

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

### **Decision notice**

**Date:** 3 October 2024

**Public Authority:** London Borough of Barnet  
**Address:** Hendon Town Hall  
The Burroughs  
London  
NW4 4BG

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

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1. The complainant has made two requests to London Borough of Barnet ('the Council') about the funding bid and expected income for the JOLT electric vehicle charging point scheme. The Council provided some of the requested information but relied on section 43(2) of FOIA (commercial interests) to withhold the redacted sections of the requested bid document.
2. The Commissioner's decision is that the Council was entitled to rely on section 43(2) of FOIA to withhold some of the requested information. He also finds that the Council breached sections 10(1) and 17(1) of FOIA by failing to provide a refusal notice to the requests within 20 working days.
3. The Commissioner does not require further formal steps. However, if it has not already done so, the Council should disclose the updated version of the redacted bid document to the complainant as planned.

#### **Requests and response**

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##### **Request One:**

4. On 23 November 2023, the complainant wrote to the Council and requested information in the following terms:

"Please provide:

1. The request (proposal) for grant funding submitted by Barnet Council to the Local Electric Vehicle Infrastructure (LEVI) pilot scheme operated by the Office for Zero Emission Vehicles (Department of Transport). The awards were announced in August 2022 and Barnet was awarded £2.1 million (<https://www.gov.uk/government/news/drivers-to-benefit-from-20-million-ev-chargepoint-boost>). This grant is being used for a program with JOLT Charge Limited to install 120 electric vehicle charge points (with advertising screens)."

**Request Two:**

5. On 2 December 2023, the complainant wrote to the Council and requested information in the following terms:

"I wish to receive the information below about the scheme undertaken by the London Borough of Barnet ("Barnet Council") and JOLT Charge Limited, agreed during 2022 or 2023, for installation of 120 JOLT electric vehicle charging points (with advertising screens) in Barnet.

1. What is the income that Barnet Council forecasts that it will receive from the implementation of this scheme, for each of the financial years: 2023/24, 2024/25, 2025/26, 2026/27, 2027/28. (Please provide annual figures not the total for this period).

2. For each year and total income figure listed in item (1), provide the components of the total income received by Barnet council, broken down as follows: (a) Rent of sites, (b) Share of EV charging revenue, (c) Share of advertising revenue, (d) Other"

6. The Council responded to both requests on 22 January 2024. For Request One, the Council provided a redacted copy of the requested information. For Request Two, it stated that the requested information could be found in the Council's Budget Book and provided the relevant link.
7. On 7 March 2024, the complainant submitted a combined request for an internal review. They asked for the redactions made to the bid document to be refined and repeated their request for the total budget revenue expected from the JOLT scheme by year.
8. The Council wrote to the complainant with its internal review response on 3 April 2024. For Request One, it provided a copy of the requested information with fewer redactions but advised that the redacted information was being withheld under section 43 of FOIA. For Request

Two, the Council maintained its response that the most accurate income estimates were already publicly available.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 14 May 2024 to complain about the way their requests for information had been handled.
10. In its submission to the Commissioner, the Council explained that it had reviewed its response to Request Two and it did hold more detailed information in scope of the request. However, it stated that this information related to the same information that had been withheld in relation to Request One. The Council said it is therefore also withholding this information under section 43(2) of FOIA.
11. Regarding Request One, the Council informed the Commissioner that it had reviewed the redactions made to the requested bid document. It found that due to the passage of time it can reduce the amount of redacted information and re-issue the document to the complainant. It stated that section 43(2) still applied to the remainder of the redacted information.
12. The Commissioner considers that the scope of his investigation is to determine whether the Council was entitled to rely on section 43(2) of FOIA to withhold some of the requested information.

## **Reasons for decision**

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### **Section 43(2) – commercial interests**

13. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
14. In order for section 43(2) to be engaged, three criteria must be met:
  - the harm which the public authority envisages must relate to someone's commercial interests;
  - the public authority must be able to demonstrate a causal relationship between disclosure and prejudice to those commercial interests. The resultant prejudice must be real, actual or of substance; and

