

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 July 2025

Public Authority: Liverpool City Council
Address: Cunard Building
Water Street
Liverpool
L3 1AH

Decision (including any steps ordered)

1. The complainant requested information from Liverpool City Council (the Council) regarding communication between Council staff, contracts, and the sale of various properties. The Council withheld information to some parts of the request and cited sections 31(1)(g) and 31(2)(b) (Law enforcement) of FOIA.
2. The Commissioner's decision is that the Council was not entitled to rely on sections 31(1)(g) and 31(2)(b) of FOIA to refuse to provide the withheld information.
3. The Commissioner requires the Council to disclose the following information, subject to any personal data redactions in accordance with his guidance¹:
 - Interviews supplied to the Commissioner
 - Information provided to him in the email dated 25 April 2025

¹ <https://ico.org.uk/for-organisations/foi/section-40-and-regulation-13-personal-information/>

4. The Council must take these steps within 30 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 11 April 2024 the complainant requested information under the FOIA of the following description:

"Can I please be provided with the following as a Subject Access request and or as a FOI request under the FOI Act;

1. Any correspondence between the former Chief Executive of Liverpool Council [name redacted] or any other Officer of LCC that mentions me in any way, either as [name redacted], [job role], [job role and surname] covering the period [dates redacted] this to include external and internal correspondence, emails etc.
2. "Can I be provided with a copy of any Reports, Internal Audit or otherwise that has been produced that mentions my name or [job role] in any connotation.
3. Can I be provided with the Internal Memorandum Report produced by [name redacted] and [name redacted] headed Pothole Programme 2017/2018 this request is for all versions made and iterations under the same heading.
4. Can I please be provided with Internal Memorandum Report produced by [name redacted] dated May 2020 re Liverpool Highways Training Academy (LHTA ex Tarmacademy).
5. Can I please be provided with a copy of Cabinet Report FDR/77/15 dated 11/12/15.
6. Can I be provided with all internal reports, prepared and written by [name redacted] that mentions me. I request this under Subject Access and under the FOI Act.
7. Can I be provided with a copy of any internal reports regarding the sale of [address redacted].
8. Can I be provided with an Audit Report from 1st June 2017 referencing the relationship between LCC and Kings Construction.

9. Can I be provided with a copy of a Report produced by Weightmans Solicitors re - the transfer of properties in the Tribeca Scheme/ New China Town project to PHD1 and Northpoint.
 10. Finally [name redacted] resigned from LCC on the same day as the former Chief Executive [name redacted] he received according to LCC accounts £175,000, did [name redacted] receive any payment or settlement agreement payment?"
6. On 31 May 2024 the Council responded. With regard to question 1 of the request, the Council actioned this in accordance with part 3 of the Data Protection Act 2018 (subject access request). Regarding question 5 of the request, the Council stated the information is publicly available and provided the complainant with a link to the information. For question 10, the Council answered this. With regard to the remaining questions within the request, the Council refused and cited sections 33(1)(b) and 33(2) (Public audit functions of other public authorities) of FOI to the withheld information.
 7. On the same day, the complainant asked for an internal review.
 8. On 15 August 2024 the Council provided its review response. It maintained its position to refuse to comply with the request, but under different exemptions, it cited sections 31(1)(g) and 31(2)(b) (Law enforcement) of FOIA to the withheld information.
 9. The Commissioner reminds the Council to consider a request under the correct legislation. In this case, the Council handled questions 2 and 6 under FOIA, and failed to identify them as a subject access request (SAR). The Commissioner considers that as these questions relate to the complainant, the Council should have dealt with them as a SAR.
 10. The complainant confirmed to the Commissioner he is seeking information to all parts of his request. He said his main reason is to be able to clarify the information that was used in relation to the Liverpool City Council Best Value Inspection, resulting in a subsequent report.²

Scope of the case

11. The Council supplied the Commissioner with the withheld information, this consisted of a set of interviews which the Council withheld under sections 31(1)(g) and 31(2)(b) of FOIA. The Commissioner asked the Council further questions, and in its response along with its answers, the Council provided further information within scope of the request. However, the Council failed to state whether this information was being withheld under any exemption. Therefore, the scope of the case, is to determine whether the Council is entitled to rely on sections 31(1)(g) and 31(2)(b) of FOIA for the interviews.

Section 31 – Law enforcement

12. Section 31(1) of FOIA states: 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 –

(g) the exercise of any public authority of its functions for any of the purposes specified in subsection (2).

The Council cited subsection 31(2)(b):

(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper.

13. As stated in the Commissioner's guidance³ on this section, in order to engage section 31(1)(g) a public authority should:

- identify the public authority that has been entrusted with a function to fulfil one of the purposes listed in subsection (2);
- confirm that the function has been specifically designed to fulfil that purpose; and
- explain how the disclosure could harm that function.

14. The Council stated the basis it has the authority to undertake this function and cited: "Section 27(1) Localism Act and by virtue of powers under section 10 of the Local Government Act 1999, as amended by the Local Audit and Accountability Act 2014 (the 1999 Act)."

³ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-31-law-enforcement/sections-31-1-g-regulatory-powers/>

15. The Council confirmed it is the public authority in question and it is carrying out functions identified in section 31(2)(b). The Council explained why disclosure of the information would prejudice the function which it is designed to protect.
16. The withheld information comprises interviews with Council officers between February and September 2020. It said "to release the information requested would risk the examination being prejudiced. Confidentiality is also necessary, so that people are not discouraged from assisting the Council with the exercise of its functions for the purpose identified in section 31(2)(b), for fear that such assistance may become public and they may be subject to reprisals."
17. The Council further explained that without confidentiality, anybody that assisted the examination of the Council's records, would be inhibited from being fully frank in the future exercise of its functions for the purpose identified in section 31(2)(b) of FOIA.
18. The Commissioner is satisfied these are relevant functions which fall under section 31(1)(g) for the purposes of 31(2)(b) of FOIA, and which are specifically entrusted to the Council as a local authority to fulfil.
19. The Council was asked by the Commissioner to provide evidence which demonstrates a causal relationship between disclosure of the information that has been requested, and any prejudice which may occur.
20. The Council said disclosure "would likely prejudice the findings of the Liverpool City Council Best Value Report, and the purpose of the inspection to provide direct independent assurance to the Secretary of State, that the City Council in complying with its best value duties." The Council believes disclosing this information would discourage co-operation with auditors, and damage the working relationship with independent investigators and the Council.
21. The Council also said "it is on the basis that the Liverpool City Council Best Value Inspection Team had functions in relation to the examination of effective arrangements for securing best value in the use of its resources in discharging its planning, highways, regeneration and property management functions and the strength of associated audit and governance arrangements."
22. The Council stated the information requested was collected for the specific, explicit and limited purposes in accordance with relevant Council complaints procedures, including Councillors' Code of Conduct and Whistleblowing Policy.

23. The Council informed the Commissioner that work relies on input from individuals that have raised concerns. It said some of the information contained within the document is public knowledge i.e. references to Chinatown were covered publicly. However, input from others, the Council stated, is not public knowledge.
24. The Council considers that from an audit and investigatory point of view, the release of the documents, would discourage co-operation with auditors.
25. The Council explained that the Liverpool City Council Best Value Inspection team, was dependent on the free and frank provision of information from the Council, and without fear of this being shared more widely. It would risk the examination being prejudiced if the information requested was released. The Council also said confidentiality is necessary so that people are not discouraged from assisting the Council with the exercise of its functions for the purpose identified in section 31(2)(b) of FOIA. This is for fear that such assistance may become public and they may be subject to reprisals. The Council stated without confidentiality, anybody that did assist the examination of the Council's records, would be inhibited from being fully frank in the future exercise of Council functions for the purpose identified in section 31(2)(b) of FOIA.
26. The Council considers disclosure would be likely to have a detrimental impact on the quality and content of those exchanges in the future, if the information was published.
27. The Council was asked by the Commissioner to confirm which threshold of likelihood it is relying on in this case. It considered disclosure "would" prejudice to the exercise of its investigatory functions, and the effect this would have on its ability to further its public duty of ascertaining whether any person is responsible for any conduct which is improper.
28. The Commissioner has viewed the interviews, and whilst he accepts this information may have been provided in confidence, the arguments it has put forward regarding prejudice do not relate to it. The Best Value inspection of the Council's services was commissioned in December 2020, and post-dates the interviews by many months. The Commissioner is therefore not convinced that disclosure "would likely prejudice the findings of the Liverpool City Council Best Value Report, and the purpose of the inspection to provide direct independent assurance to the Secretary of State, that the City Council in complying with its best value duties". In any event, the report was published in March 2021, and any prejudice to the report by disclosure would only be relevant at the time evidence was being gathered. The request was made over 3 years after the report was published.

29. Having ascertained that the withheld information did not match either the Council's arguments regarding prejudice, the Commissioner asked the Council to respond to this. He also required the Council to answer parts of the request that had not been addressed, citing any exemptions and arguments it may be relying on. He informed the Council that a complete copy of the withheld information relating to the request was still required.
30. The Council responded, it confirmed to the Commissioner its responses to the questions and provided copies of more information. However, the Commissioner still required the Council to state whether information had been disclosed to the complainant and state the exemption applied if the information is being withheld.

Conclusion

31. The Council was offered several opportunities to provide further submissions to the Commissioner regarding the withheld information not relating to the prejudice cited concerning the Best Value inspection and report. The Council failed to take up this offer, and in the absence of any further arguments, the Commissioner finds sections 31(1)(g) and 31(2)(b) of FOIA are not engaged.
32. The Commissioner acknowledges further information that appears in scope of the request had been provided on 25 April 2025 by the Council, but there were no exemptions cited. Consequently, the Council is required to disclose this information to the complainant.

Right of appeal

33. 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)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963
Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanna Marshall
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF