 and 3 of the request which complies with section 1 of the FOIA. The response should confirm or deny whether the specific information is held, and either disclose the information, or issue a valid refusal notice which complies with section 17 of the FOIA.
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 FOIA and may be dealt with as a contempt of court.

Request and response

4. On 23 March 2022, the complainant wrote to the Council and requested information in the following terms:

"We have noticed, on inspection of information provided by ELDC through a freedom of information request, that Tesco superstore on Richmond Drive in Skegness appears to not be included in the businesses that have been issued with a demand for the BID Levy, although it is clearly a retail outlet.

Could you please confirm the following:

1. Is that hereditament liable to pay the BID levy?
2. Has that hereditament paid the BID levy, either voluntarily or compulsorily?
3. If they are not liable for the Levy, what are the circumstances that exempt that hereditament, and not the other supermarkets in the BID area, from being charged?"
5. The Council responded on 20 May 2022. In relation to questions 1 and 3 the Council stated that the premises were "not on the final ballot list provided by the BID and were not levied". In respect of question 2 the Council stated that no BID levy had been paid. The Council upheld this position in its internal review which was issued on 21 June 2022.

Reasons for decision

6. This reasoning covers whether the Council has complied with its obligations under section 1 of the FOIA.
7. Parts 1 and 3 of the request ask specifically whether the Tesco superstore on Richmond Drive in Skegness is liable to pay the BID levy and secondly, if it is not liable to pay the BID levy what are the circumstances that exempt it from paying the levy.
8. To date the Council has simply stated that the Tesco store in question "was not on the final ballot list provided by the BID and were not levied". In the Commissioner's opinion this response merely confirms that the property in question was not on a list provided to the Council and as such it did not pay the levy, and as such a levy was not paid. The response does not answer the question of whether the property is *liable* to pay the BID levy or, if not, *why* it is exempt from paying it. For example, the Commissioner considers that it is possible that the store in question is liable to pay the levy, but for some reason it was missed off the list that was sent to the Council. If it was somehow missed off the list in error, this does not automatically mean that that the store is exempt from paying the levy.

9. In light of the above, the Commissioner's decision is that the Council has not complied with section 1 of the FOIA in relation to parts 1 and 3 of the request as it has not, to date, confirmed whether it holds the specific information requested by the complainant, that is whether the Tesco store referred to is *liable* to pay the BID levy, and if it isn't liable to pay it, the reason why it is exempt.
10. The Commissioner requires the Council to issue a fresh response to parts 1 and 3 of the request which confirms or denies whether it holds any recorded information relating to parts 1 and 3 of the request. If recorded information is held the Council should either disclose it or issue a valid refusal notice which complies with section 17 of the FOIA.

Right of appeal

11. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

12. 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.
13. 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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF