

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 February 2016

**Public Authority:** Leeds City Council

**Address:** Civic Hall  
Calverly Street  
Leeds  
West Yorkshire  
LS1 1UR

### Decision (including any steps ordered)

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1. The complainant has requested details regarding a charity's lease and business rates which the council took legal action against to recover unpaid debts. The council provided the majority of the information, however it said that it did not hold a copy of a lease which it said that the charity took out on the property to which the business rates apply. The complainant disbelieves that a copy of the lease is not held.
2. The Commissioner's decision is that on a balance of probabilities the council was correct to state that a copy of the lease was not held.
3. The Commissioner does not require the council to take any steps.

### Request and response

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4. The complainant has stated that following an earlier online request for the same information which did not receive a response, he made a further request on 6 August 2015 by email. The complainant requested the following 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 correspondences from the Council to [name redacted] and other people who were acting on behalf of Conserve Africa including [name redacted] solicitor, Agent [name redacted];*

- *All the evidence submitted by your solicitor for all legal actions;*
  - *All the evidence held by debt recovery Agencies;*
  - *The copies of authorisation provided to the solicitor and the Agent to represent Conserve Africa Foundation in NDR matters regarding Conserve Africa foundation;*
5. The council responded on 8 September 2015. It provided the majority of information which was requested.
6. The complainant wrote back to the council on 19 September 2015 requesting:

*"1. You should have the copies of the leases signed by [name redacted] or other people that were acting without authorisation on behalf of Conserve Africa Foundation. I do not see how you could have managed to make a winding up application, liability order and other legal actions against the charity without the copies of the leases. Obtaining the copies of these leases should be part of your investigations about my complaint and FOI request. The copy of the lease is the main evidence that Conserve Africa was occupying the property.*

*Refusing to provide the copies of these leases is an another evidence of your administrative obstruction that prevented me from dealing with your business rates charges because I have been unable to contact the landlord to make inquiries about how they was dealing with people who were acting on behalf of Conserve Africa.*

*2. Please also send me the following 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 correspondences from the Council to [name redacted] and other people who were acting on behalf of Conserve Africa including [name redacted] solicitor, Agent [name redacted];*
- *All the evidence submitted by your solicitor for all legal actions;*
- *All the evidence held by debt recovery Agencies;*
- *The copies of authorisation provided to the solicitor and the Agent to represent Conserve Africa Foundation in NDR matters regarding Conserve Africa foundation;*

*Please note that I did not receive any of the information mentioned above during the whole process of legal action and business rates claims against Conserve Africa Foundation."*

7. Following further correspondence, and an internal review, the council wrote to the complainant on 5 November 2015. It stated that it does not hold a copy of the lease and provided him with the information in respect of part 2 of the request. The council disclosed copies of letters dated 28 April 2014 and 18 November 2014 requesting a copy of the lease from the charity but said that none had been received.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 12 October 2015 to complain that the council had failed to fully respond to his FOI request. He confirmed that he wished the Commissioner to consider whether the council does hold a copy of the lease for the relevant property.
9. The Commissioner considers that the complaint is that the council has failed to provide him with a copy of the lease for the relevant property. For its part, the council has confirmed that it does not hold a copy of the relevant lease.

## **Reasons for decision**

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### A brief background

10. The Conserve Africa Foundation (Conserve Africa) is a charity which was wound up in August 2015 following unpaid debts to Leeds City Council. The complainant believes that the debts resulted due to a trustee of the charity entering into a lease for a particular property and thereby incurring liability for business rates when the council refused to accept that the property was subject to charitable relief on business rates. The complainant argues that the trustee was acting without proper authority to do so from the charity, and that liability for the property should not therefore have been passed on to Conserve Africa. He argues that the trustee had not informed the director or other trustees of the charity of the lease nor the liability issues which arose as a result of the lease. He believes the council should have carried out proper checks of the trustee's authority to enter into the agreement prior to shifting liability for business rates from the landlord to Conserve Africa. Part of his further research into this is the evidence which the council had available when transferring liability for business rates from the landlord to the charity.
11. Section 1(1)(a) 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."*

12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
13. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
14. The Commissioner therefore wrote to the council asking it a number of questions relating to the searches it had carried out in order to determine that a copy of the lease was not held.
15. The council clarified from the outset that it knew that the information was not held as it had requested a copy of the lease a number of times from the charity prior to taking legal action against it. Nevertheless the council clarified that it had carried out searches for a copy of the lease.
16. Primarily the council confirmed that

*"All incoming correspondence relating to Business Rates, which is received via the dedicated post office address which appears on all outgoing documents, is scanned on receipt by the Council into the document imaging system (Iclipse) operated by the Council for its Revenues and Benefits Service. This correspondence is referenced with both the relevant account and property references. In addition, hard copies of all documents received are retained in a dedicated file where the account is subject to either an application for charitable relief or insolvency proceedings, which was both in the case of this account. Searches were therefore made on both the Iclipse system, and in the hard copy file. Copies of all relevant e-mails and any attachments are also saved onto the Iclipse system."*

17. The council clarified that it had carried out searches of the Iclipse file and email addresses using the following search terms; by account number, reference number, document type and date range.

18. The council went on to explain that searches of the e-mail inboxes of the key officers who had involvement in the case were also undertaken. None of those officers use laptop computers for work purposes. No copy of the lease was located. E-mail inbox searches were undertaken using the e-mail address of the individuals involved in the case who had previously contacted the Council via e-mail.
19. The council confirmed that no information had been deleted or destroyed, and that its records retention policy is to retain records for a period of nine years plus the current financial year. It said that if the information had been held it should still have been retained by the council on its Iclipse system. This holds copies of all records received after 31 March 2006.
20. Finally the council confirmed that a copy of the lease was not required to be held by the council prior to it taking the actions it did. However it does on occasion request copies and said that it had made two specific requests to the Trustee with whom they were in contact. It confirmed that it did not receive a copy of the lease in response to these requests. It further confirmed that copies of both requests were included in the information pack submitted to the complainant in response to his requests.
21. The Commissioner considered the correspondence which was disclosed to the complainant. He notes that the council requested a copy of the lease on two occasions, however the subsequent responses from the Trustee of the charity do not appear to have included, or refer to a copy of the lease being sent to the council.
22. The council confirmed that no further requests were made other than the two items it had provided. It said that it did not have need for the lease as the issue was not that the charity denied entering into a lease; both it and the landlord had confirmed that a lease had been signed. The issue which the council had was a question of whether the property was subject to charitable relief status for business rates on the property. It confirmed therefore that it did not subsequently request a copy of the lease again during the legal proceedings which followed.
23. Having considered the council's response, together with the correspondence between the trustee of the charity and the council, the Commissioner has decided that on a balance of probabilities the council was correct to state that it does not hold a copy of the lease.

## Right of appeal

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24. 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)

25. 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.
26. 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 .....**

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