- the level of likelihood of prejudice being relied upon by the public authority must be met (that is, it must be shown that disclosure would, or would be likely to, result in prejudice occurring).
15. In terms of Request Two, the Council has explained that it is withholding information about its anticipated income from the JOLT scheme as it relates to its contractual terms with Jolt Ltd. It added that although the Council was awarded funding for up to 120 charge points, it is not yet possible to accurately estimate how many will actually be installed. It explained that all proposed sites are firstly subject to review to ensure they are suitable, and then they must pass two statutory processes in order to secure planning permission and approval under the London Local Authorities and Transport for London Act 2013. The Council explained that it can't therefore accurately predict the final number of units that will be installed. It added that income is also partly based on usage, and it is difficult to predict the level of usage until the actual number of charge points is confirmed.
  16. Concerning the withheld information in both requests, the Council has explained that disclosing the financial arrangements between itself and Jolt Ltd would negatively impact Jolt Ltd's ability to negotiate with other local authorities, as well as the Council's own negotiating power when seeking to enter future contracts for EV charge points.
  17. The Council has explained that disclosure of the terms of its specific contracting arrangements with Jolt Ltd would give competitors an advantage in offering competing bids to other organizations. This would affect Jolt Ltd's business model and competitiveness in an emerging market.
  18. The Commissioner is satisfied, first, that the harm the Council envisages relates to commercial interests; those of the Council and of Jolt Ltd.
  19. Second, the Commissioner accepts that a causal link exists between disclosing the information and commercial prejudice. The Commissioner has viewed the withheld information, and he agrees that it is related to specific contract pricing terms which are bespoke to the agreement between the Council and Jolt Ltd.
  20. In its submission to the Commissioner, the Council has stated that it considers the prejudice would happen. The Commissioner is not convinced that the prejudice described by the Council would be more likely to happen than not, but he accepts that there is likelihood of prejudice. The Commissioner therefore accepts the lower threshold of likelihood in this case; that the envisioned prejudice would be likely to happen.

21. Since the three criteria above have been satisfied, the Commissioner accepts that disclosing this information would be likely to result in commercial prejudice to the Council and Jolt Ltd. The exemption at section 43(2) is engaged.
22. The Commissioner will now consider the public interest factors in favour of disclosing the redacted information or continuing to withhold it.

### **Public interest test**

23. Section 43(2) is subject to the public interest test, as set out in section 2 of FOIA. This means that although the exemption is engaged, the requested information must be disclosed unless the public interest in maintaining the exemption is stronger than the public interest in disclosure.

### **Public interest factors in favour of disclosing the requested information**

24. The Council has acknowledged that there is public interest in transparency in the decision-making process relating to the spending of public money and ensuring that procurement processes are conducted in an open and honest way. It considers that it is also important for the public to see taxpayers' money being used effectively and public authorities getting value for money.
25. The Council has stated that it is for these reasons that it has disclosed the requested bid document with minimal redactions, and why it is willing to remove further redactions due to the passage of time.

### **Public interest factors in favour of maintaining the exemption**

26. The Council has stated that the unique nature of its agreement with Jolt Ltd means that the release of the requested information would prejudice negotiations by both Jolt Ltd and the Council for future innovative agreements. It also stated disclosure would have a chilling effect on the willingness of other companies and public authorities to enter into these agreements.
27. The Council also argues that there is no benefit to the public interest in giving Jolt Ltd's competitors a comparative advantage in releasing the withheld information.
28. The Council considers that it has discharged its commitment to transparency by releasing as much of the bid document as possible. It explained that the remaining information remains commercially sensitive and its release at this time would be prejudicial.

## **Balance of the public interest**

29. The Commissioner acknowledges that there is a public interest in transparency in the decision making process and spending of public funds. He also acknowledges that EV charging is an area of emerging technology that can have an impact on public spaces and amenities. This garners public interest.
30. However, he notes that the Council has disclosed the majority of the bid document, and it is willing to disclose more of the previously redacted information to the complainant. In their complaint to the Commissioner, the complainant made particular mention of section E1 in the bid document and expressed their dissatisfaction that the whole of this section had been redacted. The Council has provided the Commissioner with an updated copy of the redacted bid document where only a small portion of this section is withheld. The Commissioner has reviewed the withheld information and finds that the redactions applied are minimal.
31. He considers that the balance of the public interest is weighted in favour of non-disclosure of the remaining redacted information as he agrees that the release of the redacted information is likely to result in harm to Jolt Ltd's business model, and a reduction in both the Council's and Jolt Ltd's competitiveness and ability to negotiate. These factors are not in the public interest.
32. The Commissioner therefore finds that the Council was entitled to rely on section 43(2) of FOIA to withhold some of the requested information. He recommends that the Council should disclose the version of the bid document with fewer redactions to the complainant as planned.

## **Procedural matters**

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33. The Commissioner finds that the Council breached section 10(1) and 17(1) of FOIA in its original responses to the complainant by failing to communicate the requested information, or issue a refusal notice within 20 working days of receipt of the requests.

## **Right of appeal**

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34. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Keeley Christine**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**