

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 March 2019

Public Authority: Lancashire County Council
Address: PO Box 78
County Hall
Preston
Lancashire
PR1 8XJ

Decision (including any steps ordered)

1. The complainant has requested information about the decision by Lancashire County Council ("the Council") to withhold reimbursement payments to a bus operator. Following decision notice FS50705926, the Council disclosed held information and withheld some under section 41.
2. The Commissioner's decision is that the Council has failed to demonstrate that section 41 is engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the withheld information, ensuring that any personal data is redacted under the terms of the Data Protection Act 2018.
4. 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 30 November 2017, the complainant wrote to the Council and requested information in the following terms:

In 2012 Blackpool Council, (I understand through their Transport Officer [redacted name]), made what I consider to be a malicious allegation against both me personally and my bus company. The allegation led to Lancashire County Council withholding concessionary fare reimbursement payments.

Can you please provide all of the information Lancashire County Council holds, to include correspondence/emails/meeting notes received from Blackpool Council or any other organisation, which contributed to the decision to withhold reimbursement payments. We are particularly interested in the instructions received on behalf of Blackpool Council and dialogue between Blackpool Council and Lancashire County Council on this matter, or any other organisation involved.

The payments related to bus routes 12 and 22 operated by [redacted business] (known then as [redacted business]) and [redacted business] between June 2012 and January 2013, when the matter was resolved through court action and subsequently through mediation with [redacted council officer name] on behalf of Lancashire County Council.

6. The Council responded on 5 January 2018. It stated that it held information that had previously been disclosed (in 2012), and that the remainder was withheld under section 41.
7. The Commissioner considered the Council's handling of the request in decision notice FS50705926, and found that it had failed to comply with section 1 of the FOIA. As such, the Commissioner directed the Council to issue a fresh response.
8. The Council issued a fresh response on 11 December 2018. It disclosed further held information, and withheld some under section 41 (namely the same information that it had previously withheld under section 41).

Scope of the case

9. The complainant has asked the Commissioner to determine whether the Council is entitled to withhold the information under section 41.

Reasons for decision

Section 41 – Information provided in confidence

10. Section 41(1) of the FOIA states that:

*Information is exempt information if–
(a) it was obtained by the public authority from any other person (including another public authority), and
(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.*

Was the information obtained from another person (including another public authority)?

11. On 8 May 2018 the ICO wrote to the Council (as part of case FS50705926), to request it's submissions under section 41. In doing this, the ICO outlined the specific questions the Council needed to address in respect of that exemption. The ICO also informed the Council that it must provide a copy of the withheld information.
12. The Council provided it's responses to the questions on 29 August 2018, and a copy of the information that it sought to withhold on 10 September 2018.
13. The Council has informed the Commissioner that the withheld information represents confidential communications submitted to it by Blackpool Borough Council. The context of these communications is that the Council administers the 'Concessionary Travel Scheme' on behalf of partner authorities (such as Blackpool Borough Council), and as such receives communications from those partner authorities when they have concerns about the validity of claims submitted by bus operators.
14. The Commissioner has carefully reviewed the withheld information provided on 10 September 2018, and notes that it takes the form of 7 email chains. The Commissioner notes that these email chains contain a significant amount of replicated information, and are largely composed of correspondence which does not appear to derive from Blackpool Borough Council. Confusingly, the Council has advised the Commissioner that "*the actual information may in some cases be one or two emails further down in the chain*", but no further explanation has been provided.

15. The Commissioner perceives that a significant part of the earliest correspondence in the chains represents communications between the complainant's business (a bus operator) and the Council, whilst the correspondence that does appear to derive from Blackpool Borough Council takes place in between correspondence from the Council.
16. In the absence of any distinction between the emails (and set against the wide parameters of the request, which clearly seeks all such communications), the Commissioner has treated the 7 email chains as being the withheld information in its totality.
17. The Commissioner's guidance on Section 41¹ explains that, for section 41 to be engaged, the first criteria that must be met is "*the authority must have obtained the information from another person*".
18. The Commissioner's guidance further explains that, section 41 will only cover information that has been given to the authority, or any of the authority's analysis, interpretation, or comments that would reveal the content of the information it has been given.
19. Whilst the Commissioner has independently found that some of the individual emails contained within the 7 email chains do derive from blackpool.gov.uk email addresses, it is apparent that these represent only a small part of the withheld information, and the Council has not explained how the remainder of the information would reveal of the content of these individual emails.
20. Having considered the above factors, that Commissioner has concluded that the Council has failed to evidence that the email chains, in their totality, represent information obtained from another person (i.e. Blackpool Borough Council). As the Council has not elected to individually address each email within the chains, it is not appropriate, or reasonable, for the Commissioner to attempt to do so.
21. As the Commissioner has not been able to find that the email chains represent information 'obtained' from another person, she does not need to proceed to consider whether disclosure would constitute a breach of confidence.

¹ <https://ico.org.uk/media/for-organisations/documents/1432163/information-provided-in-confidence-section-41.pdf>

Other matters

22. In the circumstances of this case, the Commissioner considers that the Council has seemingly failed to give the withheld information proper consideration before seeking to withhold it under section 41, and consequently, the arguments presented under section 41 do not clearly correlate to the withheld information as provided to the Commissioner.
23. The Commissioner reminds the Council that the onus of demonstrating that information falls under an exemption lies with the public authority.

Right of appeal

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

Website: 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

Andrew White
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Water Lane
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